



GARDEN CITY PROSECUTOR'S OFFICE

DIVERSION GUIDELINES & APPLICATION

DIVERSION GUIDELINES

DIVERSION PROGRAM:

Diversion is a program offered to a defendant of a criminal or traffic case to a supervised performance program prior to and in lieu of a conviction or acquittal disposition. Essentially, diversion offers an opportunity for a defendant to resolve an offense without a conviction¹. By participating in the diversion program a defendant is able to avoid any mandatory jail term required for those offenses. If the defendant is successful and completes the terms and conditions of the Diversion Agreement, then the pending charges are dismissed with prejudice (meaning they cannot be re-filed against you) at the end of the diversion term.

However, should a defendant violate any of the terms or conditions of the Diversion Agreement, the Agreement may be revoked and the original charge(s) may be reinstated for full and complete prosecution.

Be aware that even if a defendant participates in the diversion program the Department of Revenue, Division of Motor Vehicles for the state of Kansas may revoke, suspend, or restrict driving privileges. A suspension or revocation of a driver's license may occur in another state if the defendant holds a driver's license in that state.

ELIGIBILITY:

A defendant is **not** eligible for diversion if they are charged with an alcohol related offense and:

1. They have previously participated in a diversion for an alcohol related offense.

¹ In certain cases a successful diversion will still be considered a conviction should another offense of the same nature occur – such as a DUI.



GARDEN CITY PROSECUTOR'S OFFICE DIVERSION GUIDELINES & APPLICATION

2. They have previously been convicted of or plead no contest to an alcohol related offense in the City of Garden City or the State of Kansas, have previously been convicted of or pleaded no contest to a violation of Section 86-2(30) of the Code of Ordinances of the City of Garden City, Kansas or K.S.A. 8-2,144 or 8-1567, or of a law of another state, or a political subdivision thereof, which prohibits the acts prohibited by those statutes.
3. During the time of the alleged alcohol related offense they were involved in a motor vehicle accident or collision resulting in personal injury or death.
4. **A defendant who is a driver or a holder of a Commercial Driver's License (CDL) is NOT eligible for diversion regarding any matter involving misdemeanor traffic offenses or traffic infractions.** This restriction includes both individual's with commercial licenses from the State of Kansas as well as other states. For the purposes of this restriction, a person shall be considered a holder of commercial driver's license if the person was a holder of a commercial driver's license at the time the person was arrested or was issued a citation and shall remain a holder even if the person surrenders the license after the arrest or citation. (K.S.A. 8-2,150)

ACCEPTANCE:

Acceptance into the diversion program is entirely at the discretion of the City Prosecutor's Office. Participation in the diversion program is a privilege and not a right. There are many factors that are considered when determining if a defendant will be accepted into the diversion program including but not limited to:

1. If it is in the best interest of justice, the community, and the defendant.
2. The nature of the crime charged and the circumstances around it.
3. Special characteristics or circumstances of the defendant.
4. Whether the defendant is a first time offender of an alcohol related offense and if the defendant has previously participated in diversion according to the Kansas State Department of Revenue, Division of Motor vehicles (or other state motor vehicle departments depending on the state where the driver's license was issued).



GARDEN CITY PROSECUTOR'S OFFICE DIVERSION GUIDELINES & APPLICATION

5. Whether there is a strong likelihood of the defendant cooperating with and benefiting from diversion.
6. Whether the diversion program is appropriate and can meet the needs of the defendant.
7. The impact the defendant participating in the diversion program will have on the community.
8. Any recommendations from the involved law enforcement agency.
9. Any recommendations from the victim.
10. Any restitution that maybe owed.
11. Any other mitigating circumstances.

PROCEDURE:

1. **APPLICATION:** Applications for the diversion program are available at the Garden City Municipal Court Office located at 310 N. 7th Street, Garden City, Kansas. The application must be completed entirely and returned to the Municipal Court Clerk's Office with the \$35.00 application fee (see below) prior to the defendant's court date (whether a first appearance or a case management). If the defendant has an attorney it is then the attorney's responsibility to request the application. Any incomplete application will be rejected until it is filled out completely. Any application with false or misleading information will be rejected.
2. **APPLICATION FEE:** *A \$35.00 application fee is required and must be paid at the time the diversion application is turned in to the Municipal Court Clerk's Office.* This fee is non-refundable and must be paid in cash, money order, or Visa/Master Card. If you are accepted for diversion the \$35.00 will be credited towards the diversion fee.
3. **REVIEW & DECISION:** Once the application has been submitted the Diversion Coordinator and City Prosecutor will review it and then provide an acceptance or denial letter via mail to the defendant or the defendant's attorney. If the defendant is accepted, a copy of the Diversion Agreement will be sent with the acceptance letter and a specific



GARDEN CITY PROSECUTOR'S OFFICE DIVERSION GUIDELINES & APPLICATION

day and time where the defendant must appear at the City Prosecutor's Office for a Diversion Conference.

4. **REJECTION:** If an application for diversion is rejected, the case will be placed back on the Municipal Court docket and a case management date will be stated in the denial letter. The defendant is required to attend court on the date stated in the letter and failure to do so could result in a bench warrant for their arrest.
5. **DIVERSION CONFERENCE:** All defendants who are accepted into the diversion program will be required to come to a mandatory Diversion Conference where the terms and conditions of the Diversion Agreement will be explained and the Diversion Agreement will be signed. The defendant will be given a copy of the signed Diversion Agreement along with any other information needed to successfully complete their terms and conditions. The conference will be held at the Garden City Municipal Court located at 310 N. 7th Street, Garden City, Kansas. Failure to appear at the Diversion Conference shall be grounds for rejection of the diversion application.
 - a. **DUI DIVERSION & DRUG RELATED DIVERSION:** Any and all drug or alcohol related diversion will be required to obtain a Drug & Alcohol Evaluation from an approved certified Drug & Alcohol Treatment Provider.
6. **LENGTH:** Diversion Agreements involving class 'A', 'B', 'C' and unclassified misdemeanor charges will be placed on a term of 12 months, unless otherwise stated in the Diversion Agreement. Traffic infractions will be placed on a term of 90 days, unless otherwise stated in the Diversion Agreement.
7. **DIVERSION FEE:** **The remainder of the diversion fee must be paid to the Municipal Court Clerk's Office** (*The Municipal Court Clerk's office is open Monday through Friday from 9:00 a.m. to 4:00 p.m.*) and must be paid PRIOR to the Diversion Conference. It is the defendant's responsibility to provide a receipt of their payment at the Diversion Conference.
 - a. For all misdemeanor diversion the diversion fee is \$350.00 (minus the application fee) and is separate from the fines and court costs.



GARDEN CITY PROSECUTOR'S OFFICE DIVERSION GUIDELINES & APPLICATION

- b. For all traffic diversion the diversion fee is \$150.00 (minus the application fee) and is separate from the fines and court costs.
8. **COURT COSTS:** The defendant is still required to pay court costs in the amount of \$90.00 for misdemeanor and \$75.00 for traffic diversions, unless otherwise stated in the Diversion Agreement.
9. **FINES:** The defendant is still required to pay the standard fine(s) associated with the charge(s) in their case, unless otherwise stated in the Diversion Agreement. The fines and court cost will be broken down into payments depending on the length of the Diversion Agreement. **The Diversion Fee DOES NOT cover the cost of any fines or court costs.**
10. **ADDITIONAL DIVERSION CONDITIONS:** In addition to the above terms and conditions the defendant may be required to:
- a. Pay attorney fees (if applicable).
 - b. Any evaluations including but not limited to: drug and alcohol, domestic violence, or anger management. The defendant is required to pay for these evaluations at their own expense and must be done at an approved treatment provider.
 - c. Community Service at the assigned or approved non-profit organization as stated in the Diversion Agreement.
 - d. Pay any restitution (if applicable).
 - e. Drug and Alcohol testing maybe required for any drug or alcohol related offense.
 - f. Attend a MADD Victim Impact Panel.
 - g. A defensive driving class.
11. **VIOLATION OF LAWS:** Any new charges or violation of the law(s) of the City of Garden City, the State of Kansas, or any other state is cause for termination of the Diversion Agreement.
12. **WAIVERS:** The defendant will be required to waive all rights under the law or the Constitution of Kansas or of the United States to counsel (if not retained or appointed), a speed arraignment, a speedy trial, and the right to trial by jury.



GARDEN CITY PROSECUTOR'S OFFICE DIVERSION GUIDELINES & APPLICATION

ANY DEFENDANT WHO CHOOSES TO ENTER INTO THE DIVERSION PROGRAM WILL BE EXPECTED TO COMPLY WITH ALL TERMS OF THE DIVERSION AGREEMENT. NONCOMPLIANCE WITH ANY TERM OR CONDITION OF THE AGREEMENT IS CONSIDERED GROUNDS FOR TERMINATION OF THE DIVERSION AGREEMENT AND THE REINSTITUTION OF PROSECUTION OF THE OFFENSE(S) CHARGED.



GARDEN CITY PROSECUTOR'S OFFICE

DIVERSION GUIDELINES & APPLICATION

APPLICATION FOR DIVERSION PROGRAM

1. **Full Legal Name:** _____ **Maiden Name:** _____

a. *Other Names or Aliases Used:*

2. **Current Physical Address:** _____

City, State, Zip Code: _____

Current Mailing Address: _____

City, State, Zip Code: _____

3. **Telephone Number:** Home: _____ Work: _____

Mobile: _____ Relative Name & Phone: _____

4. **Email Address:** _____

5. **Preferred method of correspondence:** Email: _____ Mailing Address: _____

6. **Previous Address:** _____

City, State, Zip Code: _____

7. **Other states you have lived in:** _____

8. **Birthdate:** _____ **Social Security No.:** _____

9. **Driver's License No.:** _____ **State Issued:** _____

10. **Other states you have had a Driver's License:** _____

11. **List your employers for the last 5 years:**

Employer	City/State	Full/Part Time	Position	Shift
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____



GARDEN CITY PROSECUTOR'S OFFICE

DIVERSION GUIDELINES & APPLICATION

12. Charges Filed Against You:

13. List all incidents where you have been arrested, charged, or convicted of a crime including felonies, misdemeanors, or traffic citations:

Crime/Offense Charged City/State/Court Date Conviction/Acquittal/Dismissed

14. Have you ever been on probation or parole (or are you currently): Yes: _____ No: _____

a. *If 'Yes' did you complete successfully:* Yes: _____ No: _____

City/State Date Started Date Finished Offence

15. Have you ever participated in a diversion program: Yes: _____ No: _____

a. *If 'Yes' did you complete successfully:* Yes: _____ No: _____

City/State Date Started Date Finished Offence



GARDEN CITY PROSECUTOR'S OFFICE

DIVERSION GUIDELINES & APPLICATION

16. **Have you ever participated in an Alcohol/Drug Treatment Program:** Yes: _____ No: _____

a. *If 'Yes' did you complete successfully:* Yes: _____ No: _____

<u>Name of Program</u>	<u>City/State</u>	<u>Date Started</u>	<u>Date Finished</u>
------------------------	-------------------	---------------------	----------------------

_____	_____	_____	_____
_____	_____	_____	_____

17. **Why should you be considered for participation in this Diversion Program:**

I, the undersigned, hereby authorize the release and exchange of any information or documents' regarding my case to or from the City Prosecutor's Office to or from the agency involved with the diversion requirements.

Applicant's Signature

Date

Parent/Guardian Signature
(If Applicant is under 18 years of age)

Date