

Seward County Attorney's Office



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Russell W. Hasenbank, County Attorney

Asst. Aaron Bruns, Asst. Christopher Phillippy, Asst. Eric L. Witcher

RE: Traffic Diversion Applications

To whom it may concern:

This letter is to advise any person applying for diversion that the diversion application in a traffic case must be returned 15 days after your first appearance or you will not be considered for the diversion program. In traffic cases after you apply for diversion the prosecutor will ask for a continuance of 30 days on your behalf to allow for any necessary evaluations, driving records, and criminal history records to be received and reviewed by our office. Traffic diversion applicants who have alcohol/drug offenses who not completed or have at least scheduled any required evaluations within the 30-day period of will no longer be eligible for diversion.

If you have any questions, feel free to contact our office.

Sincerely,

Russell W. Hasenbank

SEWARD COUNTY TRAFFIC DIVERSION PROGRAM

Pursuant to K.S.A. 22-2906 et seq. the county attorney of Liberal, Seward County, Kansas 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

All defendants may apply for diversion if they have no prior felony convictions and have never previously been on diversion in this or any other jurisdiction.

PROCEDURE

The diversion application is attached to the diversion program information. The defendant is to complete the diversion application and submit the application with a **nonrefundable \$25.00 application fee**. This nonrefundable fee must be in the form of cash, cashier's check, money order, or attorney check payable to the Seward County Attorney. **The diversion application must be submitted to the County Attorney's Office within fifteen (15) days of first appearance. Late applications will not be considered.**

For any defendant with drug/alcohol charges must make an appointment for a drug/alcohol evaluation and provide a copy of the diversion application with any licensed facility. A list of licensed facilities that provide Drug and alcohol evaluations, criminal evaluations, and other classes (sometimes required in the event that diversion is approved) will be handed to you.

The Seward County Attorney's Office will search the defendant's prior criminal history. Upon review, the County Attorney will decide if diversion is accepted. If the diversion is denied, you or your attorney will receive notification by mail with a new hearing date. If the diversion is accepted, the agreement will be sent to your or to your attorney for signature. The diversion agreement must be received in the Seward County Attorney's Office within 10 days of the mailing date or the diversion agreement will no longer be valid.

CONSIDERATIONS

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

1. Nature of the crime and the circumstances surrounding it.
2. Any special circumstances of the defendant.
3. Previous driving record or in some alcohol/drug involved cases the criminal history of the defendant.
4. The probability the defendant will cooperate with and benefit from diversion.
5. The appropriateness of the diversion program for the needs of the defendant.
6. Recommendations of the alcohol/drug counselor and/or Southwest Guidance Center.

AGREEMENT

If the defendant is found suitable for the diversion program, a written agreement for diversion will offered to the defendant for acceptance or rejection. **If no action is taken within ten (10) days after the offer to defendant or counsel for the defendant, the offer will be withdrawn.**

The written agreement may contain:

1. A waiver of all rights to a speedy trial. In all cases the defendant waives the right to trial, the right to remain silent, and agrees to stipulate to the facts of the case as presented by the prosecution.
2. The defendant will report to the diversion program coordinator, Seward County Attorney's Office, or to any person that the county attorney designates.
3. A specified term of diversion.
4. The defendant will not violate any laws, including all state, county, or local laws.
5. Payment of a specified fine as determined by the county attorney in accordance with statutory guidelines.
6. Payment of all court costs - **\$108.00 in all traffic cases; a diversion fee of \$100.00 for minor traffic violations, \$250.00 if the violation involves alcohol/drug offenses and Court Appointed Attorney Fees (If applicable).** In all cases the diversion fee must be paid within thirty (30) days. The remaining fines and costs will be divided over a ten month period.

7. Any special conditions including:
 - a. residence in a specified facility;
 - b. gainful employment;
 - c. counseling;
 - d. community service;
 - e. education program;
 - f. other conditions as determined the county attorney.

EFFECT

Once the diversion agreement has been signed by all parties, the court proceedings will be suspended by an appropriate order of the court. When the defendant successfully completes the terms and conditions of the diversion, the county attorney will move to have the traffic case dismissed with prejudice. If while on diversion the defendant is convicted of any crime, the diversion charges will be considered a conviction for sentencing purposes depending upon the nature of the charges. If the defendant fails to comply with the terms and conditions of the diversion agreement, the county attorney will request that the diversion agreement be revoked. A revocation hearing will be scheduled and upon finding the defendant failed to fulfill the terms of the diversion agreement, the Court may revoke the diversion and proceedings on the original charges will resume. The case would then be tried based on the stipulation to the facts contained in the diversion agreement.

Any violation of the diversion agreement terms, including not making payments, will result in revocation proceedings be filed with the Court.

TRAFFIC INFRACTIONS – DIVERSION APPLICATION
MUST BE COMPLETED IN FULL

1. Legal name and any alias used within the last five (5) years: _____

2. Physical Address: _____ City: _____ State: _____ Zip: _____
Mailing _____ City: _____ State: _____ Zip: _____
3. Other (parent, friend, etc.) where you can be reached:

4. Previous Address: _____ City: _____ State: _____ Zip: _____
5. Telephone #: Work _____ Home: _____ Cell: _____
6. E-mail address: _____
7. Social Security # _____ Driver's License # _____
8. Do you have a commercial driver's license (CDL)? _____ **(CDL Drivers CANNOT apply for diversion)**
9. Date of Birth: _____ Race: _____ Sex: _____
10. Date Ticket Received: _____ Charges: _____
11. Charging officer: _____
12. List any prior arrests, charges or convictions of crimes whether felony, misdemeanor or traffic. List the city/state where the incidents occurred and the results of the incident.
Failure to list all prior offenses will result in the denial of your application.

Defendant's signature

In order to be considered for diversion, this application must be submitted with the (non-refundable) \$25.00 application fee cash or money order (NO PERSONAL CHECKS) to:

Seward County Attorney
415 N. Washington Suites 106-107
Liberal, KS 67901