

Approved: 2-13-97
Date

MINUTES OF THE HOUSE TRANSPORTATION COMMITTEE.

The meeting was called to order by Chairperson Gary K. Hayzlett at 1:30 p.m. on February 5, 1997 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Hank Avila, Legislative Research Department
Julian Efird, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Jackie Buchanan, Committee Secretary

Conferees appearing before the committee:

Representative J.R. (Jack) Wempe
Joan M. Hamilton, District Attorney, Kansas Third Judicial District
Don Moler, General Counsel, League of Kansas Municipalities
James W. Clark, Executive Director, Kansas County & District Attorneys
Association
Blaise Plummer, Assistant City Attorney, Wichita, Kansas

Others attending: See attached list

HB 2052 - Requiring city, county or district attorneys to charge a fine no greater than the amount listed in the schedule of fines if accepting a plea bargain in a traffic infraction; requiring an audit of diversion fees.

Hearing was opened. The Chair called on Representative J.R. (Jack) Wempe who presented testimony in support of **HB 2052** as he feels there is considerable inequity in permitting those with means to plea bargain infractions so there is no resulting penalty in terms of insurance or licensing. The bill allows for any diversion fees received by or paid to the county or district attorney be paid over to the county treasurer and credited to the county general fund. (Attachment 1)

Being no other proponents of the bill, the Chair called on the first opponent, Joan M. Hamilton, District Attorney, Kansas Third Judicial District. Ms. Hamilton stressed several reasons for opposing the passage of this bill. It would put city, county and district attorneys together in one bill and they are separate entities, disallows even a minimal fee, and the bookkeeping would be time consuming separating out other diversions from traffic. In her office, it has a separate local fund for diversions only. The charge is \$100 and the D.A.'s office gets \$25.00 for the administration of the program and the rest to the general fund. She questioned the language on plea bargaining if the prosecutor doesn't plea bargain but allows a diversion, does this bill apply. She doesn't feel this bill promotes fairness and equality. (Attachment 2)

The Chair called on Don Moler, General Counsel, League of Kansas Municipalities, opposing **HB 2052** as it is an attempt to take the local decision-making power out of the hands of local officials. (Attachment 3)

The next opponent to testify was James W. Clark, Executive Director, Kansas County & District Attorneys Association. He advised that diversion fees already go into the general fund, as required by an Attorney General Opinion which is part of his written testimony, and this bill should have no effect on diversion practices; and fines go into the State general fund. He stressed that diversion is a good procedure and diverts a lot of cases from our courts. (Attachment 4)

The Chair called on Blaise Plummer, Assistant City Attorney, Wichita, Kansas, to testify in opposition of **HB 2052** as it would effect the trial dockets and increase cost of municipal court to the detriment of all of the city's taxpayers. Plea bargaining is a management tool, but must be accepted by the Judge and this bill restricts plea bargaining; does not prevent it. (Attachment 5)

CONTINUATION SHEET

MINUTES OF THE HOUSE TRANSPORTATION COMMITTEE, Room 526 -S Statehouse, at 1:30 p.m. on February 5, 1997.

Hearing was closed on **HB 2052**.

Meeting was adjourned at 2:30.

The next meeting is scheduled for February 11, 1997.

HOUSE TRANSPORTATION COMMITTEE GUEST LIST

DATE: February 5, 1997

NAME	REPRESENTING
Blaise Plummer	City of Wichita
Ken Clark	KDOR
Gary Carter	KDOR
Steve Blanck	Habbell + Assoc.
Joan Hamilton	S/C District Attorney
Betty McBride	KDOR
Mike Meahan	KARA
Mike Taylor	City of Wichita
Jeff McCullough	Sumner Co. LEADERSHIP
Jim Clark	KCDAA
Kelly Kuttala	City of Overland Park
Ken Boh	Economic Lifelines
Mary E. Turkington	Ks. Motor Carriers Assn.
Mike Kelley	Ks Motor Carriers Assn.
Tom Whitaker	Ks Motor Carriers Assn
Ernie Messner	City of Topeka
John J. Knoll	City of Topeka
Beccy Swanwick	League of KS Municipalities
Don Moler	" " " "

J. R. (JACK) WEMPE
REPRESENTATIVE, ONE HUNDRED THIRTEENTH DISTRICT
895 MAIN, P O BOX 187
LITTLE RIVER, KANSAS 67457
(316) 897-6459
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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: ECONOMIC DEVELOPMENT
TAXATION
SELECT COMMITTEE ON HIGHER EDUCATION
JOINT COMMITTEE ON ECONOMIC DEVELOPMENT

January 5, 1997 - Testimony

Mr. Chairman and members of the committee

This issue was brought to me in 1995 by a constituent who was offended by the innate unfairness of the practice of trading a reduced charge for an increase in the fine for a traffic violation. I agree with his assessment. This bill was first introduced in 1995. It was not worked by the committee. In 1996 it was carried as an amendment on the floor and was approved by the House. In the final hours of the session it was lost in conference committee. I have reintroduced the bill this year believing in its merit.

It seems to me there is considerable inequity in permitting those with means to plea bargain infractions so there is no resulting penalty in terms of insurance or licensing. The equity issue certainly comprises the heart of the bill. However our changing of speed limits introduces a safety issue with added import. Apparently some jurisdictions permit one to violate traffic laws with some degree of impunity provided they are willing to pay increased fines. How does that encourage conformance to the law?

This bill does not interfere with the ability to plea bargain. That process is important to the smooth functioning of the judicial system. But it does remove the inherent inequity in providing plea bargains based on the violators ability to pay.

The second part of the bill, that dealing with the audits of diversion funds, is, I believe, simply placing in statute that already provided in an attorney general's opinion.

Thank you and I stand for questions.

*House Transportation
Attachment 1
2-5-97*

First Assistant District Attorney
Joel W. Muecke

Assistant District Attorneys

Athena E. Andaya
James A. Brown
Nancy S. Brumeloe
Gwynne E. Harris
Michelle V. Hostetter
E. Bernard Hurd
Lisa C. Kelley
Anthony W. Mattivi
Michael F. McElhinney
Tony W. Rues
Lori Reyes Seifert
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Director of Victim Services
Suzanne H. Jones

Investigators
Donald M. Murphy
Ken Hendrix
Mick Meyer

CONTENTS OF PACKETS FOR TRANSPORTATION COMMITTEE

HOUSE BILL NO. 2052

Room 526-S; Statehouse
Wednesday, February 5, 1997

Opposing TESTIMONY from JoAn Hamilton, Shawnee County District
Attorney

- A. DIVERSION PROGRAM FOR FIRST OFFENDERS - Judge's Duty
- B. Levels of crimes eligible for diversions in Shawnee County
- C. FLOW CHART OF SERVICE DELIVERY
- D. DIVERSION APPLICATION (3 pages)
- E. BASIC QUALIFICATIONS FOR THE TRAFFIC TICKET DIVERSION PROGRAM;
CONDITIONS FOR PRETRIAL DIVERSION; INSTRUCTIONS (3 pages)
- F. TRAFFIC DIVERSION APPLICATION (2 pages)
- G. TRAFFIC DIVERSIONS (3 pages)
- H. DIVERSION POLICIES AND GUIDELINES - General criminal (4 pages)
- I. GENERAL CRIMINAL DIVERSION AGREEMENT (4 pages)
- J. Alternatives to Battering Program (letter form); ALTERNATIVES
TO BATTERING PROGRAM (format); HEARTLAND CLINICAL CONSULTANTS
(4 pages total)
- K. DOMESTIC DIVERSIONS (4 pages)
- L. SHAWNEE COUNTY INCEST DIVERSION PROGRAM (2 pages - front &
back)
- M. TREATMENT PROGRAM FOR PARTICIPANTSINCEST (7 pages)

House Transportation
Attachment 2
2-5-97

First Assistant District Attorney
Joel W. M. Becke

Joan M. Hamilton

Director of Victim Services
Suzanne H. [redacted]

Assistant District Attorneys

Athena E. Andaya
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RE: HOUSE BILL NO. 2052 -- OPPONENT
FROM: JoAn Hamilton, Shawnee County District Attorney
TO: Transportation Committee, Room 526-S
DATE: Wednesday, February 5, 1997; 1:30 p.m.

Honorable Chairman and Committee Members:

I am JoAn Hamilton, Shawnee County District Attorney, and former 51st Representative. I have 23 years in law enforcement, including 14 years in prosecution exclusively. I am asking you not to pass this Bill. It is unfair for those of us who have never abused the system, and work hard to be public servants for you and particularly our community.

This Bill is unfair because:

1) It throws city, county and district attorneys together in one bill though we are all separate entities. I cannot control what the city attorney's office does about traffic cases and visa versa. My office has NEVER had the practice to charge double the fine in order to have a case dismissed.

2) The District Attorney's office does ALL the work the prosecution of the cases, and particularly in diversions. To disallow even a minimal fee for this privileged program would be unfair and even CRUEL to your prosecutor. According to K.S.A. 22-2909 (e), if your county sets up a separate account, it is able to charge a fee (payment NOT to exceed \$100.00). My office has a separate local fund for diversions only - the charge is \$100 and the D.A.'s office gets \$25.00 for the administration of the program. That's because we do ALL the work. If you exclude that, and give it all to the county general fund with no amount being able to go to the prosecutor, then I don't see the benefit of my office doing the work. This would substantially INCREASE the case loads for the courts and judges. Let me give you an example of one month in my office:

DIVERSIONS (approx. per month)

Traffic diversions - 15
DUI diversions - 18

Domestic diversions - 9
General misdemeanors - 21
General felony - 6
Incest diversions - 1 (Less than 1 - 10 per year)

TOTAL diversions - 70

Justice for All

3) **Nightmare** for bookkeeping - Since this Bill only affects traffic, it would be a nightmare to separate out the other diversions for each county. If this is the trend for traffic, would the other diversion agreements be affected later? I hope not.

X **Question:** The new section (f) on page 6 of House Bill No. 2052, says that on any plea bargain accepted..... does this mean that if the prosecutor doesn't "plea bargain" but only allows a diversion, that this Bill doesn't apply?

4) Please **DELETE** the language of Sec. 3 on page 7 regarding "employee's" performance. I have attached for your review what work my "employees" **MUST** do in order to allow a suspect to get the privilege of diversion. The **ONLY** thing the judge is required to do is to **inform** the suspect of diversion if he/she is a first offender. Then the District Attorney does all the work of screening, paperwork and monitoring the diversion program for 1-5 years. This is **BRIEFLY** what happens:

- A. Each diversion coordinator (employee of the DA's office) screens the applicants/suspects.
- B. The suspect/applicant fills out an application.
- C. The diversion coordinator (employee of the DA's office) runs a criminal history record check (including NCIC, court records, etc.) - this is costly as well as timely, but only bonded personnel are able to run NCIC checks.
- D. The paperwork is done on the diversion agreement **AND** the special terms of each agreement set by the DA's office.
- E. Meeting with the suspect (now a Defendant) to go over the Agreement and to sign off on the Agreement (done by the employee of the DA's office); the District Attorney has to approve the final filing of the diversion agreement.
- F. The diversion agreement has to be filed with the court and each case has to be monitored for payment, class attendance, restitution payments, community service hours, contacting of victims in the case, counseling services, monthly meetings, etc. (done by the employee of the DA's office).
- G. The District Attorney's Office receives only a \$25.00 application and filing fee for these services. The remaining \$75.00 is deposited in the County's general funds for county use. If you want to restrict the fee, then **DO SO**, but don't punish us all for something we have never done wrong.

5) ALTERNATIVES TO THIS BILL

- A. Make it consistent with K.S.A. 22-2909 (e) and limit the fee of the city, county and district attorney;
- B. Require a separate fund for all diversion application fees and an audit, and make the funds go toward limited purposes as CLE or approved equipment;
- C. DON'T PASS.

If you are looking for fairness and equality, House Bill No. 2052 is NOT the answer.

I am available to answer any questions you might have, or to give you the accounting as we do it in Shawnee County. Thank you.

JoAn Hamilton
Shawnee County District Attorney
Room 214, Courthouse
200 E. 7th Street
Topeka, Kansas 66603
(913) 233-8200, Ext. 4140

28-170a. Prosecuting attorneys' training fund; fees. (a) There is hereby established a prosecuting attorneys' training fund. The clerk of the district court shall charge a fee of \$1 in each criminal case, to be deducted from the docket fee as provided in K.S.A. 28-172a and amendments thereto and shall charge a fee of \$1 in each case pursuant to the Kansas code for care of children or the Kansas juvenile offenders code and each mental illness, drug abuse or alcoholism treatment action as provided by subsection (c) of K.S.A. 28-170 and amendments thereto. The clerk of the district court, at least monthly, shall pay all such fees received to the county treasurer who shall credit the same to the prosecuting attorneys' training fund.

(b) Expenditures from the prosecuting attorneys' training fund shall be paid by the county treasurer upon the order of the county or district attorney and shall be used exclusively for the training of personnel in such attorney's office and costs related thereto. Annually, on or before March 15, each county and district attorney shall submit to the attorney general and the chairperson of the judiciary committee of each house, an accounting that shows for the preceding year the amount of fees paid into the prosecuting attorneys' training fund, the amounts and purpose of each expenditure from such fund and the balance in such fund on December 31 of the preceding year. The purpose for each expenditure shall specifically identify the person or persons for whom the expenditure was made and, where applicable, the time and place where the training was received. If any expenditure was paid to a nonprofit organization organized in this state of which the county or district attorney is a member, the county or district attorney shall include information on the training received for such expenditure which information shall show the persons receiving the training and the time and place thereof.

History: L. 1977, ch. 145, § 3; L. 1982, ch. 182, § 126; L. 1984, ch. 147, § 10; L. 1987, ch. 134, § 4; July 1.

Attorney General's Opinions:

Provisions of diversion agreement; disposition of diversion fees. 89-105.

22-2909. Diversion agreements; provisions; waiver of certain rights; stipulation of facts; stay of criminal proceedings; filing of agreements; alcohol and drug-related offenses, evaluation required, when. (a) A diversion agreement shall provide that if the defendant fulfills the obligations of the program described therein, as determined by the attorney general or county or district attorney, such attorney shall act to have the criminal charges against the defendant dismissed with prejudice. The diversion agreement shall include specifically the waiver of all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment, preliminary examinations and hearings, and a speedy trial, and in the case of diversion under subsection (c) waiver of the rights to counsel and trial by jury. The diversion agreement may include, but is not limited to, provisions concerning payment of restitution, including court costs and diversion costs, residence in a specified facility, maintenance of gainful employment, and participation in programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services. If a county creates a local fund under the property crime restitution and compensation act, a county or district attorney may require in all diversion agreements as a condition of diversion the payment of a diversion fee in an amount not to exceed \$100. Such fees shall be deposited into the local fund and disbursed pursuant to recommendations of the local board under the property crime restitution and victims compensation act.

(b) The diversion agreement shall state: (1) The defendant's full name; (2) the defendant's full name at the time the complaint was filed, if different from the defendant's current name; (3) the defendant's sex, race and date of birth; (4) the crime with which the defendant is charged; (5) the date the complaint was filed; and (6) the district court with which the agreement is filed.

(c) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567, and amendments thereto, the diversion agreement shall include a stipulation, agreed to by the defendant, the defendant's attorney if the defendant is represented by an attorney and the attorney general or county or district attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint. In addition, the agreement shall include a requirement that the defendant:

(1) pay a fine specified by the agreement in an amount equal to an amount authorized by K.S.A. 8-1567, and amendments thereto, for a first offense or, in lieu of payment of the fine, perform community service specified by the agreement, in accordance with K.S.A. 8-1567, and amendments thereto; and

(2) enroll in and successfully complete an alcohol and drug safety action program or a treatment program, or both, as provided in K.S.A. 8-1008, and amendments thereto, and specified by the agreement, and pay the assessment required by K.S.A. 8-1008, and amendments thereto.

(d) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation other than K.S.A. 8-1567 and amendments thereto, the diversion agreement may include a stipulation, agreed to by the defendant, the defendant's attorney if the defendant is represented by an attorney and the attorney general or county or district attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint.

(e) If the person entering into a diversion agreement is a nonresident, the attorney general or county or district attorney shall transmit a copy of the diversion agreement to the division. The division shall forward a copy of the diversion agreement to the motor vehicle administrator of the person's state of residence.

(f) If the attorney general or county or district attorney elects to offer diversion in lieu of further criminal proceedings on the complaint and the defendant agrees to all of the terms of the proposed agreement, the diversion agreement shall be filed with the district court and the district court shall stay further proceedings on the complaint. If the defendant declines to accept diversion, the district court shall resume the criminal proceedings on the complaint.

(g) Except as provided in subsection (h), if a diversion agreement is entered into in lieu of further criminal proceedings alleging commission of a misdemeanor by the defendant, while under 21 years of age, under the uniform controlled substances act (K.S.A. 65-4101 *et seq.*, and amendments thereto) or K.S.A. 41-719, 41-727, 41-804, 41-2719, 41-2720, 65-4152, 65-4153, 65-4154 or 65-4155, and amendments thereto, the agreement shall require the defendant to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by that statute for such evaluation. If the attorney general or county or district attorney finds that the defendant is indigent, the fee may be waived.

(h) If the defendant is 18 or more years of age but less than 21 years of age and allegedly committed a violation of K.S.A. 41-727, and amendments thereto, involving cereal malt beverage, the provisions of subsection (g) are permissive and not mandatory.

(i) Except diversion agreements reported under subsection (j), the attorney general or county or district attorney shall forward to the Kansas bureau of investigation a copy of the diversion agreement at the time such agreement is filed with the district court. The copy of the agreement shall be made available upon request to the attorney general or any county, district or city attorney or court.

(j) At the time of filing the diversion agreement with the district court, the attorney general or county or district attorney shall forward to the division of vehicles of the state department of revenue a copy of any diversion agreement entered into in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567, and amendments thereto. The copy of the agreement shall be made available upon request to the

attorney general or any county, district or city attorney or court.

History: L. 1978, ch. 131, § 4; L. 1982, ch. 145, § 1; L. 1982, ch. 144, § 7; L. 1985, ch. 48, § 17; L. 1986, ch. 131, § 2; L. 1988, ch. 48, § 5; L. 1988, ch. 47, § 21; L. 1989, ch. 38, § 47; L. 1990, ch. 321, § 15; L. 1993, ch. 181, § 1; July 1.

Revisor's Note:

Section was amended twice in 1955 session, see 22-2909a.

Section was amended twice in 1989 session, see also 22-2909b.

Law Review and Bar Journal References:

"Kansas Diversion: Defendant's Remedies and Prosecutorial Opportunities," Joseph Brian Cox, 20 W.L.J. 344, 346, 361 (1981).

"The New Kansas DUI Law: Constitutional Issues and Practical Problems," Gerard Little, Jr., 22 W.L.J. 340, 357 (1983).

"The New Kansas Drunk Driving Law: A Closer Look," Matthew D. Keenan, 31 K.L.R. 409, 416, 417 (1983).

"Kansas Diversion: Will Courts Become More Involved?" Michael Kaye, 56 J.K.B.A., No. 1, 8 (1986).

Attorney General's Opinions:

Procedure after arrest; diversion from prosecution. 81-195.
Serious traffic offenses; driving while under influence of alcohol. 83-8.

Procedure after arrest; diversion; imposition of diversion costs. 84-15.

Cereal malt beverages; qualifications for retailer's license; conviction of driving under influence of alcohol includes participation in diversion program. 84-21.

Diversion agreements involving restriction of driver's license. 85-1.

Provisions of diversion agreement; disposition of diversion fees. 89-105.

Diversion fee in county with a property crime compensation board. 90-128.

Diversion agreement; provision for contributions to non-profit organization. 93-120.

You may be eligible for a diversion program if this is your first offense and you HAVE NOT previously been on a diversion program or convicted of another crime.

In a diversion program you stipulate to the facts in the complaint and affidavit (you admit that, yes, you committed the offense for which you are charged).

You will also be required to pay court costs (ranging from \$10.50 to \$134.50), a diversion maintenance fee of \$75.00; any restitution owing in the case (for medical bills, property damage, etc.); and depending on the offense for which you are charged you may have classes, counseling or community services hours for which you will be responsible.

If you have NEVER been convicted of a crime or HAVE NOT previously been on diversion since you turned 18, you may be eligible for the diversion program.

The judge will refer you to the District Attorney's office for a diversion screening.

NO felonies severity levels 1-6 are divertable

Most felonies, severity levels 7, 8, 9, 10 are divertible

NO felony drug offenses are divertable with the exception of Drug Dealer's Failure to Pay Tax

NO weapons charges are divertable

Basically all misdemeanors are diversion eligible

Financial crimes are divertable provided the behavior has not exceeded six months (in cases like writing bad checks, collecting unemployment or welfare, etc.)

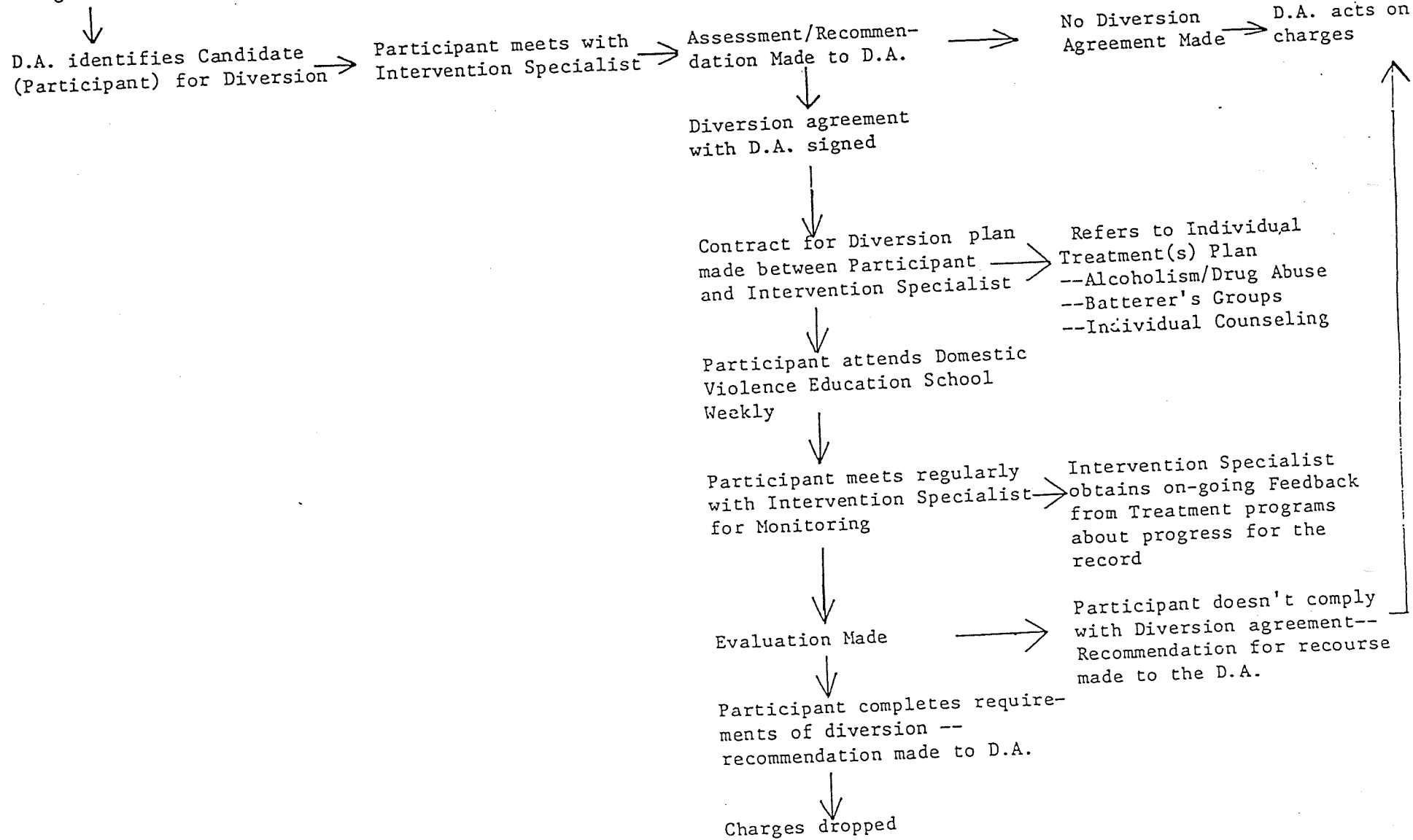
All misdemeanor destructive crimes (Battery, Criminal Damage to Property, etc.) will be cleared with the victim before final approval

Some of the most common offenses that are diverted:

Burglary to a Motor Vehicle
Felony and Misdemeanor Damage to Property
Drug Dealers Failure to Pay Tax
Employment Security Fraud
Welfare Fraud
Misdemeanor and Felony Worthless Checks
Battery
Battery on LEO
Misdemeanor Criminal Damage
Possession of Hallucinogenic
Possession of Drug Paraphernalia
Criminal Trespass
Felony and Misdemeanor Obstruction of Legal Process
Felony and Misdemeanor Theft
Misdemeanor Assault
Lewd and Lacivious Behavior
Prostitution
Forgery
Making a False Writing
Unlawful Use of a Financial Card
Falsely Reporting a Crime
Failure to Appear (in conjunction with the underlying case)
Disorderly Conduct
Telephone Harassment
Minor in Possession of Alcohol
Open Container

FLOW CHART OF SERVICE DELIVERY

Charges filed



2-9

C

DIVERSION APPLICATION

This is your application for diversion. It is most important that you answer every question carefully and accurately. If there are any questions which do not apply to you simply put NA in the blank. THERE IS A NON-REFUNDABLE APPLICATION FEE OF \$25.00 THAT IS PAYABLE TO THE DISTRICT ATTORNEY'S OFFICE.

I. PERSONAL INFORMATION

NAME (please print) _____
Date of birth _____ Drivers license no. _____ SSN _____

Beginning with your present address, list below your addresses for the past five years.

ADDRESS	CITY	STATE	DATE MOVED IN	DATE MOVED OUT

II. EDUCATION

List below all schools you have attended during the last five years of education. (include junior high, high school, vo-tech, college, etc.)

NAME OF SCHOOL	ADDRESS	DATES OF ATTENDANCE

III. EMPLOYMENT

List below your employment record for the past five years. Fill in the name and address of your employer, name of supervisor, dates of employment, job title, salary and reason for leaving.

- Employer: _____ Address _____
Supervisor: _____ Type of work & pay _____
Dates of employment _____ Reason for leaving _____
- Employer: _____ Address _____
Supervisor: _____ Type of work & pay _____
Dates of employment _____ Reason for leaving _____

3. Employer: _____ Address _____
 Supervisor: _____ Type of work & pay _____
 Dates of employment _____ Reason for leaving _____

4. Employer: _____ Address _____
 Supervisor: _____ Type of work & pay _____
 Dates of employment _____ Reason for leaving _____

5. Employer: _____ Address _____
 Supervisor: _____ Type of work & pay _____
 Dates of employment _____ Reason for leaving _____

IV. PRESENT OFFENSE

Briefly explain, in your own words, your involvement in the current offense(s):

V. PRIOR RECORD

List all other offenses as an adult. Be sure to include serious traffic offenses, such as Driving Under the Influence and cases which are still pending.

Date	Charges	City, State	Result
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

If you are currently or have ever been confined to a correctional facility, as an adult or as a juvenile, list the following:

Institution/Facility	City, State	When entered	When Released
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

VI. FAMILY BACKGROUND

Name	Age or date deceased	Address	Occupation & Employer
Spouse _____	_____	_____	_____
Children _____	_____	_____	_____

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
Father _____	_____	_____	_____
Mother _____	_____	_____	_____
Brothers/ _____	_____	_____	_____
sisters _____	_____	_____	_____
_____	_____	_____	_____
Stepfathers/ _____	_____	_____	_____
Mothers/ _____	_____	_____	_____
sisters/ _____	_____	_____	_____
brothers _____	_____	_____	_____

VII. MARITAL HISTORY

Spouse's name	Age	Address	Occupation & Employer
_____	_____	_____	_____
Children's names	Age	Address	Occupation & Employer
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
Former spouses name	Date Married	Date divorced/deceased	
_____	_____	_____	
_____	_____	_____	

VIII. FINANCIAL

What is your current monthly take home pay? _____

What is your spouse's monthly take home pay? _____

What is the total amount of your debts? _____

Any additional comments that you think may help your case?

I certify that I have answered this application truthfully and to the best of my knowledge.

Signature of defendant: _____

Date: _____

BASIC QUALIFICATIONS FOR THE TRAFFIC TICKET DIVERSION PROGRAM

1. No traffic convictions ~~within the last three years~~.
2. The traffic citation you received MUST NOT have been issued as the result of a traffic accident. If you have been involved in a accident, you must provide proof (police report) that the incident was not your fault.
3. At the time the citation was issued you were properly licensed and insured.
4. You were issued only one moving-violation.
5. If the citation you received was a speeding citation the following rules apply:
 - a. You cannot have been monitored traveling more than twenty (20) miles and hour over the posted speed limit.
 - b. If speeding in a school zone or work zone you cannot have been monitored traveling more than the normally posted speed limit and you will be required to pay double the fine.

COSTS

1. There is a Twenty-Five dollar nonrefundable application fee. This fee must accompany the application. Seventy-Five dollar maintenance fee. The regularly scheduled fine and Court costs of Forty-Five dollars.
2. The costs must be paid within the twelve months of diversion.

CONDITIONS FOR PRETRIAL DIVERSION

1. You cannot enter into any other traffic diversion agreements for twelve months from the date of this diversion.
2. Violate no traffic or criminal laws for twelve months from the date the diversion agreement is entered.
3. At all times during the duration of the diversion agreement you **MUST** be properly licensed and insured.
4. If upon the completion of the twelve month period, our records reflect you have complied with all the conditions of the diversion agreement, the traffic citation will be dismissed. As a result, the traffic ticket will not reflect on your record as maintained by the Department of Motor Vehicles.
5. Any other special conditions as reflected within your diversion agreement.

DIVERSION APPLICATION

It is most important that you answer every question carefully and accurately. Please include a COPY OF YOUR TICKET WITH THE COMPLETED APPLICATION. You will need to call the office after one the following work day.

INSTRUCTIONS FOR COMPLETING TRAFFIC TICKET DIVERSION

Complete and return the application WELL IN ADVANCE of your court date. The diversion application and agreement must be completed prior to your court date. The Clerk's Office can inform you of your pending court date.

If rejected:

- a. Pay the ticket BEFORE the court date.
- b. Appear on the court date in order to challenge the ticket.

TRAFFIC DIVERSION APPLICATION

I. PERSONAL INFORMATION

Date of birth ___ ___ Drivers license # _____

SSN _____ Full name _____

Phone Number _____ Ticket # _____

Date of Ticket _____ Male/Female _____

Beginning with your present address, list below your addresses for the past three years.

ADDRESS	CITY	STATE/ZIP	DATE FROM - TO
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

II. EMPLOYMENT

List below your employment record for the past two years. Fill in all the areas in questions.

1. Employer: _____ Address _____

Supervisor: _____ Type of work _____

Dates of employment _____ Reason for leaving _____
2. Employer: _____ Address _____

Supervisor: _____ Type of work _____

Dates of employment _____ Reason for leaving _____

III. PRIOR CRIMINAL RECORD

List all misdemeanor/felony offenses as an adult, such as Driving Under the Influence and cases which are still pending.

DATE	CHARGES	CITY, STATE	RESULT
_____	_____	_____	_____
_____	_____	_____	_____

IV. PRIOR DIVERSION AGREEMENTS:

List all diversion agreements you have entered into in the past three years.

DATE	CHARGES	CITY, STATE	RESULT
-----	-----	-----	-----
-----	-----	-----	-----
-----	-----	-----	-----

IV. ADDITIONAL COMMENTS

Any additional comments that you think may help your case? This is your opportunity to list any mitigating factors you want the Traffic Diversion Coordinator to consider.

I certify that I have answered this application truthfully and to the best of my knowledge. I also understand that any false information contained in the application will be a basis for the revocation of any diversion agreement.

Signature of Defendant: _____

Date: _____

dv

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

STATE OF KANSAS

PLAINTIFF

vs.

ent:case

ent:name

DEFENDANT

DOB: ent:date

Diversion Expires: _____

DIVERSIONARY AGREEMENT

NOW on this ____ day of February, 1997, the defendant appears in person. The State appears by Ilene J.K. Miller, Assistant District Attorney. The matter comes on before the Court on the joint agreement of diversion of prosecution.

The Court finds the following:

1. The defendant's full name is ent:name.
2. The defendant is a male born ent:date.
3. The traffic offense with which the defendant is charged with is ent:charge.
4. The date the ticket was issued: ent:date.

THE COURT FURTHER FINDS THAT:

1. The defendant has voluntarily waived his/her right to a speedy trial, speedy arraignment, preliminary examination and hearing and/or a waiver of the right to a speedy trial by jury, with the advice of counsel.

2. That the defendant understands that every accused has the right to a trial, the right to present evidence and testify in

his/her own behalf and the right to compel the attendance of witnesses through subpoena.

3. The defendant understands that the burden at trial would be upon the state to prove the defendant guilty beyond a reasonable doubt and that the defendant would be presumed innocent throughout the trial.

4. The defendant understands that the charges pending against him/her will remain in force and effect during the period of diversion and that violation of any term of this agreement will result in resumption of the criminal proceedings.

5. That upon the successful completion of the diversion the State will dismiss the pending charges with prejudice.

6. Defendant stipulates to the factual basis for the charges.

7. Defendant further acknowledges that any resumption of the criminal case, including any appeal, will be had only upon the stipulation of facts contained in the police report and citation.

8. Defendant has not been convicted of any laws of the United States, of any State statute or any city ordinance; nor has the defendant participated in a diversion agreement.

IT IS THEREFORE BY THE COURT ORDERED that the defendant be and is hereby released pending trial or disposition for a period of twelve (12) months conditioned upon the successful completion of the diversionary program and upon the following conditions:

1. Defendant shall not violate any statute, ordinance, or resolution during the period of diversion.

2. Upon being questioned or arrested by any law enforcement officer, the defendant shall immediately notify the Traffic Diversion Coordinator.

3. The defendant shall pay to the Clerk of the District Court, 200 SE 7th Street, Suite. 209, Topeka KS 66603, the sum of \$ent:total This includes the (\$75.00 maintenance fee, \$ent:fine, \$45.00 court costs) before the end of the diversionary period.

STIPULATION

I, ent:name, the above named defendant, have read this agreement and know the contents, including the stipulation of facts appended hereto and I agree to comply with these conditions.

ILENE J.K. MILLER
ASSISTANT DISTRICT ATTORNEY

YVONNE ORENDER
LEGAL ASSISTANT
TRAFFIC DIVERSION COORDINATOR

ent:name
DEFENDANT

OFFICE OF THE DISTRICT ATTORNEY
KANSAS THIRD JUDICIAL DISTRICT
SHAWNEE COUNTY COURTHOUSE
TOPEKA, KANSAS

SHAWNEE COUNTY DIVERSION PROGRAM -
POLICIES AND GUIDELINES
(except traffic and sexual offenses cases)

P R E A M B L E

Pursuant to K.S.A. 22-2906 - 2912 et. seq., Shawnee County 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 defendants of said program and to provide for a diversion conference for all defendants who are eligible to request said conference.

A copy of this diversion program's policies and guidelines may be available to each defendant in the District Court of Shawnee County, Kansas, and, upon making their first appearance before the Court, each defendant shall be informed of the diversion program by the Court or District Attorney pursuant to K.S.A. 22-2907.

ELIGIBILITY TO APPLY FOR ENTRY INTO THE DIVERSION PROGRAM

(A) All defendants charged with misdemeanors and some felonies, excluding A and B felonies, are eligible to apply for diversion if they have NO prior criminal convictions.

(B) No defendant who has previously been on diversion or is presently on diversion in any jurisdiction is eligible.

(C) Traffic and sexual offenses diversion programs are separate diversion programs within the District Attorney's office and will follow separate and distinct guidelines.

(D) No one charged with an A or B felony is eligible for diversion.

(E) No one charged with an A or B felony, subsequently reduced to a lesser crime, is eligible for diversion unless said A or B felony charge should initially have been filed as the lesser offense.

(F) Worthless check cases may be diverted provided the check writing has not exceeded six months of behavior. Any check written prior to the diversion application may be added to the file. Any check written after the diversion application will be prosecuted separately in another case, and is cause for revocation on the present case.

(G) Employment security fraud cases may be diverted provided the behavior has not exceeded six months.

(H) Other financial crimes will also be considered for diversion provided the behavior has not exceeded six months.

(I) All other C,D, and E felonies will be considered on a case-by-case basis, discretionary with the District Attorney. Factors considered are listed in K.S.A 22-2906.

(J) The District Attorney will require the defendant requesting diversion to provide information regarding prior criminal charges and/or prior diversion agreements entered into in any state, county, city or country.

(K) The District Attorney may also require any defendant requesting diversion to provide information regarding education, work experience and training, family, residence in the community, medical history, including any psychiatric or psychological treatment or counseling, and other information relating to the diversion pursuant to K.S.A. 22-2907.

(L) In all cases, the defendant shall be present and shall have the right to be represented by counsel at the diversion conference with the district attorney's office.

The defendants or counsels for defendants, may apply at the District Attorney's office for diversion if eligible. Said application shall be accompanied by a \$25.00 non-refundable application fee.

A pre-diversion report will be prepared by the District Attorney's office. The following factors shall be considered in determining whether diversion of the defendant is in the best interest of justice and of benefit to the defendant and the community pursuant to K.S.A. 22-2908:

1. The nature of the crime charged and the circumstances surrounding it;
2. any special characteristics or circumstances of the defendant;
3. whether the defendant is a first-time offender and if the defendant has previously participated in diversion, according to the certification of the Kansas bureau of investigation or the certification of the judicial administrator;
4. whether there is a probability that the defendant will cooperate with and benefit from diversion;
5. whether the available diversion program is appropriate to the needs of the defendant;

6. the impact of the diversion of the defendant upon the community;

7. recommendations, if any, of the involved law enforcement agency;

8. recommendations, if any, of the victim;

9. provisions for restitution; and

10. any mitigating circumstances.

Upon receipt of all the above information, a diversion conference may be held at which time the defendant shall be present and shall have the right to be represented by counsel. At that time, the District Attorney's office shall state whether or not the defendant is an acceptable candidate for the diversion program.

Upon determination that the defendant is an acceptable candidate for entering the diversion program, a written diversionary agreement shall be entered into by the parties with the approval of the Court. The said written agreement shall contain pursuant to K.S.A. 22-2909:

1. The defendant's full name and the defendant's full name at the time the complaint was filed, if different from the defendant's current name;

2. the defendant's sex, race and date of birth;

3. the crime with which the defendant is charged;

4. the date the complaint was filed;

5. the district court with which the agreement is filed;

6. a waiver of all rights to a speedy court or jury trial, speedy arraignment, preliminary examination and hearing.

7. a specified term of diversion not to exceed two years for misdemeanors or five years for felonies;

8. a statement or certification from the defendant that he/she has not been convicted of any laws of the United States, of any State or the ordinances of any city; nor has he/she been on any other diversion programs;

9. an agreement that the defendant shall refrain from violating any of the laws of the United States, of any state, or the ordinances of any city;

10. an agreement that the defendant shall report to the Shawnee County District Attorney's office or any other person at any time that may be agreed upon in the diversion agreement;

11. that the defendant shall obey the law at all times and otherwise be a law-abiding citizen;

12. that the defendant pay all court costs;

13. any special conditions agreed to by the parties which may include any of the following:

a. Full restitution to the victims;

- b. Residence in a specified facility;
- c. Maintenance of gainful employment;
- d. Participation in any recommended program;
- e. Counseling;
- f. Community service.

Upon the defendant entering into a diversion agreement, the criminal proceedings shall be suspended; and only upon the defendant's successfully fulfilling all the terms and conditions of his/her agreement, the District Attorney shall move to have the criminal charges dismissed with prejudice against the defendant.

If the diversion agreement is in lieu of further criminal proceedings on the complaint and the defendant agrees to all of the terms of the proposed agreement, the diversion agreement shall be filed with the district court and the district court shall stay further proceedings on the complaint. If the defendant declines to accept diversion, the district court shall resume the criminal proceedings on the complaint.

Except diversion agreements reported under K.S.A. 22-2909 (h) [traffic], the district attorney shall forward to the KBI a copy of the diversion agreement promptly. A copy of the agreement shall be made available upon request to any court or public prosecutor.

If during, or at the end of the said diversionary period and prior to dismissal of the case, the defendant has failed to fulfill any of the terms and conditions of the diversion agreement, or the defendant is NOT a first-time offender or a first-time defendant on diversion, the District Attorney shall file a motion to revoke the diversion and upon the Court finding that the defendant has failed to fulfill all the terms and conditions of the diversionary agreement at a hearing thereon shall revoke the diversionary agreement and order the criminal proceedings resumed on the original complaint.

Effective date: January 1, 1983
Amended: May 31, 1985
Amended: January 1, 1992.
Amended: January 11, 1993

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
STATE OF KANSAS PLAINTIFF

VS.

96-CR-_____

DEFENDANT'S NAME

DEFENDANT

DOB: __-__-__ W/M

DIVERSIONARY AGREEMENT

PRE-TRIAL RELEASE AND GENERAL CONTINUANCE ORDER

Now on this ___ day of February, 1997, the defendant appears in person and by _____, his attorney. The State appears by Joan M. Hamilton, District Attorney. The matter comes on before the Court on the joint agreement of diversion of prosecution and continuance for approval by the Court.

The Court, being fully advised in the premises, finds that the defendant was charged on the ___th day of _____, 1996, with the offenses of _____ as defined by K.S.A. _____ and that these charges are in full force and effect.

The Court further finds that:

1. The defendant has voluntarily waived his/her right to a speedy trial, speedy arraignment, preliminary examination and hearing and/or a waiver of the right to a speedy trial by jury, with ___ the advice of counsel.
2. That the defendant understands that the State must prove him/her guilty beyond a reasonable doubt and that he/she has the right to a trial.
3. The defendant understands that during the period of diversion of prosecution, the charge(s) pending against him/her will remain in full force and effect and that the said matter may be

2-25

set for trial prior to the end of the diversion period upon termination of the agreement by any party to the agreement.

4. The defendant, by signing this agreement, states that he/she has not been convicted of any laws of the United States, of any State or ordinances of any city; nor has he/she been on any other diversion programs;

5. That he/she has read this agreement and agree and stipulate to the facts as set forth in the affidavit and complaint. He/she further acknowledges that any resumption of the criminal case, including any appeal, will be had only upon the stipulation of facts contained in this Diversion Agreement pursuant to K.S.A. 1992 Supp. 22-2909(d) as amended in the 1993 Sessions Laws of Kansas, Chapter 121, section (d).

6. That upon successful completion of the diversion period, the Complaint will be dismissed by the State of Kansas.

IT IS THEREFORE BY THE COURT ORDERED that defendant be and is hereby released pending trial for a period of 24 months conditioned upon the successful completion of the diversionary program and upon the following conditions:

1. That he/she refrain from violating any of the laws of the United States or of any state, or ordinance of the City of Topeka, Kansas.

2. That he/she report to this Court, the Shawnee County District Attorney's Officer or any other person at any time that he/she may be ordered to do so by the Court, or anyone so designated by the Court.

3. That he/she conduct himself at all times as a law abiding citizen.

4. That he/she advise the diversion coordinator of any changes in address or employment during the period of his/her diversion.

5. That he/she pay court costs in the amount of \$134.50 within 24 months.

6. That he/she pay Diversion Maintenance Fee of \$75.00 within 24 months.

7. That he/she pay restitution in the amount of \$4,863.00 within 24 months. (payable through the Clerk of the District Court for disbursement to _____)

8. (further conditions depending on the offense-- community service hours, counseling, drug and alcohol classes, no contact with victim, continue education, etc.)

The Court, the defendant or the State of Kansas hereby reserves the right to terminate this agreement at any time prior to the successful completion of the term of the diversion program and demand that the matter be set for trial.

JOAN M. HAMILTON
ATTORNEY FOR PLAINTIFF

ATTORNEY FOR DEFENDANT

DEFENDANT

I, DEFENDANT'S NAME, the above named defendant, have read the above order and know the contents thereof and hereby agree to comply with the conditions as set forth therein.

DEFENDANT

MAKE PAYMENTS TO:

Clerk of the District Court
200 E 7th, Room 209
Topeka, Kansas 66603

plb

Battered Women Task Force

Domestic Violence and Sexual Assault Programs

at the YWCA

Box 1883 • Topeka, KS 66601-1883 • (913) 354-7927

ALTERNATIVES TO BATTERING PROGRAM YWCA Battered Women Task Force

Joe Macnevin

Call ~~Fred Fiesland~~ for intake appointment. Phone Number: (913) 354-7927

Location: Topeka YWCA, 225 W. 12th, Topeka Kansas

Client will be seen individually, then placed in an education group.
Diversion and self referral program for domestic batterers.

Curriculum:

- Safety planning
- Non-threatening behavior
- Accountability and honesty
- Non-controlling behavior
- Self esteem
- Communication
- Fair fighting
- Child abuse prevention

Twenty four weekly group education classes are recommended.

Intake fee \$35.00. Education groups sliding scale \$20.00 to \$5.00 per class.

ALTERNATIVES TO BATTERING PROGRAM

NEW PROGRAM FORMAT AND GROUP TIMES

MONDAY

PRE-GROUP (DENIAL GROUP)	4:00 - 5:00
SAFETY PLANNING	5:00 - 6:00
GROUP	6:00-7:30

WEDNESDAY

SAFETY PLANNING	5:00 - 6:00
GROUP	6:00 - 7:30

THURSDAY

SAFETY PLANNING	4:00 - 5:00
GROUP	5:00 - 6:30

FRIDAY

SAFETY PLANNING	9:00 - 10:00
GROUP	10:00 - 11:30

THE PROGRAM WILL LAST ONE YEAR.
 PARTICIPANTS WILL ATTEND GROUP FOR THIRTY TWO WEEKS (EIGHT MONTHS).
 THERE WILL BE A FOUR MONTH FOLLOW-UP DONE.
 GROUPS WILL BE ONE AND ONE-HALF HOURS LONG.
 THERE WILL BE TWO SAFETY PLANNING SESSIONS DONE AT BEGINNING OF GROUP.
 THERE WILL BE THREE INDIVIDUAL SESSIONS DONE DURING GROUP PARTICIPATION.
 THERE WILL BE FOUR INDIVIDUAL SESSIONS DONE AFTER GROUP IS COMPLETED.
 COMPLETION LETTERS WILL BE SENT AFTER LAST INDIVIDUAL SESSION IS DONE.
 AN EVALUATION OF THE CLIENT'S PARTICIPATION WILL BE SENT ALSO.
 VICTIMS WILL BE CONTACTED PERIODICALLY (AT LEAST THREE TIMES).

HEARTLAND CLINICAL CONSULTANTS

"MEN'S EMOTIONAL MANAGEMENT/VIOLENCE INTERVENTION " **TREATMENT PROGRAM**

TOPEKA PROGRAM

TARGET POPULATION/ADMISSION

Adult males that have been referred by family, employer, attorney, SRS, the **Court or Court Services Officer**. Referents may be voluntary, pre-sentence or having been convicted. Specific admission to the program will be accomplished through a formal intake process. Should an individual be found inappropriate, a recommendation will be made concerning referral.

TREATMENT LOCATION/COORDINATION

Address for appointments: 5040 SW 28th, Suite E, Topeka, KS 66614-2302

For appointments and information: (913) 272-2266 or (913) 272-2279

Contact Person: Larry L. Huey, LSCSW -- Program Coordinator

Daytime, Evening, and Saturday group/individual sessions are available. Call for days and times.

PROGRAM STRUCTURE

All individuals requesting admittance into this program will be considered, by the program staff, for possible scheduling of an assessment/intake interview. Individuals scheduled an assessment/intake interview will be accepted into the program or recommended an alternative referral at this time.

This program will utilize a basic format of 18 weekly education/therapeutic group presentations, with an optional six (6) "aftercare" group sessions. Clients and referents will be kept informed, by the program treatment staff, of the client's progress in the program, including: determining completion at 18 sessions; recommendations for adjunctive therapeutic services, e.g., individual, medication evaluation, etc.; extension of additional mandatory sessions, and/or expected completion of the "aftercare" group sessions. Clients may be approved for additional lengths, up to two (2) years.

Clients will be expected to complete the 18 and any additionally required sessions, with completion requiring make-ups of missed sessions. Clients will be provided appropriate program educational/therapeutic materials, at no additional costs. The program may make available, personal treatment notebook, program topic workbook, community resource listings, and take-home assignments. Referents will be provided ongoing appropriate telephone and written progress reports. When appropriate, a copy of the completion and discharge summary will be forwarded to the client's referring agency.

COST

Insurance that covers the program is acceptable with clients paying their co-payment, or clients paying the entire fee. Arrangements may be made for referent, employer, etc., to make payment for program service, through contractual agreements.

When the client is responsible for paying for the program services, two (2) payment options are available:

- a) Insurance -- insurance pays benefit portion and client pays remaining self co-payment.**
- b) Self-Pay -- no insurance, client pays the total fee.**

Whether the client has insurance available or chooses the private pay option, the program fees are designed to be economical and takes the client's financial ability under consideration. Clients are expected to make full payment in advance, or may make payment at the time of intake and at each group session.

THE PROGRAM

The educational/therapeutic program is designed to produce lifestyle changes in men, through emotional, attitudinal, and behavioral modifications, while educating them on the "cycle of violence". This will allow men to resolve life conflicts without resorting to conflict and violence. Men that attend will be provided the opportunity to develop tools for rebuilding their lifestyles in a responsible manner.

Learning alternative options to violence is a life-long process. The "Men's Emotional Management/Violence Intervention" Treatment Program group process is designed to help clients identify the nature of their personal aggressive/violent tendencies, and to develop positive steps to stop the "cycle of violence" in their lives.

Clients are asked to bring honesty, courage, and a commitment to the group. The information and material provided will not become a part of their life unless they do the work, and continue practicing their newly realized life-skills.

An overview of the "Men's Emotional Management/Violence Intervention" group process is as follows:

- Sessions: 1-8: Addresses how we are raised to hold onto our pain and turn anger into violence, what we know about women, identifying physical, emotional, and sexual abuse as well as learning how and where to get help with these issues.
- Sessions: 9-13: Explores the connection between anger, power, violence, and alcohol/drugs.
- Sessions: 14-18: Developing alternatives to violence in our family, among our friends, and in the community.

Adjunctive therapeutic services: When appropriate, the program staff may recommend other educational/treatment services, including, but not limited to:

- individual therapy
- substance abuse assessments
- medication consultation
- family therapy
- substance abuse education/treatment
- marital therapy

(Note: Typically, recommendations and initiation of marital therapy will be determined on a per case basis, with safety and priority issues taking precedence.)

* * *

For information please contact:

HEARTLAND CLINICAL CONSULTANTS
(913) 272-2266 or (913) 272-2279
FAX -- (913) 273-9972

HEARTLAND CLINICAL CONSULTANTS

W. E. MECHLER, BA, CADC, NCAC 1

2914 SW PLASS CT., SUITE A
TOPEKA, KS 66611
Telephone (913) 266-2090 or (913) 272-2279
Fax (913) 273-9972

SUBSTANCE ABUSE TREATMENT/EDUCATION PROGRAM **TOPEKA**

THE SUBSTANCE ABUSE TREATMENT/EDUCATION PROGRAM CONSISTS OF 24 CLINICAL HOURS OF GROUP COUNSELING AND EDUCATION. THE PROGRAM IS DESIGNED TO PROVIDE CURRENT INFORMATION ON THE DISEASE CONCEPT OF ADDICTION WHILE ASSISTING THE CLIENT IN ALTERING BEHAVIORS, ATTITUDES, AND BELIEFS.

CLIENTS ATTENDING THE EIGHT (8) WEEKLY SESSIONS WILL ADDRESS A VARIETY OF TOPICS INCLUDING FAMILY SYSTEMS, COMMUNICATIONS SKILLS, AND RELAPSE PREVENTION PLANNING.

THE CLIENT WILL ALSO BE INTRODUCED INTO THE CONCEPT OF 12 STEP RECOVERY.

THIS PROGRAM IS BASED ON THE **BIO-PSYCHO-SOCIAL DISEASE MODEL OF CHEMICAL DEPENDENCY** AND IS DESIGNED TO ASSIST CLIENTS IN PREVENTING THE DEVELOPMENT OF PROBLEMS IN THEIR LIFE DUE TO SUBSTANCE ABUSE OR CHEMICAL DEPENDENCY.

SESSIONS ARE CONDUCTED FROM 10 A.M. TO 1:00 P.M. FOR EIGHT (8) CONSECUTIVE SATURDAYS, OR 6:00 P.M. TO 9:00 P.M. ON WEDNESDAYS, AT 2914 SW PLASS CT., SUITE A, IN TOPEKA. THE PROGRAM IS OPEN ENDED SO THAT A CLIENT MAY ENTER THE GROUP AT ANY POINT.

INSURANCE PAYMENT IS ACCEPTED WITH THE CLIENT MEETING THE CO-PAYMENT. A PRIVATE PAY SCHEDULE IS ALSO AVAILABLE ON A SLIDING SCALE.

* * *

FOR FURTHER INFORMATION, PLEASE CONTACT:
W. E. MECHLER AT (913) 266-2090
HEARTLAND CLINICAL CONSULTANTS ADMINISTRATIVE OFFICE
AT (913) 272-2279

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

STATE OF KANSAS

PLAINTIFF

vs.

97-CR-

DEFENDANT'S NAME

DEFENDANT

DOB: 11/7/50 W/F

DIVERSIONARY AGREEMENT

PRE-TRIAL RELEASE AND GENERAL CONTINUANCE ORDER

Now on this ___ day of February, 1997, the defendant appears pro se. The State appears by Joan M. Hamilton, District Attorney. The matter comes on before the Court on the joint agreement of diversion of prosecution and continuance for approval by the Court.

The Court, being fully advised in the premises, finds that the defendant was charged on the 23rd day of January, 1997, with the offense of Domestic Battery, K.S.A. 21-3412(b) and that this charge is in full force and effect.

The Court further finds that:

1. The defendant has voluntarily waived his/her right to a speedy trial, speedy arraignment, preliminary examination and hearing and/or a waiver of the right to a speedy trial by jury, with the advice of counsel.

2. That the defendant understands that the State must prove him/her guilty beyond a reasonable doubt and that he/she has the right to a trial.

3. The defendant understands that during the period of diversion of prosecution, the charge(s) pending against him/her will remain in full force and effect and that the said matter may be set for trial prior to the end of the diversion period upon termination of the agreement by any party to the agreement.

4. The defendant, by signing this agreement, states that he/she has not been convicted of any laws of the United States, of any State or ordinances of any city; nor has he/she been on any other diversion programs;

5. That he/she has read this agreement and agree and stipulate to the facts as set forth in the affidavit and complaint. He/she further acknowledges that any resumption of the criminal case, including any appeal, will be had only upon the stipulation of facts contained in this Diversion Agreement pursuant to K.S.A. 1992 Supp. 22-2909(d) as amended in the 1993 Sessions Laws of Kansas, Chapter 181, section (d).

6. That upon successful completion of the diversion period, the Complaint will be dismissed by the State of Kansas.

IT IS THEREFORE BY THE COURT ORDERED that defendant be and is hereby released pending trial for a period of 12 months conditioned upon the successful completion of the diversionary program and upon the following conditions:

1. That he/she refrain from violating any of the laws of the United States or of any state, or ordinance of the City of Topeka, Kansas.

2. That he/she report to this Court, the Shawnee County District Attorney's Office or any other person at any time that he/she may be ordered to do so by the Court, or anyone so designated by the Court.

3. That he/she conduct himself at all times as a law abiding citizen.

4. That he/she advise the diversion coordinator of any changes in address or employment during the period of his/her diversion.

5. That he/she pay Court costs of \$102.50 within 12 months.

6. That he/she pay Diversion Maintenance Fee of \$75.00 within 12 months.

7. That he/she agrees not to have, use, or possess any firearms whatsoever, this includes in the home.

7. That he/she attend counseling at Battered Womens Task Force and pay the costs thereof to begin immediately for 32 sessions or any other equivalent program approved by the District Attorney's Office.

8. That he/she obtain an alcohol/drug or psychological evaluation and follow all recommendations of said evaluation if requested by District Attorney personnel or Court Services Officer.

9. NO VIOLENT CONTACT ORDER IS IN EFFECT WITH VICTIM'S NAME.

The Court, the defendant, or the State of Kansas, hereby reserves the right to terminate this agreement at any time prior to the successful completion of the term of the diversion program and demand that the matter be set for trial.

JOAN M. HAMILTON
ATTORNEY FOR PLAINTIFF

ATTORNEY FOR DEFENDANT

DEFENDANT'S NAME
DEFENDANT

I, DEFENDANT'S NAME, the above named defendant, have read the above order and know the contents thereof and hereby agree to comply with the conditions as set forth therein.

DEFENDANT'S NAME
DEFENDANT

MAKE PAYMENTS TO:

Clerk of the District Court
200 E 7th, Room 209
Topeka, Kansas 66603

/jc

Shawnee County Incest Diversion Treatment Program



Menninger

Purpose

The Incest Diversion Program was developed in a collaborative effort between staff members of Menninger and personnel in the Shawnee County District Attorney's Office.

The purpose of the program is to provide the opportunity for treatment to persons who have sexually abused a child within a family system. While not all persons charged with aggravated incest or indecent liberties with a minor are appropriate for this program, some individuals benefit from treatment. The community benefits because treatment allows the perpetrator to continue to financially support the family and pay for treatment of the victim and family. Treatment also reduces public expenses related to incarceration and public assistance.

Referrals

Treatment inquiries should be made to Ms. Pat Henry at the Menninger Community Service Office, 232-7214. All participants in the Incest Diversion Program are thoroughly evaluated by a special psychiatric team to determine whether the program is the most appropriate way for the perpetrator to take responsibility for their illegal actions and whether they can benefit from treatment. Attorneys who represent clients charged with aggravated incest or indecent liberties with a minor should discuss legal requirements for program referral with the District Attorney's Office.

General guidelines include:

- no prior criminal record
- perpetrator takes responsibility for criminal actions
- perpetrator and family members desire treatment

Evaluation criteria

1. All legal documents are reviewed by the treatment team. Charges should be filed prior to a psychiatric evaluation so that a potential participant's legal status is clear to the District Attorney's Office and the treatment team. Persons requesting a psychiatric evaluation to use in an impending trial are referred for a forensic psychiatric evaluation.

2. A family assessment is almost always required as a part of a psychiatric evaluation. For the purposes of this program, incest is broadly defined. Incest can occur between extended family members and stepparents and stepchildren.

3. Previous treatment records of the incest perpetrator and family members will be requested if the incest perpetrator or family members have been receiving treatment prior to the request to be evaluated for this program.

4. The extent of the perpetrator's evaluation depends on the number of questions the treatment team needs to answer. A full evaluation requires approximately ten hours and includes:

- psychiatric interviews
- psychological testing
- a family assessment conducted by

a social worker, who interviews the spouse of the perpetrator and the child who was abused

- a meeting with group psychotherapists

The evaluating team will recommend the conditions of treatment for the perpetrator and forward their summary of findings to the District Attorney's Office and the perpetrator's attorney. A representative of the treatment team will also communicate the findings and recommendations to the perpetrator.

Acceptance for treatment

A perpetrator who is accepted for treatment makes a legal agreement with the district court to comply with the treatment recommendations. Legal compliance is monitored by a representative of the District Attorney's Office. If the perpetrator pleads guilty, he may be placed on probation. Compliance with treatment recommendations is monitored by a probation officer.

Goals of treatment

The goal of treatment is to break the family cycle of incest.

Treatment for family members usually includes:

- group therapy for the incest perpetrator
- individual or group therapy for the victim/survivor
- individual or group therapy for the spouse
- family therapy

The goal of treatment for the perpetrator is:

- to understand the internal conflicts

and external circumstances that fostered the abusive thoughts, feelings, and behavior

to learn to take full responsibility for feelings, thoughts, and behavior

to control one's self and relate differently to a spouse and children.

The goal of treatment for the child is:

to recover from the abuse—by understanding that she/he was not responsible for the abuse

to learn how to express feelings and communicate personal needs

to have the opportunity to confront the perpetrator in writing or during a family therapy meeting.

The treatment goal of the spouse and other family members is to understand family dynamics that foster abuse, to recover and heal,

and to learn new skills for healthy relationships within the family.

Cost

Evaluations are made on a sliding fee scale. Hourly charges for an evaluation range from \$75 to \$110 per hour. When treatment begins, an hourly fee for any group therapy, individual therapy or family therapy is assigned. Financial counselors can assist in filing insurance claims.

For information or referral

The Clinical Resources Office representatives can provide insurance information and answer general questions. Specific questions about

the treatment program or a referral can be answered by Ms. Pat Henry, Shawnee County Incest Diversion Treatment Coordinator, Menninger Community Service Office, 913-232-7214.

Additional information

Clinical Resources
The Menninger Clinic
PO Box 829
Topeka, KS 66601-0829

913-273-7500
or toll free 1-800-351-9058

Menninger is licensed by the State of Kansas and accredited by the Joint Commission on Accreditation of Healthcare Organizations. It is an approved hospital for Blue Cross, Medicare, CHAMPUS, and other insurance carriers.

I. DIVERSION PROGRAM PROCEDURE

1. SRS will report any possible crime of incest to appropriate law enforcement agency and sexual abuse treatment program coordinator and cooperate with investigation.
2. If law enforcement personnel receive the initial referral, they will notify SRS and sexual abuse treatment program coordinator and include them in the investigation.
3. Law enforcement will investigate the referral and send the report to the District Attorney. The investigation will be accomplished as soon as possible, preferably within ten days of the initial report. During this time period the sexual abuse treatment program team will complete an evaluation of the applicant which will include interviews with the applicant, the child, and the applicant's spouse. No contact will be allowed between child and the applicant during the investigation.
4. In order for an individual application for diversion to be considered, the applicant must furnish a personal background history on forms provided by the District Attorney that details: (1) Education; (2) work experience and training; (3) family background; (4) residence in the community; (5) medical history, including any psychiatric or psychological treatment or counseling; (6) financial status; and (7) the facts that caused charges to be filed. The applicant must also sign a Diversion Agreement, stipulate in Juvenile Court to child in need of care petition, and cooperate and fulfill all requirements of the agreement and court disposition.
5. After the application has been submitted and reviewed, a diversion conference will be scheduled. This conference shall be held in the District

Attorney's office with the applicant and applicant's counsel, if any, present. The sexual abuse treatment program coordinator will be present as well as the evaluating therapists. This conference will take place within a week of submitting the application for the Diversion Program. Following this conference the District Attorney will make a decision regarding the admission of the applicant into the Diversion Program.

6. When the District Attorney agrees to Diversion, the Menninger Foundation sexual abuse treatment team will initiate appropriate counseling, therapy, and monitoring of the progress in treatment.
7. The participant will be released at the end of a ²⁴~~36~~-month period by the District Attorney.
8. If the person admitted does not cooperate or fulfill requirements, the sexual abuse treatment program coordinator will notify the District Attorney who will file charges.
9. Regular review of the ongoing cases will occur monthly including the District Attorney, SRS personnel, and Menninger Foundation sexual abuse treatment program staff.

II. ELIGIBILITY CRITERIA

In order for an individual application for Diversion to be considered, the applicant must establish that:

1. The application was filed within 10 days after completion of the investigation.
2. The applicant has admitted a crime related to an incestuous relationship within his immediate family. A person acting as a parental figure in a family situation may be eligible for this program provided the applicant meets other eligibility requirements.
3. There was no force or threat of force involved. If the investigation and evidence establish that force or threat of force was involved, the applicant is not eligible for Diversion.
4. The applicant is not charged with other crimes in other jurisdictions. Persons with penal municipal, state, or federal charges pending will not be considered for Diversion.
5. The applicant does not have a criminal record. Persons with prior misdemeanor or felony convictions will not be considered for Diversion.
6. Persons previously accepted into and/or discharged from the Pre-Filing Diversion Program will not be eligible.

III. FACTORS TO BE CONSIDERED BY DISTRICT ATTORNEY
REGARDING ADMISSION TO THE DIVERSION PROGRAM

In determining whether diversion of an applicant is in the interest of justice and of benefit to the applicant and the community, the District Attorney will consider:

1. The nature of the crime charged and the circumstances surrounding it.
2. Any special characteristics or circumstances of the applicant.
3. Whether the applicant is a first-time offender.
4. Whether there is a probability that the applicant will cooperate with, and benefit from diversion.
5. Whether the available Diversion Program is appropriate to the needs of the applicant.
6. The impact of the diversion of the applicant upon the community.
7. Recommendations, if any, of the involved law enforcement agency.
8. Recommendations, if any, of the victim.
9. Provisions for restitution.
10. Any mitigating circumstances.
11. Whether the applicant evidences a genuine sense of remorse and is prepared to acknowledge the acts(s) charged and accountability for the consequences of his actions.

IV. DIVERSION PROGRAM REQUIREMENTS

1. Participants must agree to stipulate to child in need of care petition based on sexual abuse in Juvenile Court.
2. The participant will comply strictly with all federal, state, and local laws.
3. The participant will participate in the Pre-Filing Diversion Program for 36 months.
4. The participant will notify the sexual abuse treatment team coordinator of the participant's present address, telephone number, place of employment, and any changes.
5. The participant will be financially responsible for all individual/family/group treatment sessions for all family members as directed by the coordinator. Costs will be based on ability to pay.
6. The participant will not contact the victim or other specified family members without the written consent of the District Attorney.
7. The participant will sign a release authorizing the District Attorney's office to provide any information in the District Attorney's file pertaining to the offense for which he has been investigated to the Menninger Foundation and the Department of Social and Rehabilitation Services.
8. The participant will sign an authorization for the Menninger Foundation to release and provide upon request periodic evaluation reports on the participant to the District Attorney's office and to SRS.
9. The participant will authorize SRS to release appropriate information to the District Attorney's office and the Menninger Foundation staff.

10. The participant will reside in a specified facility or in a specified location.
11. The participant will maintain gainful employment.
12. The participant will agree to moderation or abstinence in the consumption of beer or other alcoholic beverages.
13. The participant will avoid specified locations or associates if so directed.

VI. TREATMENT PROGRAM

1. The treatment team at the Menninger Foundation will evaluate the applicant's treatability by meeting individually with the father, the mother, and the child. Evaluation will be made based on high, medium, or low-risk cases. During this evaluation, there will be no contact between the applicant and the child. No consideration will be given to applicants who contact the children during this time.
2. The program will begin with the Diversion conference attended by the applicant, applicant's counsel, sexual abuse treatment program coordinator, and other treatment team members.
3. If the District Attorney agrees to Diversion, the participant will begin an individual treatment process with a designated therapist.
4. The child will begin an individual process with a designated therapist.
5. The mother will be seen individually, with the participant, or with the child, depending upon the individual circumstances of each case.
6. As soon as the number of participants in the program is large enough, consideration will be given to forming various groups: Orientation group for couples, a fathers' group, a group for adolescent children, a group for small children, and a group for mothers.
7. Visitation will be considered when the father clearly takes responsibility for what has occurred, when the child wishes to see the father, when the father's impulse control is adjudged to be sufficient for him to abstain from the incestuous behavior, and when the mother can assist in protecting the child from the father's incestuous impulses.

A written notice of visitation or visitation changes will be sent to the participant by the District Attorney after notification of the District Attorney by the sexual abuse treatment coordinator.

8. Family therapy with the mother/daughter dyad, the father/daughter dyad, the marital couple, or the entire family will be instituted in later stages of the treatment program according to the circumstances of each case.
9. The father and the child will have separate therapists.
10. The initial investigation by law enforcement personnel as well as the evaluation by the Menninger Foundation treatment team will be conducted as speedily as possible in order to minimize the risk of the child's retracting her story and the father's acting destructively toward himself or others. In addition, conducting this portion of the program quickly will make the most constructive use of the family's anxiety and channel it into motivation for treatment.



**League
of Kansas
Municipalities**

LEGAL DEPARTMENT · 300 S.W. 8TH TOPEKA, KS 66603 · TELEPHONE (913) 354-9565 · FAX (913) 354-4186

LEGISLATIVE TESTIMONY

TO: House Transportation Committee

FROM: Don Moler, General Counsel

RE: Opposition to HB 2052

DATE: February 5, 1997

First I would like to thank the Committee for allowing the League to appear today in opposition to HB 2052. As I am sure the Committee knows, the League has long opposed preemption of local decision-making regarding local matters. We believe HB 2052 to be a classic example of an attempt to take the local decision-making power out of the hands of local officials.

It is the position of the League that if, in fact, a policy does not meet with the approval of the community, that the appropriate legislative body for the citizenry to approach is not the state legislature but rather the local city governing body. Quite clearly, if a city governing body does not believe the policy to be appropriate, it can be ended quickly at their determination. It is unfortunate that so many bills seem to move to the legislature, and be considered here, which tend to micro-manage the affairs of local governments.

We would argue that the policy is not as onerous as the proponents of this bill would have you believe and that if the policy needs to be changed, modified or repealed that the appropriate level of government to do this is the city governing body. We hope the Committee will agree with this position and reject HB 2052.

Thank you very much for allowing the League to appear here today.

*House Transportation
Attachment 3
2-5-97*

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House Transportation Committee

February 5, 1997

Testimony in Opposition to

HOUSE BILL NO. 2052

The Kansas County and District Attorneys Association appears in opposition to HB 2052, which places restrictions on prosecutors in traffic cases by: (a) limiting fines to the amount scheduled in K.S.A. 1996 Supp. 8-2118, or in city cases, the amount listed on the citation; and (b) requiring diversion fees paid to county or district attorneys (but not city attorneys) to go to the county treasurer and credited to the general fund. Our opposition to the bill is not out of self interest or to protect a source of unbridled discretionary funds. Currently, diversion fees already go into the general fund, as required by Attorney General Opinion 89-105 (attached), hence the bill should have no effect on diversion practices; and fines go into the State general fund, and decisions by this Legislature to reduce state funds is well beyond the scope of county prosecutors.

The bill is opposed because it attempts to micro-manage a very small portion of the criminal justice system, seemingly without any attempt to consider the larger scope of the legislative framework. For example, the Legislature as early as 1978 recognized the benefits of diversion when it enacted HB 3130, an act relating to pretrial diversion procedures in lieu of criminal proceedings in certain cases, codified in K.S.A. 22-2906 et seq. The statutes lay out a deliberate scheme for diversions, including eligibility criteria, effect of successful completion of diversion, consequences of unsuccessful completion, etc. They make no provision for disbursement of diversions fees, other than if the county commission has created a crime victim compensation fund, because as the AG Opinion points out, the law already requires them to go to the county general fund. One exception is that if the courts have created local rules governing diversion fees, then the diversion statutes are inapplicable. In short, where the general rule is that fees generated by diversion statutes go to the county general fund, with the exception of contrary court rules, does Section 3 of HB 2052 now eliminate the court rule exception in traffic cases. Where there is already a general rule, what is the effect of an even more specific one? And if diversion fees warrant such intense legislative scrutiny, why are diversion fees in municipal courts not even addressed?

As for Sections 1 and 2 restricting fines, the adverse effect on the State's coffers has already been mentioned. What is more of a concern is the effect on every other crime, where fines are included as part of the authorized sentence. Does the effect of this bill imply that prosecutors should ask for high fines in more serious cases to make up for the shortfall in traffic cases? Should they refuse to plea bargain in order for judges to sentence to higher fines after trial? In short, what message is being sent by micro-managing plea bargains in traffic infractions, but not addressing the bill's impact on the entire criminal justice system?

House Transportation
Attachment 4
2-5-97



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

August 15, 1989

MAIN PHONE: (913) 296-2215
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TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 89- 105

Mr. Delton M. Gilliland
Osage County Counselor
112 E. 7th, P.O. Box K
Lyndon, Kansas 66451

Re: Fees and Salaries -- Fees in All Counties and Salaries in Certain Counties -- Disposition of Fees and Compensation Not Authorized to be Retained by Officers and Employees; Diversion Fees

Criminal Procedure -- Kansas Code of Criminal Procedure; Procedure After Arrest -- Provisions of Diversion Agreement; Disposition of Diversion Fees

Counties and County Officers -- County Attorney -- Fees, When; Diversion Fees

Synopsis: The county attorney should not retain control of fees received pursuant to a diversion agreement except as authorized by the board of county commissioners in accordance with proper budgetary procedures. Such fees should initially be paid over to the county treasurer pursuant to K.S.A. 28-175. Cited herein: K.S.A. 1988 Supp. 8-1567, as amended by L. 1989, ch. 38, §42 and L. 1989, ch. 92, §16; K.S.A. 19-705; 22-2906; 22-2907; 22-2909, as amended by L. 1989, ch. 95, §6 and L. 1989, ch. 38, §47; K.S.A. 1988 Supp. 28-170; 28-170a; 28-170b; 28-172b; K.S.A. 28-175.

* * *

Dear Mr. Gilliland:

As Osage County Counselor you request our opinion concerning funds received from criminal defendants pursuant to diversion agreements. You specifically ask that we address the following:

- "1. Who is the proper custodian of fees so collected, the County Attorney, or the County Treasurer?
2. Is it proper for a County Attorney to retain custody of funds collected pursuant to diversionary agreements exclusive of the County Treasurer?
3. Is it proper for the County Attorney to directly make expenditures of such funds without the approval or order of the County Commissioners?
4. Is the receipt and expenditure of such funds by the County Attorney in excess of receipts and expenditures authorized by the budget adopted for the current year in violation of the State's budget law?
5. For what purposes is it proper for the County Attorney to spend funds comprised of fees collected from criminal defendants entering into diversionary agreements?"

K.S.A. 22-2907 permits prosecutors to offer diversion to certain criminal defendants. K.S.A. 22-2906 defines diversion and diversion agreement:

"(3) 'Diversion' means referral of a defendant in a criminal case to a supervised performance program prior to adjudication.

(4) 'Diversion agreement' means the specification of formal terms and conditions which a defendant must fulfill in order to have the charges against him or her dismissed."

K.S.A. 22-2909(a) discusses certain provisions which may be contained in the diversion agreement:

"The diversion agreement may include, but is not limited to, provisions concerning payment of restitution, including court costs and diversion costs, residence in a specified facility, maintenance of gainful employment, and participation in programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services." (Emphasis added).

If the diversion agreement is in lieu of further criminal proceedings under K.S.A. 1988 Supp. 8-1567, as amended, K.S.A. 22-2909(c) discusses fines under that statute. The statutes clearly authorize the payment of fees by a criminal defendant who enters into a diversion agreement. Thus, when entering into a diversion agreement, a prosecutor may include requirements concerning the payment of fees by the criminal defendant. The issue becomes how to properly characterize and handle the fees thus received.

The statutes do not define or characterize these fees as compensation to the prosecutor. Rather, they are assessed as payment for fines, restitution, court costs, or diversion costs. Many statutes discuss the disposition of fees collected pursuant to criminal proceedings. See e.g., K.S.A. 28-170 (the clerk of the court shall remit a portion of court costs payments to the state treasurer); K.S.A. 1988 Supp. 28-170a (the clerk of the court shall pay a portion of docket fees to the county treasurer for the prosecuting attorney's fund); and K.S.A. 1988 Supp. 28-172b (the clerk of the court shall pay a portion of the docket fee to the state treasurer for the indigent defense services fund).

The statutes do not specifically discuss the proper disposition of all fees and moneys received pursuant to a diversion agreement. However, K.S.A. 28-175 provides:

"County officers and employees shall receive no compensation, tips, fees, mileage or salaries, which compensation, tips, fees, mileage or salaries are or shall be paid to such officer or employee directly or indirectly by reason of his or

her performance of the duties or obligations of such county office or employment, unless such compensation, tips, fees, mileage or salaries are specifically allowed to them by law. *

All such compensation, tips, fees, mileage or salaries received, directly or indirectly by them or from their respective offices from any source whatsoever, which compensation, tips, fees, mileage or salaries would not have been received except for such officer's or employee's performance of the duties or obligations of such county office or employment, including all notary fees collected by any officer, deputy or clerk in any proceeding pending or to become pending, filed or to be filed in said office, not specifically authorized to be retained by them, shall be paid over on the first and fifteenth days of each month, or if either of said dates be a Sunday or legal holiday, then on the next secular day, to the county treasurer accompanied by a sworn statement in such form as the board of county commissioners may prescribe, to the effect that all compensation, tips, fees, mileage and salaries collected are correctly set forth therein. All such compensation, tips, fees, mileage and salaries shall be placed by said treasurer to the credit of the county general fund." (Emphasis added).

All funds which come into the hands of a public officer in Kansas by virtue of their office belong to the state or some political subdivision of the state and are "public funds". Mermis v. Jackson, 93 F.2d 579 (10th Cir. 1937).


K.S.A. 19-705 gives further direction to county attorneys concerning fees from individuals:

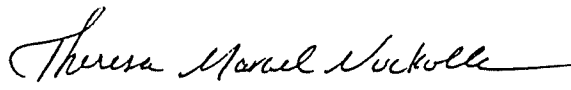
"No county attorney shall receive any fee or reward from or on behalf of any prosecutor or other individuals, except such as are allowed by law for services in

attend. . . ." See also Attorney
General Opinion No. 88-50.

Thus, unless specifically allowed to them by law, fees received by county attorneys as a result of performance of their official duties should be considered public funds and thus, pursuant to general county procedures regarding the proper procedures for handling public funds, should be paid over to the county treasurer. We find no specific statutory or common law exempting diversion fees from the provisions of K.S.A. 28-175 or K.S.A. 19-705. It is therefore our opinion that the county treasurer is the proper custodian of diversion fees. Such fees are not controlled by the county attorney unless such control is authorized by the board of county commissioners. Diversion fees should be paid over as directed under K.S.A. 28-175, credited to the general fund, and thenceforth handled in accordance with budgetary procedures applicable to all moneys deposited in the county general fund.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Theresa Marcel Nuckolls
Assistant Attorney General

RTS:JLM:TMN:bas



DEPARTMENT OF LAW
OFFICE OF CITY ATTORNEY
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**BEFORE THE HOUSE TRANSPORTATION COMMITTEE
CITY OF WICHITA
TESTIMONY IN OPPOSITION TO H2052**

What is a plea bargain? A plea bargain is the process by which the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of a case subject to court approval. It usually involves the defendant pleading guilty to a lesser offense or to only one or some of the counts of a multi-count charge in return for a lighter sentence than that possible for the more serious charge.

Plea bargaining occurs at every level of the criminal court system from federal court to municipal court. The term "prosecutorial discretion" is used to describe the authority held by the public prosecutor in regard to a criminal prosecution. It is said that the public prosecutor, except as restrained by statute, has absolute control of criminal prosecutions, and has the authority by virtue of the office to enter a *nolle prosequi* -- a virtual dismissal -- regardless of the attitude of the court. *Foley v. Ham*, 102 Kan. 66, 67, 169 Pac. 183 (1917).

Thus, the public prosecutor has always had broad executive discretion to determine whether to prosecute an action. Diversion programs, such as have been established by ordinance, place guidelines on the exercise of discretion but do not destroy or unreasonably restrict prosecutorial discretion. If one branch of government unreasonably restricts the exercise of the inherent powers of another branch of government, then the restriction may violate the separation of powers doctrine and may be struck down by the courts.

H2052 provides, in the amendatory language to the schedule of uniform traffic fines on page 6, lines 23 to 27:

“(f) Except as provided in subsection (e), on any plea bargain accepted by the city, county or district attorney for any traffic offense or ordinance traffic infraction listed in this subsection, the fine shall be no greater than the uniform fine for the original offense or infraction stated on the traffic citation.”

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In a further amendment to the municipal court procedures, H2052 provides:

“(d) On any plea bargain accepted by the city attorney for any ordinance traffic infraction, the fine shall be no greater than the fine listed in the schedule of fines for the original infraction stated on the traffic citation.”

The City of Wichita respectfully opposes the above portions of H2052 which we believe unreasonably restricts the inherent discretion of the City Attorney to enter into plea bargains involving traffic infractions. The prohibition of enhanced fines will, we believe, have the effect of increasing the cost of municipal court to the detriment of all of the City’s taxpayers. It must be remembered, that when an enhanced fine is paid as a result of a plea agreement, it is a purely voluntary arrangement to the mutual benefit of the citizen and the City. It is not due to arbitrary action on the part of the City to coerce the enhanced penalty. Nor does the City have an economic incentive to enhance fines, as the plea bargain requires more prosecuting attorney time, court time and court resources than if the violator simply plead guilty and paid the fine by mail. Historically, the fines collected in municipal court in Wichita have never fully offset the cost of court services provided, and probably never will due to the labor intensive nature of criminal prosecution including attorney costs, court personnel, and judges.

The City’s speeding ticket diversion program would be prohibited by H2052. The City of Wichita has a speeding ticket diversion program which is available to citizens in specified cases. If an individual applies for diversion and meets the qualifications for participation, he pays a \$100 diversion fee and agrees to waive the right to a speedy trial. Upon successful completion of a six month period free of any further violations, the original ticket is dismissed. The \$100 diversion fee is fully justified by the increased attorney time and paperwork required to operate the program. Diversion of speeding tickets would no longer be possible under H2052 since the \$100 fee would be greater in many cases than the “original infraction” contrary to H2052.

The City of Wichita just recently implemented a policy to reduce the number of traffic cases on the overcrowded trial dockets of the municipal court. Similar to diversion, the policy allows prosecutors to reduce some speeding infractions upon a plea of guilty and payment of an enhanced fine. Under H2052, this policy and its benefits to the City and the citizen would be lost. The following figures compare the number of traffic violations written by officers with the number of traffic violations which were set on the court’s docket at the request of citizen rather than simply paying the fine.

<u>Traffic Tickets Written</u>	<u>1995</u>	<u>Traffic Cases</u>	<u>1996</u>	<u>Traffic Tickets Written</u>	<u>Traffic Cases</u>
109,000		42,000		107,000	47,000

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It is apparent that rather than simply pay fines by mail, many citizens are choosing to fight their traffic tickets. Under the policy to reduce traffic trials, if a citizen requests amendment of a speeding ticket, the prosecutor may either amend the ticket to a non-moving violation, or reduce the number of miles over the speed limit, and double the fine assessed. We believe that this program will have benefits for the City and for citizens who are eligible for the reduction.

The greatest savings for the City is to keep traffic tickets off of the municipal trial docket and thereby reduce the trial workload of the municipal court. Every traffic ticket which goes onto the trial docket increases the cost to the city in terms of use of prosecutor's time, judge's time and court resources; all of which could be better utilized on more serious crimes such as domestic violence, drug and environmental cases. Why would so many people defend against traffic tickets? Simply, we believe that people are so averse to insurance costs, that they will choose to fight a traffic ticket rather than simply pay the fine and have the ticket go on their driving record. In addition, some citizens utilize a vehicle for their work and a traffic ticket may mean the loss of a job or other adverse employment consequences. Therefore even though they know they will probably lose going in, they have every incentive to hire a lawyer to fight it the "old fashioned" way. Payment of an enhanced fine in exchange for a reduction in the charge, saves the citizen an increased insurance premium, the attorney fees for fighting the ticket and the loss of time which they would have spent away from work during the trial.

By allowing city prosecutors to use their discretion to amend or reduce traffic tickets in exchange for a guilty plea and enhanced fine, the court resources can be allocated for other cases. The penalty is preserved since an enhanced fine will usually get the attention of the violator. Probably the biggest reason to enhance the fine when amending or reducing a traffic charge, is to preserve the deterrent effect of the ticket. Enhancing the fine preserves the purpose for writing the ticket in the first place, punishment and deterrence.

While it can be argued that the enhancement of fines has a disproportionate impact on persons of less economic means, that argument overlooks the fact that any system of uniform fines has a disproportionate economic impact. It is precisely this reason which argues in favor of preserving prosecutorial discretion since a prosecutor is capable of taking into account how the amount of the fine will affect the violator and adjusting the plea bargain accordingly. Therefore, the City respectfully opposes the prohibition of H2052 on the prosecutorial discretion of the City Attorney to enter into plea bargains with violators and to enhance the fines as a part of the agreement.


Gary E. Rebenstorf
City Attorney