

**STATE OF KANSAS**  
**Sixth Judicial District**

**OFFICE OF THE LINN COUNTY ATTORNEY**  
**JAMES BRUN, COUNTY ATTORNEY**  
**Adult Diversion Program**  
**Letitia Lee Ferwalt, Diversion Coordinator**

**GENERAL POLICY**

1. The Diversion program is intended to give a “second chance” to offenders who commit a relatively minor criminal offense.
2. Diversion is a privilege and not a right. There is no guarantee Diversion will be granted in any given case. The needs of the offender are less important than those of public safety and the rights of the victim.
3. It is not required that a defendant have an attorney for the purpose of Diversion. However, a defendant has the right to employ an attorney and have him/her present throughout the Diversion application process.
4. A defendant is required to reimburse the court when represented by court appointed counsel. Additionally, if a defendant wants to participate in the Diversion program and must serve jail time, the defendant may be asked to sign a waiver of counsel form.
5. The County Attorney appoints a Diversion Coordinator to make all decisions regarding Diversion policy, to enforce such policies and determine Diversion eligibility including conditions of Diversion contracts. The County Attorney has the final authority to approve or deny any Diversion application for any lawful reason.
6. It is the responsibility of the defendant to read the Diversion policy in its entirety, prior to applying, to ensure they are eligible to make application. Once an application for Diversion has been submitted, that fee is non-refundable. Additionally, if a defendant has pursued substantive motions, trial or a preliminary hearing, the application will be rejected.
7. A defendant’s application for Diversion will be denied if not submitted within 60 days of the defendant’s first appearance. The application, application fee and any required evaluation or assessment (if applicable) must be submitted together to be considered on time.
8. All DUI/BUI and drug cases require that an evaluation, from a Diversion approved provider, be completed before an application for Diversion will be accepted. Defendant is subject to monthly face to face monitoring and monitoring fees.
9. Defendants at the discretion of the Diversion Coordinator, may be required to attend a diversion conference prior to a decision for Diversion being made. In addition, Defendants may be required to report for face to face check-in appointments with the Diversion Coordinator during the term of diversion.
10. Defendants placed on Diversion may be required to submit to urinalysis testing at any time for illegal drugs or alcohol at defendant’s expense.
11. Diversion contracts not signed by the defendant and/or defense counsel within 60 days of the acceptance letter will be withdrawn.
12. The Diversion program will be administered in accordance with K.S.A. 22-2907, K.S.A. 22-2908, K.S.A. 22-2909, K.S.A. 22-2910 and K.S.A. 22-2911.

## **DIVERSION FEES/COSTS**

1. Diversion Application (Exact cash, firm check or money order only):
  - a. Misdemeanor - \$30.00
  - b. Felony - \$50.00
2. Diversion Fee (due upon signing the diversion agreement):
  - a. Misdemeanor - \$200.00
  - b. Felony - \$350.00
3. Court Costs (due upon signing the diversion agreement):
  - a. Misdemeanor (non-DUI) - \$158.00
  - b. Felony - \$193.00
  - c. BUI/DUI - \$108.00 plus statutorily mandated fine \$500.00/\$750.00
4. Additional Diversion Costs (due upon signing the diversion agreement) may include, but are not limited to:
  - a. Fingerprinting fee
  - b. Urinalysis testing
  - c. Lab fees
  - d. Witness fees
  - e. Extradition costs
  - f. Court appointed attorney's fees
  - g. Statutory fines
  - h. Restitution

## **ELIGIBILITY**

### *Current Offense*

1. A defendant is prohibited from applying for Diversion if charged with the following:
  - a. Felonies - Level 1-6
  - b. Drug Cases - Level 1-4 (Level 4 Possession of Marijuana, Possession w/ Intent to Distribute Marijuana or Distribution of Marijuana are eligible)
  - c. Aggravated Domestic Battery
  - d. Residential Burglaries
  - e. Felony Sex Offenses
  - f. BUI/DUI cases with any prior BUI/DUI diversions and/or convictions
  - g. BUI/DUI cases involving any injuries of any severity, including the driver
  - h. BUI/DUI cases with children present in the vehicle/vessel
  - i. BUI/DUI cases when the driver has been previously issued a CDL license
  - j. Battery and/or Assault on Law Enforcement
  - k. Failure to Register as an Offender
  - l. Any case involving a financial loss over \$10,000

### *Prior Criminal History*

1. A defendant with the following criminal history is ineligible to apply **(5/10 Rule)**:
  - a. Misdemeanor diversion or conviction within the last 5 years
  - b. Felony diversion or conviction within the last 10 years
  - c. The following traffic misdemeanors are subject to the 5/10 Rule:  
Any class "A" misdemeanor  
DUI  
Fleeing and Eluding  
PBT Refusal  
Reckless Driving
  - d. The 5/10 rule is from the date of supervision completion, not arrest/charge date.

2. **Defendants who have more than one case pending in Linn County District Court or with other charges pending in any municipal, state, or federal jurisdictions will not be considered for Diversion.**
3. Defendants who have had a prior Diversion in Linn County District Court may not apply until 10 years after the dismissal date of that diversion and it may not be for the same offense.
4. The County Attorney and the Diversion Coordinator reserves the right to consider any prior offense as a basis to deny Diversion on a case by case basis.
5. Juvenile adjudications are not subject to the 5/10 Rule. The County Attorney's Office reserves the right to consider the nature, quantity, and timing of juvenile adjudications as a basis to deny diversion on a case by case basis.

### **ADDITIONAL REQUIREMENTS**

1. A defendant charged with BUI/DUI or a drug offense must obtain a substance use evaluation **prior** to making application for Diversion and evaluation must be submitted **with** the diversion application or emailed directly to lferwalt@linncountyatty.com **prior** to submitting application. Any application submitted without an evaluation will be denied. Any other case type where the defendant was under the influence of alcohol or drugs during the commission of the crime, will be required to obtain a substance use evaluation after the signing of the diversion agreement (unless directed otherwise) and follow those recommendations.
2. A defendant may be required to submit additional evaluations prior to determining whether to offer a Diversion contract.
3. A defendant charged with a felony domestic violence offense must obtain a Domestic Violence Assessment **prior** to making application for Diversion. Unless directed otherwise, in all other Domestic Violence cases, a defendant will be required to obtain a Domestic Violence Assessment after signing the Diversion agreement and must follow the recommendations of that assessment as a condition of Diversion. A defendant charged in a Domestic Violence case will be required to complete at a minimum, anger control classes.
4. A defendant charged with Lewd and Lascivious Behavior, Sexual Battery or other eligible sexual related offenses is required to obtain a non-violent sex-offender evaluation **prior** to making application for diversion. Evaluation must be submitted with the application for Diversion or emailed directly to lferwalt@linncountyatty.com **prior** to submitting application for Diversion.
5. **All assessments, evaluations, counseling, classes and substance use services are at defendant's expense and *must* be obtained from an agency on the Diversion approved provider list.**
6. A defendant may be required to submit full payment, upon signing the diversion agreement on any case requiring restitution.