

**OFFICE OF THE CITY PROSECUTOR
LINDSBORG, KANSAS**

**LINDSBORG CITY DIVERSION PROGRAM
POLICY AND GUIDELINES**

PREAMBLE

Pursuant to K.S.A. 12-4412, et. seq., the City of Lindsborg is mandated to establish a pre-trial diversion program in certain criminal proceedings; to set forth written policies and guidelines to implement said statute; to provide for notification to all offenders of said program and to provide for a diversion conference for all offenders who are eligible to request said conference.

A copy of these diversion program policies and guidelines shall be placed in the file jacket of each person charged with an offense who may be eligible for diversion in the Municipal Court of Lindsborg, Kansas, and upon making their first appearance before the Court, each offender shall be furnished a copy by the Court.

**ELIGIBILITY TO APPLY FOR ENTRY
INTO THE DIVERSION PROGRAM**

1. No offender who has had a prior diversion as an adult or juvenile (except for insufficient funds check) is eligible for diversion for any offense.

2. No offender who has been convicted of or adjudicated of an alcohol or drug related offense including but not limited to DUI, TOC, MIP/C, Furnishing Alcohol to a Minor, Intoxicated Pedestrian, or any offense committed while under the influence of alcohol or drugs, etc., is diversion eligible for an alcohol-related offense.

3. No offender who has been convicted of, adjudicated of, or has charges pending for a felony is eligible for diversion.

3. No offender who has been convicted of, adjudicated of, or has charges pending for a person misdemeanor is eligible for diversion for a person misdemeanor.

4. Not falling within one of the above exclusion does not guarantee diversion. Diversion may be denied for any offense based on the City Prosecutor's review of the statutory considerations as outlined below.

The City Prosecutor may hold a pre-diversion conference with the offender. The City Prosecutor will consider all of the applicable statutory factors in reaching a decision to offer or deny diversion to an offender. The offender shall complete and submit a Diversion Application to the

City Prosecutor. The City Prosecutor will then determine whether the offender is an acceptable candidate for the Diversion Program.

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

1. The nature of the crime and the surrounding circumstances;
2. Any special characteristics or circumstances of the offender;
3. Whether the offender is a first-time offender and if the offender has previously participated in diversion, according to the certification of the Kansas Bureau of Investigation;
4. Whether there is a probability that the offender will cooperate with and benefit from a diversion program;
5. Whether the available diversion program is appropriate to the needs of the offender;
6. The impact of the diversion upon the community;
7. Recommendations, if any, of the involved law enforcement agency;
8. Recommendations, if any, of the victim;
9. Provisions for payment of restitution, if any, and
10. Any mitigating circumstances.

Upon the determination that the offender is an acceptable candidate for entering the Diversion Program, the parties shall enter into a written diversion agreement. The written diversion agreement shall contain, but is not limited to the following:

1. A waiver of all rights to a speedy trial;
2. A specified term (period) of diversion;
3. An agreement the offender shall not violate any laws of the United States, of the State of Kansas, and the ordinances of any city or county.
4. The offender shall report to the City Prosecutor, Diversion Officer, or any other person or agency at any time he/she may be ordered to do so by the City Prosecutor or Diversion Officer;
5. The offender shall conduct himself/herself as a law-abiding citizen at all times;
6. Payment of all costs, fines, and court-assessed attorney's fees, if any;
7. The offender's full legal name;
8. The offender's full name at the time the complaint was filed, if different from the offender's current name;
9. The offender's current address, sex, date of birth, driver's license number, phone number and social security number;
10. The crime(s) with which the offender is charged;
11. The date the complaint was filed;
12. If applicable, the Court in which the diversion agreement will be filed;
13. A stipulation to the essential facts in the case that establish each element of the offense/s charged;

14. Any special conditions, which may include, but are not limited to the following:
- a. Full restitution payment to the victim(s);
 - b. Residence at a specified address, or if changed, proper notice of such change given;
 - c. The maintenance of gainful employment or mandatory school attendance;
 - d. Participation in any recommended programs, including but limited to educational, drug/alcohol, tobacco, driving, or mental health programs;
 - e. Payment of any and all fees for required evaluations and programs;
 - f. Payment of a diversion fee of \$25.00 per month for each month of diversion as specified in the agreement.

The diversion agreement shall be signed by the offender, the offender's attorney, if any, and the City Prosecutor before the diversion is in effect.

Upon the offender entering into a diversion agreement, the criminal proceedings shall be suspended; and, upon the offender's successful completion of the terms and conditions of said agreement, the City Prosecutor shall have the charge(s) against the offender dismissed with prejudice.

If, prior to the expiration of said diversion agreement term or period, it has been determined the offender failed to fulfill the terms and conditions of said agreement, the City Prosecutor shall make notice to the Court of such failure and, if the Court finds the offender has failed to fulfill the terms and conditions of the agreement at a hearing thereon, the diversion agreement shall be terminated and the original criminal proceedings shall be resumed.

Lindsborg City Prosecutor

(Revised 11-20-2014)