



# OSAGE COUNTY ATTORNEY'S OFFICE

Jack Hobbs, County Attorney

## Adult Diversion Program Guidelines

Updated December 11, 2018

### OSAGE COUNTY ADULT DIVERSION POLICY

Pursuant to K.S.A. 22-2907, the Osage County Attorney has established the following written policies and guidelines for the implementation of an adult diversion program. These guidelines are effective for any cases pending or offenses committed on or after January 1, 2008. It is not required that an applicant have an attorney for the purpose of an adult diversion. A Defendant will be notified that a diversion program exists by way of printing notice of such on his/her criminal complaint.

Diversion of prosecution is a privilege and **NOT A RIGHT**. There is no presumption in favor of diversion in any case, and the burden of persuasion falls upon the defendant to establish that the granting of diversion in his/her case will serve the ends of justice and the interests of the community.

### ELIGIBILITY

Diversions in adult cases, as a general a rule, are available to first-time offenders only. For those defendants who have a criminal record, diversion will still be considered if the person has not committed any crimes within the last five (5) years, or been diverted for any crime within the last five (5) years. Typically, diversion will not be considered if the applicant has any criminal convictions or diversions within the last five (5) years. Defendants charged with off-grid, Level 1-7 nonperson crimes, Level 1-3 drug felonies, and any person felony **shall not** be eligible to apply for diversion.

Defendants charged with DUI are **not** eligible to apply for diversion if: they have a prior diversion for DUI, they have a prior conviction for DUI, or if the DUI charged involved an accident resulting in any personal injury or death, including any personal injury of the defendant himself/herself.

Defendants who possesses a commercial driver's license (CDL) regardless of if the person was driving and/or what type of vehicle the person was driving at the time of the offense are **not** eligible to apply for diversion. (See K.S.A. 8-2150)

Defendants charged with Domestic Battery are **not** eligible to apply for diversion if: they have a prior diversion or conviction for Domestic Battery.

Defendants charged with any crime against a Law Enforcement Officer or Correctional Officer are **not** eligible to apply for diversion.

Defendants charged with Child Endangerment are **not** eligible to apply for diversion.

The County Attorney's Office has a policy against reducing charges and then diverting the reduced charges or diverting part of the charges and dismissing other charges not diverted.

### **PROCEDURE**

The defendant shall complete the "Application for Diversion" and submit the application. This application for diversion must be submitted to the Osage County Attorney's Office within thirty (30) days of the first appearance before the Court exclusive of Saturdays, Sundays or legal holidays. Applications submitted untimely will likely not be considered.

All defendants who are participating in a diversion program for a felony offense, misdemeanor offense, or any other offense shall, at the discretion of the Osage County Attorney's Office, participate in, complete and pay for any recommended counseling program(s).

All defendants who are charged with a DUI **must obtain an ADSAP evaluation prior to being considered for diversion in the case and must attach the evaluation to the Application for Diversion.** All fees for the evaluations must be paid by the defendant to the evaluating agency.

All defendants charged with a domestic battery **must obtain a Domestic Violence evaluation prior to being considered for diversion in the case and must attach the evaluation to the Application for Diversion.** All fees for the evaluations must be paid by the defendant to the evaluating agency.

Upon review, the Osage County Attorney's Office will set a diversion conference either with or without the defendant and/or his/her attorney to decide if diversion is an acceptable alternative for the defendant. A decision regarding whether the defendant will be accepted on diversion will be made as soon as possible.

### **CONSIDERATIONS**

Although not intended to be exclusive, the following factors shall be considered by the Osage County Attorney's Office in determining whether diversion of the defendant is in the best interest of justice and will be a benefit to the defendant and to the community.

1. Nature of the crime(s) charged and the circumstances surrounding it.
2. Any special characteristics or circumstances for the defendant.
3. Previous record of the defendant.
4. The probability that the defendant will cooperate with and benefit from diversion.
5. Provisions for restitution and/or fines.
6. Whether the available diversion program is appropriate to the needs of the defendant.

7. Recommendations of the law enforcement agency involved.
8. Recommendation of any victim(s) of the crime(s) charged.

### **AGREEMENT**

If the defendant is found suitable for the Diversion Program, a written agreement for diversion shall be offered by Osage County Attorney's Office to the defendant for acceptance or rejection. Although not exclusive, the written agreement may contain:

1. The defendant waives all rights to a preliminary hearing, to file motions and have those heard by the court, and to a trial and agrees to stipulate to the facts of the case.
2. An agreement that the defendant report to the Osage County Attorney's Office.
3. Payment to the Osage County Attorney's Office of a Diversion Supervision Fee.
4. Payment of all Court costs.
5. Any specified terms of diversion.
6. The defendant agrees not to violate any laws of the United States or any state, county, or local laws.
7. Any special conditions including, but not limited to:
  - a. Restitution to the victim(s) of any crime.
  - b. Random urine analysis.
  - c. Counseling.
  - d. Maintaining employment (if applicable).
  - e. Reimbursement of Court appointed attorney's fees.
  - f. No contact with victim(s) and/or witness(es).
  - g. Community service.
  - h. Fines.
  - i. Letters of apology.
  - j. Obtaining a General Education Certificate.

### **EFFECT**

The filing of the diversion agreement with the Clerk of the District Court of Osage County, Kansas, shall act as a general continuance of the proceedings until the conclusion of the diversion agreement. When the defendant has successfully fulfilled the terms and conditions of the diversion agreement, the County Attorney shall move to have all of the charges against the defendant dismissed with prejudice. If the defendant fails to fulfill the terms and conditions of the agreement for diversion, the County Attorney will request that prosecution be resumed. After an appropriate hearing, the Court, upon finding that the defendant failed to fulfill the terms

of the diversion agreement, may order diversion terminated and resumption of the criminal proceedings on the original complaint.

The Osage County Attorney's Office does hereby advise all prospective applicants for diversion of prosecution to consult with their own attorney prior to executing any diversion agreement, to determine any and all affects which said diversion agreement might have upon the individual defendant.

It is extremely important that the defendant understand that diversion is a privilege and not a right, and **absolute compliance** will be required. Absolute compliance with the conditions of diversion, including the timely making of any and all payments under the diversion contract, on the dates specified therein will be required. The County Attorney's Office will not excuse any non-compliance no matter how slight.

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