

**MORTON COUNTY KANSAS
DIVERSION PROGRAM
POLICIES AND GUIDELINES**

General

Pursuant to K.S.A. § 22-2907(a), all applications for diversion shall establish that granting of such application would be in the interests of justice and of benefit to the defendant and the community. At the discretion of the Morton County Attorney, applications that satisfy this requirement will result in a diversion agreement being proposed to the defendant in their respective case. The terms of each diversion agreement shall be established by the Morton County Attorney in accordance with K.S.A. § 22-2909, and amendments thereto.

Diversion Conference

Each eligible defendant or, defendant's attorney if represented, is encouraged to contact the Morton County Attorney Office at County.Attorney@mtcoks.gov to schedule a Diversion Conference where an application package will be provided. The Diversion Conference may be held via any means agreed to by the parties.

Disclosure of Information

Pursuant to K.S.A. § 22-2907(c), the County Attorney may require any defendant requesting diversion to provide information regarding prior criminal charges, education, work experience and training, family, residence in the community, medical history, including any psychiatric or psychological treatment or counseling, and other information relating to the diversion program. In all cases, the defendant shall be present and shall have the right to be represented by counsel at the diversion conference with the County Attorney.

Consideration

Pursuant to K.S.A. § 22-2908(a), in determining whether diversion of a defendant is in the interest of justice and of benefit to the defendant and the community, the County Attorney shall consider at least the following among all factors considered:

1. The nature of the crime charged and the circumstances surrounding it;
2. Any special characteristic or circumstances of the defendant;
3. Whether the defendant is a first-time offender and if the defendant has previously participated in diversion, according to the certification of the Kansas Bureau of Investigation or the division of vehicles of the Department of Revenue;
4. Whether there is a probability that the defendant will cooperate with and benefit from diversion;
5. Whether the available diversion program is appropriate to the needs of the defendant;
6. Whether there is a probability that the defendant committed such crime as a result of an injury, including major depressive disorder, polytrauma, post-traumatic stress disorder or traumatic brain injury, connected to service in a combat zone, as defined in section 112 of the federal internal revenue code of 1986, in the armed forces of the United States of America;

7. If there is a probability that the defendant committed such crime as a result of an injury as described in item 6, whether the defendant will cooperate with and benefit from inpatient or outpatient treatment from any treatment facility or program operated by the United States department of defense, the United States department of veteran's affairs or the Kansas national guard with the consent of the defendant, as a condition of diversion;
8. The impact of the diversion of the defendant upon the community;
9. Recommendations, if any, of the involved law enforcement agency;
10. Recommendations, if any of the victim;
11. Provisions for restitutions; and
12. Any mitigating circumstances.

Ineligibility

Pursuant to K.S.A. § 22-2908(b)(1)-(4), individuals accused of certain crimes are either eligible for diversion with certain restrictions or not eligible. The following circumstances render a defendant ineligible for diversion:

1. Violation of the Kansas statute prohibiting driving under the influence, specifically Pursuant to K.S.A. § 8-1567, and the defendant:
 - a. Has previously participated in diversion upon a complaint alleging a violation of the Kansas statute prohibiting driving under the influence or an ordinance of a city in Kansas which prohibits driving under the influence;
 - b. Has previously been convicted of or pleaded nolo contendere to a violation of the Kansas statute prohibiting driving under the influence or any similar statute of another state; or
 - c. During the time of the alleged violation of the Kansas statute prohibiting driving under the influence, the defendant was involved in a motor vehicle accident or collision resulting in personal injury to another person or death;
2. Violation of the Kansas statutes regulating traffic and establishing the rules of the road while the defendant was a commercial driver's license holder or any subsequent time prior to being considered for diversion;
3. Individuals alleged to have committed a severity level 1, 2 or 3 felony for nondrug crimes or a drug severity level 1 or 2 felony drug crime; and
4. Individual alleged to have committed a domestic violence offence as defined in K.S.A. 2021 Supp. 21-5111, and amendments thereto, and the defendant has participated in two or more diversions in the previous five-year period upon complaints alleging a domestic violence offense.

Diversion Agreements

If the defendant fulfills the obligations of the diversion agreement, as determined by the Morton County Attorney, the County Attorney shall act to have the criminal charges against the defendant dismissed with prejudice. The diversion agreement shall include specifically the waiver of all rights under the law or the constitution of Kansas or the United States to a speedy arraignment, preliminary examination and hearings, and a speedy trial, and, in the case of diversion for violations of the Kansas statute prohibiting

driving under the influence, waiver of the rights to counsel and trial by jury. The diversion agreement may include, but it not limited to, provisions concerning:

1. Payment of restitution, including court costs and diversion costs;
2. Residence in a specified facility;
3. Maintenance of gainful employment;
4. Participation in programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services; and
5. Supervision by the Morton County Attorney, or by court services or community correctional services, including a diversion supervision fee and urinalysis costs when applicable.

Wildlife, Parks and Recreation Offense

Any diversion agreement in lieu of further criminal proceedings for violations of the Kansas wildlife, parks and recreation statutes, specifically Article 10 of Chapter 32 of the K.S.A., shall carry the same penalties as the conviction for the corresponding violation. If the defendant has previously participated in one or more diversions for violations of the Kansas wildlife, parks and recreation statutes, then each subsequent diversion shall carry the same penalties as the conviction for the corresponding violations.

Driving Under the Influence Offenses

Any diversion agreement in lieu of further criminal proceedings for driving under the influence shall include a stipulation, agreed to by the defendant, the defendant's attorney (if represented) and the Morton County Attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint. In addition, the agreement shall include a requirement that the defendant:

1. Pay a fine by the agreement in the amount authorized by K.S.A. 8-1567 for a first offense or, in lieu of payment of the fine, perform community service specified by the agreement, in accordance with K.S.A. 8-1567; and
2. Participate in an alcohol and drug evaluation conducted by a licensed provider pursuant to K.S.A. 8-1008 and follow any recommendation made by the provider after such evaluation.

Domestic Violence Offenses

Any diversion agreement in lieu of further criminal proceedings on a complaint alleging a domestic violence offense, as defined in K.S.A. 2021 Supp. 21-5111, shall include a requirement that the defendant undergo a domestic violence offender assessment and follow all recommendations unless otherwise agreed to with the prosecutor in the diversion agreement. The defendant shall be required to pay for such assessment and, unless otherwise agreed to with the prosecutor in the diversion agreement, for completion of all recommendations.

Drug and Alcohol Offenses for Minors

Any diversion agreement in lieu of further criminal proceedings on a complaint alleging misdemeanor drug or alcohol offenses by the defendant while under the age of 21 years of age shall require the defendant to participate in an alcohol and drug evaluation conducted by a licensed provider pursuant to K.S.A. 8-1008 and follow any recommendations made by the provider after such evaluation. If the defendant is 18 or more years of age but less than 21 years of age and allegedly committed a violation involving alcohol, the alcohol and drug evaluation will be at the discretion of the Morton County Attorney.

Commercial Sexual Exploitation Offenses

Any diversion agreement in lieu of further criminal proceedings on a complaint alleging an offense involving commercial sexual exploitation shall include a requirement that the defendant pay a fine specified by the agreement in an amount of not less than \$1,200 and not more than \$5,000. Any diversion agreement under this section may include a requirement that the defendant enter into and complete a suitable educational or treatment program regarding commercial sexual exploitation.

General Offenses

Any diversion agreement in lieu of further criminal proceedings for offenses other than driving under the influence, may include a stipulation, agreed to by the defendant, the defendant's attorney (if represented) and the Morton County Attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint.

Nonresidents

If the person entering into a diversion agreement is a nonresident of Kansas, the Morton County Attorney shall transmit a copy of the diversion agreement for distribution to motor vehicle administrator of the person's state of residence.

Stay of Proceedings

If the Morton County Attorney elects to offer diversion in lieu of further criminal proceedings on the complaint and the defendant agrees to all of the terms of the proposed agreement, the diversion agreement shall be filed with the district court and the district court shall stay further proceedings on the complaint. If the defendant declines to accept diversion, the district court shall resume the criminal proceedings on the complaint.

Distribution of Diversion Agreements

Diversion agreements will be forwarded to either the Kansas bureau of investigation or the division of vehicles of the state department of revenue pursuant to the requirements of K.S.A. 22-2909(k) and (l). A copy of the diversion agreement forwarded to either agency shall be made available upon request to the attorney general, or any county, district or city attorney or court.

Restrictions on Diversion

- No defendant shall be required to enter any plea to a criminal charge as a condition for diversion.
- No statements made by the defendant or counsel in any diversion conference or in any other discussion of a proposed diversion agreement shall be admissible as evidence in criminal proceedings on crimes charged or facts alleged in the complaint.
- Except for sentencing proceedings and as otherwise provided in K.S.A. 22-2090(c), and amendments thereto, the following shall not be admissible as evidence in criminal proceedings which are resumed under K.S.A. 22-2911:
 - Participation in a diversion program;
 - The facts of such participation; or
 - The diversion agreement entered into.

Failure to Fulfill Diversion Agreement

If the Morton County Attorney finds at the termination of the diversion period, or any time prior to that point, the defendant has failed to fulfill the terms of the specific diversion agreement, the County Attorney shall inform the district court of such finding. The district court will set a hearing in regard to the County Attorney's finding and, upon a finding that the defendant has violated the specific diversion agreement, the district court shall resume the criminal proceedings on the complaint.

Fulfillment of Diversion Agreement

If the defendant has fulfilled the terms of the diversion agreement, the district court shall dismiss with prejudice the criminal charges filed against the defendant.

Notice of Failure to Fulfill or Fulfillment Diversion Agreement

The Morton County Attorney shall forward, to the Kansas bureau of investigation and/or the division of vehicles of the state department of revenue, a record of the fact that the defendant did or did not fulfill the terms of the diversion agreement required to be filed under K.S.A. 22-2909. Such record shall be made available to any city, county or district attorney or court.

Adopted this 17th day of September, 2023.

David A. Thompson
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Interim Morton County Attorney