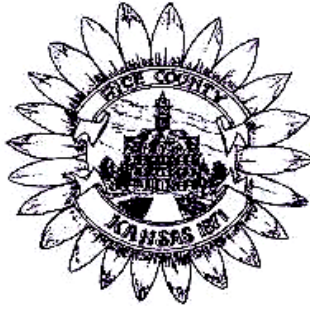


REMINGTON S. DALKE
Rice County Attorney
rca@ricecothse.com

RICE COUNTY COURTHOUSE
101 WEST COMMERCIAL
LYONS, KANSAS 67554
(620) 257-3081



Office of the Rice County Attorney

RICE COUNTY ADULT DIVERSION POLICY

Pursuant to K.S.A. 22-2907, the Rice County Attorney has established the following written policies and guidelines for the implementation of an adult diversion program. These guidelines are effective for any cases pending or offenses committed on or after January 1, 2018. It is not required that an applicant have an attorney for the purpose of an adult diversion. Defendants will be notified that a diversion program exists by way of printing notice of such on his/her criminal complaint.

Diversion of prosecution 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 the granting of diversion in his/her case will serve the ends of justice and the interests of the community.

ELIGIBILITY

Diversion agreements are available for most traffic offenses and generally available to first-time offenders.

For those defendants who have a criminal record, diversion will still be considered, but the following factors will weigh against an offer of diversion:

- the person has been convicted of any crimes within the last five (5) years
- the person received a diversion for any crime within the last five (5) years

Defendants charged with DUI **are not** eligible for diversion if they have a prior diversion for DUI, if they have a prior conviction for DUI, or if the DUI charged involved an accident resulting in any personal injury or death, including any personal injury of the defendant himself/herself.

PROCEDURE

The defendant shall complete the "Application for Diversion" and submit the application. Said applications are available from the Rice County Attorney's Office or online. There is a non-refundable \$25 application fee for each diversion application. This application must be submitted to the Rice County Attorney's Office within thirty (30) days of the first appearance before the Court exclusive of Saturdays, Sundays or legal holidays.

Often an evaluation of some type will be a condition of diversion. All fees for the evaluations must be paid by the defendant to the evaluating agency. All defendants who are participating in a diversion program may, at the discretion of the Rice County Attorney's Office, be required to participate in, complete and pay for any recommended counseling program(s).

Upon application, the Rice County Attorney's Office will set the matter for review to decide if diversion is an acceptable alternative for the defendant. A decision regarding whether the defendant will be accepted on diversion will be made as soon as possible.

CONSIDERATIONS

Although not intended to be exclusive, the following factors shall be considered by the Rice County Attorney's Office in determining whether diversion of the defendant is in the best interest of justice and will be a benefit to the defendant and to the community:

- Nature of the crime(s) charged and the circumstances surrounding it
- Any special characteristics or circumstances for the defendant
- Previous record of the defendant
- The probability that the defendant will cooperate with and benefit from diversion
- Provisions for restitution and/or fines
- Whether the available diversion program is appropriate to the needs of the defendant
- Recommendations of the law enforcement agency involved
- Recommendation of any victim(s) of the crime(s) charged

DOMESTIC VIOLENCE POLICY

Pursuant to K.S.A. 22-2309, the Rice County Attorney's Office will maintain safety information for victims of domestic violence. In those crimes in which probation, rather than jail or prison, is warranted, the County Attorney will recommend conditions of diversion which are designed to rehabilitate the defendant and meet safety issues of the victim.

REVOCAION OF DIVERSION

A person granted diversion may have that diversion revoked at a later date and prosecution may be reinstated. Although not intended to be exclusive, the following factors shall be considered by the Rice County Attorney's Office in determining whether diversion of the defendant should be revoked:

- Commission of a new crime
- Failure to meet the conditions of diversion, e.g. obtaining an evaluation, completing recommended treatment, etc.
- Contact with any victim or witness in the case if contact is prohibited as a condition of diversion
- Failure to pay costs, fees and/or restitution in the time specified in the diversion

Every diversion contains a document entitled "Stipulation of Facts" that the person granted diversion agrees to as a condition of diversion. If a diversion is revoked and prosecution is reinstated, the finding of guilt by the Court and conviction of the crime(s) will be based solely on the stipulations agreed to by the person granted diversion. The person granted diversion that is later revoked is not entitled to a trial other than on the stipulated facts.