

## 2023 Kansas Statutes

**12-4415. Same; 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 city 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 of an alcohol related offense as defined in K.S.A. 12-4413, and amendments thereto, and if the defendant has previously participated in diversion, according to the certification of the division of vehicles of the state department of revenue;
- (4) whether there is a probability that the defendant will cooperate with and benefit from diversion;
- (5) 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;
- (6) if subsection (a)(5) 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;
- (7) whether the available diversion program is appropriate to the needs of the defendant;
- (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 city attorney shall not enter into a diversion agreement in lieu of further criminal proceedings on a complaint alleging an alcohol related offense as defined in K.S.A. 12-4413, and amendments thereto, if the defendant:

- (1) Has previously participated in diversion of an alcohol related offense;
- (2) has previously been convicted of or pleaded nolo contendere to an alcohol related offense in this state or has previously been convicted of or pleaded nolo contendere to a violation of K.S.A. 8-2,144 or 8-1567, and amendments thereto, or of a law of another state, or of a political subdivision thereof, that prohibits the acts prohibited by those statutes; or
- (3) during the time of the alleged alcohol related offense was involved in a motor vehicle accident or collision resulting in personal injury to another person or death.

(c) A city attorney shall not enter into a diversion agreement in lieu of further criminal proceedings on a complaint or traffic citation alleging a violation of an ordinance of any city or resolution of any county that prohibits the acts prohibited under chapter 8 of the Kansas Statutes Annotated, and amendments thereto, if 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.

(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. 1982, ch. 144, § 14; L. 1985, ch. 48, § 11; L. 1986, ch. 185, § 1; L. 2011, ch. 105, § 22; L. 2012, ch. 172, § 24; L. 2015, ch. 76, § 5; L. 2018, ch. 106, § 18; L. 2022, ch. 80, § 16; July 1.