



ANDERSON COUNTY ATTORNEY'S OFFICE

Elizabeth L. Oliver, County Attorney

Juvenile Diversion Program Guidelines

Updated January 15, 2013

ANDERSON COUNTY JUVENILE DIVERSION POLICY

Pursuant to K.S.A. 38-1635, the Anderson County Attorney has established a Juvenile Diversion Program. A juvenile will be notified that a diversion program exists by way of printing notice of such on his/her juvenile 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 Juvenile to establish that a Diversion Program will serve the ends of justice and the interests of the community.

ELIGIBILITY

All Juveniles charged with non-violent felony crimes and all misdemeanors, if they have no prior felony adjudications and have never previously been placed on Diversion in this or any other jurisdiction, and are charged with non-violent crimes shall be eligible to apply for Diversion. Juveniles charged with Off-grid, Level 1-5 Non-drug and Level 1-3 Drug felonies shall not be eligible to apply for diversion. In addition, Juveniles will not be eligible for diversion if a firearm was, in any way, involved in the offense.

PROCEDURE

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

All juveniles who are participating in a Diversion Program for a felony offense, misdemeanor offense, or any other offense shall, at the discretion of the Anderson County Attorney's Office, participate in, complete and pay for recommended counseling programs. Any Juvenile who is charged with criminal offenses (felony or misdemeanor) in which the possession or consumption of drugs and/or alcohol are clearly indicated, but not charged shall participate in, complete and pay for the recommended program at an alcohol/drug facility. All fees for the evaluations must be paid by the Juvenile to the evaluating agency.

Upon review, the Anderson County Attorney's Office will decide if Diversion is an acceptable alternative for the Juvenile and under what terms and conditions.

CONSIDERATIONS

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

1. Nature of the crime charged and the circumstances surrounding it.
2. Any special characteristics or circumstances for the Juvenile.
3. Previous record of the Juvenile.
4. The probability that the Juvenile will cooperate with and benefit from Diversion.
5. The appropriateness of this Diversion Program for the needs of the particular Juvenile.
6. Provisions for Restitution.
7. Recommendations of the law enforcement agency involved.

AGREEMENT

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

1. The Juvenile waives all rights to a preliminary hearing, to file motions and have them heard by the court, and to a trial and agrees to stipulate to the facts of the case.
2. An agreement that the Juvenile report to the Anderson County Attorney's Office or Community Corrections of the Fourth Judicial District.
3. Payment to the Anderson County Attorney's Office of a Diversion Supervision Fee of \$100.
4. Payment of all Court costs.
5. Any specified terms of diversion.
6. The Juvenile agrees not to violate any laws of the United States or any state, county, or local laws.
7. Any special conditions including:

- a. Restitution to the victim(s) of any crime.
- b. Random urine, blood, breath or saliva analysis.
- c. Counseling.
- d. Maintaining employment (if applicable).
- e. Restitution for Court appointed attorney's fees.

EFFECT

The filing of the Diversion Agreement with the Clerk of the District Court of Anderson County, Kansas, shall act as a general continuance of the proceedings until the conclusion of the Diversion Agreement. When the Juvenile has successfully fulfilled the terms and conditions of the Diversion Agreement, the County Attorney shall move to have all of the charges against the Juvenile dismissed with prejudice. If the Juvenile 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 Juvenile failed to fulfill the terms of the Diversion Agreement, may order Diversion terminated and resumption of the criminal proceedings on the original complaint.

The Anderson 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 effects which said Diversion Agreement may have upon the individual Juvenile.

It is extremely important that the Juvenile 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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