

# RICHARD N. RALEIGH

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### **DIVERSION PROGRAM – TRAFFIC OFFENSES**

Pursuant to K.S.A. 22-2906 et seq. the Harper County Attorney has established a Diversion Program. Diversion 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 a Diversion Program will serve the ends of justice and the interests of the community.

#### **ELIGIBILITY**

Certain traffic offenses are not eligible for the diversion program. These offenses include, but are not limited to: K.S.A. 8-1566 Reckless Driving; K.S.A. 8-1568 Fleeing or Attempting to Elude Police Officer; K.S.A. 8-262 Driving While Canceled, Suspended or Revoked; K.S.A. 8-1599 Open Container of Alcohol; K.S.A. 40-3104 Liability Insurance; construction zone violations; school zone violations; crosswalk violations; railroad crossing violations; violations by drivers who possess a current commercial driver's license; offenses involving an injury accident. Speeding violations over 20 MPH above the posted speed limit will not be considered. A separate diversion program exists for certain first time DUI offenders. Defendants may be eligible for the diversion program if they have not had any traffic tickets, convictions or diversions for moving violations in the past six (6) months or a DUI or other serious traffic violation or criminal offense in the past five (5) years. Defendants who have holds from other jurisdictions or law enforcement agencies for separate legal actions are ineligible for diversion.

#### **PROCEDURE**

The defendant and/or defendant's attorney may request consideration for diversion. The application shall be available in the Diversion Office. The defendant shall complete the application for diversion. All payments for diversion costs **must** be in the form of a personal check, cashier's check, money order, or attorney's trust account check payable to "Clerk of the District Court". The diversion coordinator will review the defendant's history to verify eligibility and will make a determination as to the offer of diversion. Though not mandatory, the defendant will then have the option to be scheduled for an interview with the Diversion Coordinator. The defendant's attorney may attend this interview. The defendant shall give such information as may be necessary for the Diversion Committee to determine his suitability for diversion, including information which would otherwise be privileged. The application for Diversion **must** be filed prior to first Preliminary Hearing date if the case is a felony, or within thirty (30) days of arraignment if the case is a misdemeanor. **Applications not so filed will not be considered, unless waived by the Diversion Coordinator and/or the Diversion Committee.**

#### **CONSIDERATIONS**

Pursuant to K.S.A. 22-2908, the following factors shall 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:

- The nature of the crime charged and the circumstances surrounding it
- Any special characteristics or circumstances of the defendant

- 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
- Whether there is a probability that the defendant will cooperate with and benefit from diversion
- Whether the available diversion program is appropriate to the needs of the defendant
- The impact of the diversion of the defendant upon the community
- Provisions for restitution
- Recommendations of the law enforcement agency involved
- Recommendations of the victim involved
- Recommendations of the Diversion Coordinator and/or assessment evaluator
- Any mitigating circumstances
- Whether the defendant admits the offense and accepts responsibility

#### **DETERMINATION**

The Diversion Committee will review the defendant's suitability for diversion and make a recommendation to the County Attorney. The County Attorney reserves the right to accept or reject the recommendations of the Diversion Committee in making the final determination of the defendant's suitability for diversion. Once a defendant is denied diversion, an application will not be reconsidered unless material circumstances have arisen which were not initially brought to the attention of the Diversion Coordinator and/or the County Attorney.

#### **AGREEMENT**

If the defendant is found suitable for the Diversion Program, a written Agreement for Pretrial Diversion shall be offered to the defendant for acceptance or rejection. If no action is taken within thirty (30) days after the mailing of the offer to enter into a written agreement to the defendant or counsel for the defendant, the offer will be considered to be withdrawn. If the offer is accepted by the defendant, all parties shall sign the written Agreement for Pretrial Diversion with the approval of the Court. This Agreement shall contain:

- A waiver of all rights under the law or the Constitution of Kansas or of the United States to a speedy arraignment, preliminary examinations and hearings, speedy trial, all rights to a jury trial and a stipulation as to the facts of the case
- A specified term of Diversion
- An agreement that the defendant shall not violate any laws of the United States or any State, or ordinances of any City, or resolutions of any County
- An agreement that the defendant shall report to the Diversion Program Coordinator or to any

other person at the time he or she may be ordered to do so by the Court, or anyone so designated by the Court

- Payment of all court costs, Diversion costs, fees and fines within a specified period
- Any special conditions agreed to by the parties which may include any of the following:
  1. Full restitution to the victim
  2. Residence in a specified facility
  3. Maintenance of gainful employment
  4. Participation in any recommended program
  5. Counseling
  6. Other conditions as determined by the County Attorney

#### **EFFECT**

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.

