

STATE OF KANSAS  
Tenth Judicial District

OFFICE OF THE DISTRICT ATTORNEY  
STEPHEN M. HOWE, DISTRICT ATTORNEY  
Veterans Treatment Court Diversion

**GENERAL POLICY**

1. The Johnson County Veterans Treatment Court Diversion Program (“VDP”) is intended to give a “second chance” to veterans who have committed a relatively minor criminal offense. The offense in which is, in part, the “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.”
2. VDP is a privilege, not a right. There is no guarantee that you, as a veteran, will be granted admission into the program. Your admission will be weighed against public safety and the rights of the victim(s).
3. The District Attorney’s Office makes all decisions regarding VDP policy and admission into the program. The District Attorney appoints a Veterans Treatment Court Diversion Chief to enforce such policies and determine Diversion eligibility including conditions of Diversion contracts. The District Attorney has the final authority to approve or deny any Diversion application.
4. 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 Diversion application process.
5. A defendant is required to reimburse the court when represented by court appointed counsel. Additionally, if a defendant wants to participate in the Diversion program and must serve jail time, the defendant may be asked to sign a waiver of counsel form.
6. A defendant’s application for diversion will be rejected if not submitted within 90 days of the defendant’s first appearance. Additionally, if the defendant has pursued substantive motions, trial, or preliminary hearing in a “CR” or “DV” case the application will be rejected. The District Attorney’s Office may accept an application for Diversion, outside of this policy on a case-by-case basis.
7. Diversion Agreements not signed by the defendant within 60 days of the acceptance letter will be withdrawn.
8. The Diversion program will be administered in accordance with K.S.A. 22-2907, K.S.A. 22-2908, K.S.A. 22-2909, K.S.A. 22-2910 and K.S.A. 22-2911.

## **DIVERSION FEES/COSTS**

1. Diversion Application (Exact cash or money order only):
  - a. Misdemeanor - \$30.00
  - b. Felony - \$50.00
2. Diversion Fee:
  - a. Misdemeanor - \$125.00
  - b. Felony - \$150.00
3. Court Costs:
  - a. Misdemeanor (non-DUI) - \$159.50
  - b. Felony - \$194.50
  - c. DUI - \$909.50
4. Additional Diversion Costs may include, but are not limited to:
  - a. Fingerprinting fee
  - b. Pre-Trial Supervision fees
  - c. Urinalysis testing
  - d. Lab fees
  - e. Witness fees
  - f. Extradition costs
  - g. Court appointed attorney fees
  - h. Restitution. A minimum 25% of restitution must be paid upon signing the diversion agreement.

## **ELIGIBILITY**

To be eligible for VDP, you must:

1. Have served in the armed forces of the United States of America
2. Fall within one of the following groups
  - a. Live in Kansas and be eligible to receive benefits from the United States Department of Veterans Affairs; or
  - b. Be a resident of Johnson County, Kansas.
3. A defendant is prohibited from applying for Diversion if charged with the following:
  - a. Felonies - Level 1-6
  - b. Aggravated Domestic Battery, applications in cases involving the offense of Aggravated Domestic Battery will be reviewed for acceptance on a case-by-case basis.
  - c. Residential Burglaries
  - d. Mistreatment of a Dependent Adult
  - e. Felony Sex Offenses
  - f. Person Felony Offenses where victim is under the age of 18
  - g. Drug Cases - Level 1 - 4
  - h. DUI cases with any prior DUI diversions and/or convictions
  - i. DUI cases involving any injuries of any severity, excluding the driver
  - j. DUI cases with children present in the vehicle
  - k. DUI cases when the driver was a CDL holder at the time the violation was committed or at any subsequent time prior to being considered for diversion
  - l. Any case involving a financial loss over \$25,000

- m. Any case involving a financial loss over \$10,000 AND the defendant has a prior felony conviction OR the period of theft is greater than one year OR there are 5 or more victims OR the defendant was in fiduciary relationship with the victim.
- 4. Applications in cases involving the offenses of Identity Theft or Identity Fraud will be reviewed for acceptance on a case-by-case basis. Applications will not be accepted in cases involving allegations that the defendant has opened or attempted to open a financial account in the name of the victim OR obtained or attempted to obtain financing/credit in the name of the victim OR obtained or attempted to obtain employment in the name of the victim OR caused an individual or business to suffer a financial loss. Further, applications will not be accepted if the defendant has a prior diversion or conviction for Identity Theft or Identity Fraud.
- 5. The input of any victim shall be taken into consideration when determining whether to grant or deny diversion.
- 6. The assigned Assistant District Attorney (ADA) may request that a case be denied for Diversion even though otherwise eligible.
- 7. Final approval of Diversion lies with the Veterans Treatment Court Diversion Chief in conjunction with the District Attorney.

### **PRIOR CRIMINAL HISTORY**

- 1. A defendant with the following criminal history is ineligible to apply (**5/10 Rule**):
  - a. Misdemeanor charges with sentence, probation, suspended sentence, or diversion ending within the last 5 years.
  - b. Felony charges with sentence, probation, suspended sentence, or diversion ending within the last 10 years.
- 2. Traffic misdemeanors will not be subject to the 5/10 Rule except as described below in paragraphs Nos. 3 and 4. The District Attorney's Office reserves the right to consider any prior offense as a basis to deny diversion on a case-by-case basis.
- 3. The following traffic misdemeanors are subject to the 5/10 Rule:
  - a. Any class 'A' misdemeanor
  - b. DUI
  - c. Fleeing and Eluding
  - d. PBT Refusal
  - e. Reckless Driving
- 4. In addition to the offenses listed above, if currently charged with a DUI, the following traffic misdemeanors are also subject to the 5/10 Rule:
  - a. Minor in Possession of Alcohol,
  - b. Transporting an Open Container,
  - c. DWS (if basis for suspension was alcohol related)

5. Juvenile adjudications are not subject to the 5/10 Rule. The District Attorney's Office reserves the right to consider the nature, quantity, and timing of juvenile adjudications as a basis to deny diversion on a case-by-case basis.
6. A defendant who has had a prior diversion contract with the District Attorney's Office as an adult may not apply until 10 years after the dismissal date of the prior diversion. A defendant shall not be placed on diversion a second time for an offense which is the same or similar to the first diversion contract.
7. A defendant who has more than one pending case in Johnson County District Court will not be considered for diversion.
8. A defendant with criminal charges pending in any other municipal, state, or federal jurisdictions will not be considered for Diversion. Any outstanding traffic warrants must be resolved prior to any defendant applying for diversion.
9. Defendants charged with Severity Level 5 Drug Felonies may still apply for diversion if they have a misdemeanor conviction or diversion within the last 5 years. However, the District Attorney's Office reserves the right to deny diversion based upon criminal history, to include misdemeanor convictions or diversions within the last 5 years.

### **FORMAL DIVERSION CONFERENCE**

Upon completion of your application and assessments, you and your attorney will be required to participate in a formal VDP conference with the District Attorney's Office.

### **ADMISSION TO VDP**

If you are accepted into the VDP, the program will be administered in accordance with K.S.A. 22-2907, K.S.A. 22-2908, K.S.A. 22-2909, K.S.A. 22-2910 and K.S.A. 22-2911.

Based upon your treatment needs, you will either serve a 12 or 18-month term of diversion. Defendants in high-risk Domestic Violence cases may be required to participate in and complete Batterer's Intervention counseling as a condition of Diversion. Defendants in all other Domestic Violence cases will be required to obtain a DV assessment and follow the recommendations of that assessment as a condition of diversion. DV assessments may be obtained from any court approved provider, however, all counseling services must be obtained from a Veterans Treatment Court approved provider.