

2023 Kansas Statutes

22-2908. Grant of diversion; factors to consider; when prohibited. (a) In determining whether diversion of a defendant is in the interests of justice and of benefit to the defendant and the community, the county or district attorney shall consider at least the following factors among all factors considered:

- (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 division of vehicles of the department of revenue;
- (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) whether there is a probability that the defendant committed such crime as a result of an injury, including major depressive disorder, polytrauma, post-traumatic stress disorder or traumatic brain injury, connected to service in a combat zone, as defined in section 112 of the federal internal revenue code of 1986, in the armed forces of the United States of America;
- (7) if subsection (a)(6) applies to the defendant, whether there is a probability that the defendant will cooperate with and benefit from inpatient or outpatient treatment from any treatment facility or program operated by the United States department of defense, the United States department of veterans affairs or the Kansas national guard with the consent of the defendant, as a condition of diversion;
- (8) the impact of the diversion of the defendant upon the community;
- (9) recommendations, if any, of the involved law enforcement agency;
- (10) recommendations, if any, of the victim;
- (11) provisions for restitution; and
- (12) any mitigating circumstances.

(b) A county or district attorney shall not enter into a diversion agreement in lieu of further criminal proceedings on a complaint if the complaint alleges that the defendant committed a:

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

(c) A county or district attorney may enter into a diversion agreement in lieu of further criminal proceedings on a complaint for violations of article 10 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto, if such diversion carries the same penalties as the conviction for the corresponding violations. If the defendant has previously participated in one or more diversions for violations of article 10 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto, then each

subsequent diversion shall carry the same penalties as the conviction for the corresponding violations.

(d) As used in this section, "major depressive disorder," "polytrauma," "post-traumatic stress disorder" and "traumatic brain injury" mean the same as in K.S.A. 21-6630, and amendments thereto.

History: L. 1978, ch. 131, § 3; L. 1981, ch. 153, § 1; L. 1982, ch. 144, § 6; L. 1984, ch. 119, § 11; L. 1985, ch. 48, § 16; L. 1986, ch. 185, § 2; L. 1992, ch. 239, § 257; L. 1993, ch. 291, § 190; L. 2005, ch. 182, § 8; L. 2010, ch. 101, § 9; L. 2011, ch. 91, § 14; L. 2012, ch. 150, § 40; L. 2013, ch. 133, § 11; L. 2015, ch. 76, § 8; L. 2018, ch. 106, § 28; L. 2022, ch. 80, § 19; L. 2022, ch. 80, § 19; July 1.