

PAWNEE COUNTY ATTORNEY'S OFFICE
DIVERSION POLICY
(Effective January 9, 2017) – Revised October 10, 2018

General Policy

The Pawnee County Attorney hereby establishes a diversion program pursuant to and accordance with K.S.A. 22-2907, et. seq., and amendments thereto.

The Diversion Program is intended to give a “second chance” to offenders who commit relatively minor criminal offenses.

Diversion is a privilege and not a right. There is no guarantee Diversion will be granted in any given case. The needs of the offender are less important than those of public safety and the rights of the victim.

Any defendant may request an informal diversion conference with this office at any time prior to conviction. It is not required that a Defendant have an attorney for the purpose of Diversion. However, a Defendant has the right to employ an attorney and have him/her present throughout the legal process.

The decision regarding to offer of a Diversion Agreement to any defendant is solely within the discretion of the Pawnee County Attorney. In determining whether the offer of a Diversion Agreement is appropriate the Pawnee County Attorney will consider the total circumstances of a case which will include, but are not limited to:

the circumstances of the victim;
the needs and safety of the community;
the probability the defendant will make total restitution;
the nature of the crime;
the defendant's prior driving record and/or criminal history or lack thereof;
the defendant's previous contact with law enforcement and/or the Pawnee County Attorney's Office, whether or not formal charges are resulted;
the amenability of the defendant to rehabilitation;
recommendations of law enforcement and victims;
an admission of wrongdoing/acceptance of responsibility by the defendant;
and any mitigating or aggravating circumstances.

Diversion agreements not signed by the offender within 30 days of the offer letter may be withdrawn at the discretion of the Pawnee County Attorney.

Consideration

The following factors will be considered in determining whether diversion of the defendant is in the best interest of justice and will be of benefit to the defendant and the community:

- Nature of the crime charged and the surrounding circumstances
- Previous criminal conduct, whether or not such conduct resulted in a formal charge or conviction of the defendant
- Any special characteristics or circumstances of the defendant
- The probability that the defendant will cooperate with and benefit from diversion

- The appropriateness of Diversion to meet the needs and safety of the community
- Provisions for restitution
- Recommendations of the law enforcement agency involved and the victim
- Any mitigating or aggravating circumstances
- Whether the defendant admits the offense and accepts responsibility

Offenses NOT eligible for Diversion

- Off-Grid Felonies
- Felonies level 1-4
- Residential burglaries
- Identity Theft and/or Identity Fraud
- Drug Cases – Level 1-3
- DUI cases with: any prior DUI diversion or conviction, involving injuries, children in vehicle, or a driver issued a CDL license
- Case where financial loss is over \$25,000
- In traffic matters if the driver is issued a CDL license
- Offenders with pending charges in other municipal, state, or federal jurisdictions

General Terms

If the offer is accepted by the offender, all parties shall sign the written Agreement for Pretrial Diversion. This Agreement may contain:

- 1) A waiver of preliminary hearing, all rights to a speedy trial, all rights to a jury trial and a stipulation as to the facts of the case;
- 2) A specified term of Diversion;
- 3) An agreement that the offender shall not violate any laws of the United States or any State, or ordinances of any City, or resolutions of any County;
- 4) An agreement that the offender shall report to the Diversion Officer or to any other person as designated by the Diversion Officer at the time he/she may be ordered to do so;
- 5) Payment of all court costs, Diversion costs, fees and fines within a specified period; and
- 6) Any special conditions agreed to by the parties which may include any of the following:
 - a) Full restitution to the victim;
 - b) Residence in a specified facility;
 - c) Maintenance of gainful employment;
 - d) Participation in any recommended program;
 - e) Counseling or substance abuse treatment;
 - f) Performance of community service; and
 - g) Other conditions as determined by the District Attorney.

Diversion Conference

Pursuant to K.S.A. 22-2907(2), defendants are entitled to have a diversion conference. In traffic, misdemeanors and juvenile matters, said conferences will be informally conducted by a member of the County Attorney’s staff to review the terms and conditions of the proposed diversion. In felony matters, a diversion conference shall be conducted before a District Court Judge following the waiver of preliminary hearing for the purpose of reviewing the required waiver of certain constitutional rights as set forth in subsection (a) of K.S.A. 22-2909.

Effect of Diversion

Upon the defendant entering into an Agreement for Pretrial Diversion, the criminal proceeding shall be suspended by appropriate order of the Court. When the defendant successfully fulfills the terms and conditions of Diversion, the County Attorney shall move to have the criminal charges dismissed with prejudice. If the defendant fails to fulfill the terms and conditions of the Agreement for Pretrial Diversion, the County Attorney will request that the diversion be terminated. After an appropriate hearing, the Court, upon finding the defendant has failed to fulfill the terms of the Agreement shall order Diversion terminated. Criminal proceedings on the original complaint shall be resumed.

Diversion Fee Schedule

In addition to any restitution, lab fees, court appointed attorney fees and when applicable BIDS application fees, the offender shall be responsible for the following:

Criminal and Juvenile Matters

Felony Cases

- \$500.00 diversion fee plus court costs and booking/fingerprint fee
- At the discretion of the prosecuting attorney, the offender may also be required to be supervised and pay an additional supervision fee.

Misdemeanor Cases

- \$150.00 diversion fee plus court costs and booking/fingerprint fee

Worthless Check Cases

- \$50.00 diversion fee plus court costs and booking/fingerprint fee

Juvenile Cases

- \$150.00 diversion fee plus court costs and booking/fingerprint fee
- At the discretion of the prosecuting attorney, the offender may also be required to be supervised and pay an additional supervision fee.

Traffic Matters

DUI (1st Offense)

- \$350.00 diversion fee plus court costs, booking fee/fingerprint and mandatory fine
- ADSAP fee to be paid directly to the provider

Misdemeanor Traffic

- \$150.00 diversion fee plus court costs and fines

Speeding - court costs and standard fine plus the following diversion fee:

- 0-9 mph over speed limit - \$50.00 diversion fee
- 10-14 mph over speed limit - \$100.00 diversion fee
- 15-19 mph over speed limit - \$150.00 diversion fee
- 20-24 mph over speed limit - \$200.00 diversion fee
- 25-30 mph over speed limit - \$250.00 diversion fee