



ENHANCED DIVERSION PROGRAM POLICIES AND PROCEDURES

DOUGLAS COUNTY DISTRICT ATTORNEY'S OFFICE | ALTERNATIVES TO INCARCERATION UNIT

<https://www.douglascountyks.org/depts/district-attorney>

ENHANCED DIVERSION PROGRAM

INTRODUCTION

The Douglas County District Attorney's Office recognizes that its responsibilities extend beyond its chief function of ensuring public safety. While public safety and victims' rights are paramount, societal interests such as equal access to justice and offender reformation can often be served through alternatives to incarceration. The Enhanced 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.

The District Attorney's Office reviews diversion applications on a case-by-case basis. Diversion is appropriate when the District Attorney's Office determines that a diversion agreement will best serve the ends of justice, the interests of the community, public safety, and the rights of the victims.

MISSION

The mission of the Enhanced Diversion Program is to divert people from the criminal justice system while emphasizing accountability and reformation. The program provides structure for its participants, as well as assistance in accessing community resources. Access to these resources helps participants identify and address the underlying issues which may have led to their involvement with the criminal justice system, ideally reducing recidivism.

Participants of the Enhanced Diversion Program generally would not otherwise have the option of diverting their cases due to a determination that they are higher-risk, higher-needs, or some combination of both.

GOALS

- Promote offender reformation through interactive programming.

Improve quality of life for participants through assisted access to community-based support services.
- Reduce court congestion and increase judicial efficiency by decreasing the number of cases processed through the District Court.
- Reduce jail population and allow the District Attorney to allocate prosecutorial resources to the most serious offenses.

ELIGIBILITY FOR ENHANCED DIVERSION

In determining eligibility the District Attorney's Office shall consider:

- Legitimate public safety concerns.
- Input from identifiable victims.
- The nature of the crime charged and the circumstances surrounding it.
- Any special circumstances of the applicant.

- The applicant's criminal history, including any prior participation in diversionary programs.
- Whether the applicant is amenable to engagement in diversion.
- Whether diversion is consistent with the applicant's rehabilitation and reintegration.
- Whether public interest will be best served by diverting the applicant from prosecution.
- Recommendations, if any, of the involved law enforcement agency.
- Provisions for payment of restitution.
- Any mitigating circumstances.

While diversions are granted on a case-by-case basis, some offenses *generally* are not appropriate for diversion, including:

- Offenses committed with a firearm.
- Offenses where bodily harm results.
- Offenses involving manufacture, distribution, or dealing of drugs for profit.
- Offenses involving fiduciary relationships (relationships involving trust, especially with regard to the relationship between a trustee and a beneficiary).
- Offenses involving vulnerable populations.
- Offenses involving a criminal enterprise.
- Offenses involving sexual conduct.

Victims shall have the right to be informed and will be notified of the decision to enter the applicant in the Enhanced Diversion Program.

Cases involving the following are not eligible by Kansas Statute:

- Complaint alleging K.S.A. 8-1567 or K.S.A. Supp. 8-1025, and amendments thereto, and the defendant: (A) has previously participated in a diversion upon a complaint alleging a violation of that statute or an ordinance of a city in this state which prohibits the acts prohibited by that statute; (B) has previously been convicted of or pleaded nolo contendere to a violation of that statute or a violation of a law of another state or of a political subdivision of this or any other state, which law prohibits the acts prohibited by that statute; or (C) during the time of the alleged violation was involved in a motor vehicle accident or collision resulting in a personal injury or death.
- The complaint alleges that the defendant committed a class A or B felony or for crimes committed on or after July 1, 1993, an off-grid crime, a severity level 1,2, or 3 felony for nondrug crimes, a drug severity level 1 or 2 felony for drug crimes committed on or after July 1, 1993, but prior to July 1, 2012, or a drug severity level 1, 2, or 3 felony committed on or after July 1, 2012.
- The complaint alleges a domestic violence offense, as defined in K.S.A. 2017 Supp. 21-5111, and amendments thereto, and the defendant has participated in two or more diversions in the previous five year period upon complaints alleging a domestic violence offense.

No applicant shall be denied admission based upon race, ethnic background, religion, gender, disability, marital status, sexual orientation or economic status.

Applicants may elect to be represented counsel throughout the diversion process. Criminal Justice Services will provide counsel to unrepresented applicants.

REFERRALS TO ENHANCED DIVERSION

Cases may be prescreened by the District Attorney's Office for eligibility. Cases identified will be notified in writing. Cases may be identified at first appearance for eligibility and notated on the pretrial recommendation report.

Attorneys may refer clients, or applicants without counsel may apply, by submitting a completed Diversion Program Application to the District Attorney's Office. The preferred method of delivery is via email to dadiversions@douglascountyks.org.

ACCEPTANCE PROCESS

Cases with a preliminary acceptance for Enhanced Diversion will be referred to Criminal Justice Services to create a diversion supervision plan and complete the Risk and Needs Triage (RANT) assessment, to determine clinical services needs and supervision level.

Enhanced Diversion terms, supervision plan, and agreement shall be sent to defense counsel for review with the applicant.

The applicant and defense counsel shall meet with the District Attorney's Office to discuss terms of the Enhanced Diversion Agreement and execute the enrollment documents.

DENIAL PROCESS

Applicants who apply and are denied Enhanced Diversion shall be notified in writing. The letter shall state the reasons for denial.

Applicants who decline the offer for Enhanced Diversion, or are ineligible, will proceed with charges through the District Court for case processing.

APPLICANT ASSESSMENT PROCESS

To complete the referral process, all applicants must meet with Criminal Justice Services to complete the RANT and create an individualized diversion plan with achievable goals. *The RANT can be completed by non-clinically trained probation officers and provides immediate guidance regarding clinical service needs and supervision recommendations.*

Based on the charge(s), circumstances of the case, or RANT, applicants may be referred for an additional evaluation to determine if clinical services are needed.

The results of the RANT and proposed diversion plan are initially sent to the District Attorney's Office for review, and then defense counsel to review with the applicant. The District Attorney's Office shall notify defense counsel if the applicant is to seek an additional clinical assessment prior to signing the diversion agreement.

THE ENHANCED DIVERSION AGREEMENT

If approved for the Enhanced Diversion Program, a written Diversion Agreement shall be offered to the applicant with a deadline for acceptance. If the applicant chooses to accept, the applicant must execute and deliver the Agreement to the District Attorney's Office, along with proof of payment of applicable court costs, by the deadline. If the applicant fails to do so, the offer of Enhanced Diversion may be withdrawn.

The Terms of the Diversion Agreement shall include:

- A waiver of certain rights: speedy trial; speedy arraignment; preliminary hearing; jury trial.
- Stipulation to the facts of the case.
- Specific term of diversion agreement.
- Agreement to remain law abiding.
- Agreement to provide proof of completion of conditions specifically set forth in the Enhanced Diversion Agreement, including the Monitoring Plan.
- Payment of court costs, fines, fees and other costs within specified period of time.

CRIMINAL JUSTICE SERVICES SUPERVISION

Once the Enhanced Diversion agreement has been accepted and signed, the participant will be required to report to Criminal Justice Services for compliance monitoring.

Reporting requirements are based upon supervision level, which is determined by the RANT assessment.

Abstinence from illegal drug usage is expected during the diversion period. Alcohol and drug testing as a condition of the diversion will be determined at the time the agreement is signed. The Adult Services Officer may request a participant to submit to alcohol or drug testing at any time the officer has reasonable suspicion to believe the participant has been using or is under the influence.

If clinical services are a condition of the diversion, the Adult Services Officer will work with the provider to ensure that the participant is following all treatment recommendations. The participant may be required to sign a release of information for the Adult Services Officer to communicate with the provider.

The Adult Services Officer will assist in coordinating any additional recommendations ordered as a condition of the diversion, such as: community service work, restitution, and apology letters.

INCENTIVES AND SANCTIONS

Incentives are used to assist a participant in achieving diversion goals and encourage positive behavior. Sanctions, or interventions, are used to deter a participant from negative behavior and assist with public safety goals.

PROGRAM REQUIREMENTS

Enhanced Diversion requirements are developed on an individual basis and created to be the least restrictive conditions possible to achieve agreed upon goals and minimize risk for future criminal behavior.

The District Attorney's Office recognizes that there is no "one size fits all" approach to offender reformation, and each Enhanced Diversion Agreement will be narrowly tailored based upon offense- and offender-specific characteristics. Program requirements will generally include:

- Obey all federal, state and local laws.
- Meet with the Adult Services Officer as directed.
- Obtaining or maintaining employment.
- Community service work.
- Abstaining from illegal drugs and alcohol (if alcohol related offense).
- Completing recommended clinical treatment, such as: substance use treatment, mental health treatment, batterer's intervention, parenting education, cognitive based program, etc.
- Restitution.
- Participation in restorative justice.
- Other conditions as agreed.

TERMINATION

The Adult Services Officer shall notify the District Attorney of non-compliance through formal written notice and provide a copy to the participant and participant's defense counsel.

Upon filing the violation notice, a determination will be made as to whether the District Attorney's Office will:

- Withdraw the motion and continue the participant in the program;
- Continue the motion and monitor the participant's (non)compliance for an additional period of time (determined by the District Attorney's Office); or,
- Go forward with the termination process on the allegations of non-compliance through a court hearing, at which the participant would have the right to counsel.

Participants who are terminated from the Enhanced Diversion program are referred back to the District Court for case disposition. Any trial shall be to the Court, solely upon the Stipulation of Facts as set out in the Enhanced Diversion Agreement.

OPTING OUT

A participant may opt out of the Enhanced Diversion Program at any time and be placed back on the criminal docket in District Court for case disposition. In some instances, through engagement in the Enhanced Diversion Program, it may be determined that the participant is more amenable to placement in a different alternative program (i.e. Drug Court). If admissions criteria for a different program are met, then the participant would have the option of transitioning into that separate program.

SUCCESSFUL COMPLETION

Participants who successfully complete all program goals shall have their case dismissed with prejudice, meaning the specific charges for the same exact offense can never be refiled.

For more information, contact Joshua D. Seiden, Douglas County District Attorney's Office Deputy District Attorney, at jseiden@douglascountyks.org.

ENHANCED DIVERSION PROGRAM LEVEL OF SUPERVISION GRID

Supervision Level	LEVEL ONE	LEVEL TWO	LEVEL THREE	LEVEL FOUR
RANT Score	High Risk/High Need Best Suited for Intensive Supervision and Clinical Services	High Risk/Low Need Best Suited for Intensive Supervision and Less Intensive Clinical Services	Low Risk/High Need Best Suited for Lower Level Supervision and More Intensive Clinical Services	Low Risk/Low Need Best Suited for Lower Level Supervision and Less Intensive Clinical Services
Duration of Diversion Program	A Minimum of 12 Months	A Minimum of 12 Months	A Minimum of Six Months	A Minimum of Six Months
Supervision Contact Requirements	A Minimum of Twice Monthly	A Minimum of Monthly	A Minimum of Bi-Monthly	UNSUPERVISED
Conditions of Diversion	Supervision Services with Criminal Justice Services Personalized Diversion Plan Results from Independent Evaluations may Also be Included			Obey the Law

ENHANCED DIVERSION PROGRAM RESPONSE GRID

	Supervision Level			
	Level One	Level Two	Level Three	Level Four
Minor Violation (Up to 1 Response)	Verbal Warning Substance Use Testing (Increase) Increase Reporting Verbal Apology			The Graduated Response Grid Shall not Apply to Level 4, as the Only Condition of Unsupervised Diversion is to Remain Law-Abiding. Should New Law Violation be Alleged, Referral Shall be Made to the DA for Consideration.
Moderate Violation (Up to 2 Response)	Formal Meeting with DA	Verbal Warning Substance Use Testing (Increase) Increase Reporting Verbal Apology Apology Letter Impose Curfew Community Service Treatment Modification		
Serious Violation (Up to 3 Responses)	Verbal Warning Substance Use Testing (Increase) Increased Reporting Verbal Apology Apology Letter Impose Curfew Community Service Treatment Modification Electronic Monitoring Formal Meeting with DA			

ENHANCED DIVERSION PROGRAM VIOLATION LEVEL REPORT

Name:	Date of Report:		
Underlying Offense(s):			
Violation #:			
Brief Description of Violation:			
Risk Factors	Minor Violation	Moderate Violation	Serious Violation
Relationship to Underlying Offense	Behavior Addressed is Unrelated <input type="checkbox"/>	Behavior Addressed Supports Behaviors Similar to Underlying Offense <input type="checkbox"/>	Behavior Addressed is Same as Underlying Offense <input type="checkbox"/>
Victim Impact	No contact/No Intentional Contact/Explainable Contact <input type="checkbox"/>	Nonaggressive Attempt to Engage Victim <input type="checkbox"/>	Intentional Contact/Verbal Threat/Intimidation of Victim <input type="checkbox"/>
Frequency of Violation	Behavior Addressed Occurred 1-2 times within a 2-Week Period <input type="checkbox"/>	Behavior Addressed Occurred 3-4 times within a 2-Week Period <input type="checkbox"/>	Behavior Addressed Occurred more than 5 Times in a 2-Week Period <input type="checkbox"/>
Compliance with Conditions	Behavior Addressed Violates at Least One Community Supervision Condition <input type="checkbox"/>	Behavior Addressed Violates More than One, but not Majority, of Community Supervision Conditions <input type="checkbox"/>	Behavior Addressed Violates all or Majority of Community Supervision Conditions <input type="checkbox"/>
Community Safety	Behavior Addressed Poses no Direct Risk to Community <input type="checkbox"/>	Behavior Addressed may Lead to Additional Actions that Pose a Risk to the Community <input type="checkbox"/>	Behavior Addressed Poses a Direct Risk to Community <input type="checkbox"/>
Scoring Instructions	Total Number that Apply:	Total Number that Apply:	Total Number that Apply:
<i>The Column with the Highest Number of Total Factors that Apply Suggest the Severity Level of the Non-Compliant Behavior and Should Guide Choice of Sanction. If Two Columns Have the Same Number, the Default Should be for the Highest Violation Level.</i>			
List What Behavioral Tool was Used and the Sanction(s) Imposed:			
Staff Signature:			