

Kansas Prosecutors' Refusal to Use
Diversion and the Cost to Communities

Choosing Incarceration

ACLU

Kansas

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 **SMART
JUSTICE**

December 2017

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Executive Summary

The crime rate in Kansas has fallen significantly over the last 40 years, but incarceration has more than quadrupled. In October 2017, the Kansas prison population stood at almost 10,000 people and on some days exceeded the system's capacity. The costs of maintaining such a massive prison system have escalated dramatically over the course of four decades, putting an unnecessary burden on Kansas taxpayers. Keeping nearly 10,000 Kansans in prison, many of them due to mental illnesses or substance abuse conditions, cost Kansas taxpayers \$229 million in 2016¹ and results in overcrowding that endangers correctional officers. Such epidemic levels of incarceration make Kansas communities less free, healthy, strong, and safe.

There are alternative approaches to our criminal justice system that would make Kansas communities safer and stronger, while reducing incarceration and the cost to taxpayers. Diversion is one such approach. Diversion is when the prosecutor, who is an elected official, allows selected individuals to avoid criminal charges if they follow a prescribed program of treatment, restitution, and/or community service.

Diversion programs have a long and proven track record of reducing incarceration and costs, dramatically reducing the likelihood that an individual will commit another crime, ensuring that people get treatment and services they need, and making communities safer and stronger.

Diversion works, but it is a strategy that is not being used effectively by elected prosecutors in Kansas.

In fact, Kansas prosecutors use diversion

at just half of the national average, or in about 5% of all felony cases,² **despite the fact that 94% of Kansans want their local prosecutor to use diversion more often.**

Instead of embracing diversion, prosecutors in Kansas choose incarceration. If Kansas were to truly embrace diversion, it could reduce the state's prison population by as much as 10% and cut government spending by \$8.9 million.³ This report explores the reasons for the low diversion rate in Kansas. It examines the wildly divergent policies, practices, and outcomes related to diversion in all 105 counties.

There are several reasons that diversion is not an effective tool in Kansas, including:

- **Local prosecutors flaunt the state law that requires them to have formal diversion policies.**
- **Prosecutors have created a web of unnecessarily harsh rules that leave thousands of people ineligible for diversion.**
- **Diversion programs are a well-kept secret, with many eligible applicants totally unaware of the option's existence.**
- **Enormous fines and fees make participation difficult even for those who are able to navigate the eligibility guidelines.**
- **A near-total lack of data makes accountability, transparency, and improvement difficult.**
- **Limited capacity and funding reduces the options for diversion applicants and prosecutors.**

But the most important reason that diversion is not an effective tool in Kansas is

that **too many of the state’s elected prosecutors simply refuse to use it.** The major impediment to the broader use of diversion—and the incarceration-reducing, recidivism-limiting, community-strengthening benefits that accompany it—is not lack of resources or capacity, nor statutory constraints, nor public hostility.

The major impediment to diversion in Kansas is that elected county and district attorneys use their prosecutorial discretion to discourage, prohibit, refuse, and reject diversion in cases where it would be appropriate.

Prosecutors’ rejection of diversion has real costs for Kansas, in increased incarceration, increased costs for taxpayers, and communities that are less safe and vibrant. This report offers recommendations to address this set of problems, including:

- **Requiring prosecutors to make all defendants aware, at the time of arrest, that they can request diversion.**
- **Standardizing the diversion process, with a single, uniform application and a requirement that denied applications receive a written response.**
- **Reducing fees and fines.**
- **Enhanced transparency and data collection about diversion, especially at the county level.**

Kansas can—and should—be a national leader in the use of diversion. Embracing these recommendations would help Kansas achieve that goal. Increasing the use of diversion would reduce incarceration, provide treatment and services to improve community health, reduce costs to taxpayers, and make families and communities safer and stronger.

Diversion Works

A Proven Strategy for Making Communities Safer and Stronger

What Is Diversion?

Diversion is an approach designed to promote community safety by providing people a chance to succeed, not pursuing the conviction and incarceration of offenders who pose minimal risk to the community. Diversion makes good use of taxpayer dollars by not pursuing the imprisonment of people who pose little danger to others, and instead connecting them to the tools they need to avoid reoffending and to be part of the community. It is also a way to divert defendants with mental health and substance abuse issues into treatment programs rather than incarceration.

In a diversion, a potential defendant submits a formal application to the local prosecutor requesting that he or she be redirected (“diverted”) out of the criminal justice system, completing an alternative program or sentence rather than incarceration. The local prosecutor, called the county (or district) attorney is an elected official who has the exclusive power to grant or reject the application. No other official—including law enforcement officers or a judge—have any power to grant or reject the application. Instead, the decision to grant a diversion is an example of “prosecutorial discretion”—where prosecutors get to pick and choose the cases they bring, the charges they file, and the sentences they pursue.

If a county attorney approves a diversion application, the individual who applied must abide by a diversion agreement. In this agreement, a defendant stipulates (in effect, admits) to the charge and agrees to follow certain conditions. Those conditions

often include mental or behavioral health treatment, restitution, or community service. Once those terms have been successfully completed, the case is dismissed and the charge does not appear on the individual’s record. There is never a conviction—something that is especially important in felony cases, where a conviction can mean lifetime consequences of unemployment and restricted access to services—and the individual never serves a prison sentence. If a defendant does not complete the program, the charges are restored and the individual can face stiff accountability measures.

Individuals applying for diversion generally are asked about their educational background, employment history, any prior criminal charges, the circumstances of the crime, and why they believe they could successfully complete a diversion. Applications for misdemeanor diversions typically must be filed within a pre-established time of their first appearance (ranging from five to 120 days), while applications for a felony diversion must be filed before the first preliminary hearing. If more time is needed, the defendant must file a motion to continue the preliminary hearing.

Increasing the use of diversion should be an urgent priority for Kansas because the approach has proven highly successful at building healthier, safer, and stronger communities.

Providing Community-Based Treatment

An alarming number of people who are incarcerated in Kansas prisons have diagnosed mental health conditions. In 2016, fully 35% of adult inmates in Kansas had a diagnosed mental health condition. An even larger number of inmates had experienced challenges with substance

abuse.⁴ In many cases, the behavior that resulted in a person being convicted and incarcerated is a direct result of the mental or behavioral health condition. The Kansas Department of Corrections acknowledges that a mental health crisis is unfolding within its facilities, with inadequate resources and capacity to address the challenge. Even if adequately-resourced, very few people would contend that prison is an effective or humane course of treatment for mental and behavioral health conditions.

For offenders with mental and behavioral health conditions, diversion is a far superior alternative. Through a diversion program, individuals can pursue community-based treatment for the condition. These models have proven successful both at treating underlying health conditions, and at preventing future offenses related to a mental or behavioral health issue. Community-based treatment is less expensive for taxpayers than prison. The public overwhelmingly agrees that diverting individuals with mental and behavioral health conditions into community-based treatment is preferable to sentencing these offenders to prison time.

Reducing Recidivism

The Kansas Department of Corrections has made progress in reducing recidivism through mental health service initiatives such as Collaboration4Success and mentoring programs like Mentoring4Success, which have been credited with reducing reincarceration by nearly a third. Even so, Kansas faces a crisis in prison overcrowding and recidivism, which in the adult population has outstripped improvements.

Recidivism is increasing by nearly 1% per year, to 35.08% in 2011 from 33.5% in 2009.⁵ Diversion programs would help Kansas address issues of recidivism and

“Warehousing people who are addicts doesn’t do anything to solve the problem (of addiction or mental illness).”

Mark Waller (R), former member of the Colorado House of Representatives

jail overcrowding, simultaneously making communities safer.

Success reported by other states demonstrates that diversion programs reduce recidivism. For example, in two counties in Nevada, recidivism declined by 95% after robust mental health courts—a type of diversion program—were implemented. Costs also were reduced, from \$3,000 per month to keep someone in jail to about \$900 a month to provide someone with mental health services.⁶ In Oklahoma, a Smart on Crime initiative placed non-violent offenders with mental health or addictive disorders into a variety of diversion programs, which, after a three-year investment in cost overruns, are now saving the state \$123 million a year.⁷

Recidivism is often very high among offen-

Diversion's Gatekeepers:

Why Prosecutors Matter



The local prosecutor is the single most powerful person in the criminal justice system. In fact, the local prosecutor is the most powerful elected official that no one knows.

Law enforcement officers make arrests and criminal referrals, juries determine guilt (although only 2% of Kansas felony dispositions go to a jury), and judges hand down sentences.

But the prosecutor alone—without consulting anyone else—decides who gets charged with a crime, what crime they are charged with, which punishment to pursue, and how vigorously to pursue punishment.

When prosecutors make these decisions, they are not engaged in a pure, objective application of the law—they are making policy decisions with consequences for the entire community. In fact, the dangerous overcrowding currently being experienced by Kansas prisons and jails could be entirely avoided if prosecutors simply made different decisions in their work.

Prosecutors wield such significant power by virtue of being elected officials, accountable to the people.

There are 100 local prosecutors in Kansas, one for each county (and four who serve multiple counties). They are usually given the title County Attorney, but a handful of Kansas prosecutors

are officially titled District Attorney. Kansas prosecutors run for office in partisan elections to serve a four (4) year term. Prosecutorial elections in Kansas happen in presidential years, with the next set of elections taking place in 2020.

Once elected, the job of a county or district attorney is a full-time one. Some county attorneys, particularly in smaller communities, operate one-person offices; others, as in Johnson and Sedgwick Counties, have large staffs made of assistant prosecutors, investigators, and administrative personnel.

The county or district attorney is particularly important when it comes to diversion, where he/she has completely unchecked power.

The prosecutor is the gatekeeper for diversion, as the one and only decision-maker. Local prosecutors have enormous power over the entire process: they set the diversion policy, determine who is and is not eligible, have sole discretion over whether to grant a diversion, and are exclusively responsible for determining whether an individual is complying with the terms of the agreement.

However, because prosecutors are locally elected officials, they are accountable to the citizens of their county. **Citizens can and should advocate with their local prosecutors to make different decisions in the way they pursue criminal justice policy, including their use of diversion.**

The Difference Diversion Can Make

Imagine two Kansans who are charged with the same offense. Neither one has a criminal background, and they both have jobs and families. The only significant difference between them is that one lives in Cheyenne County and the other lives in Rawlins County, right next door. We'll call them Mr. Cheyenne and Mr. Rawlins.

In Cheyenne County, the prosecutor rarely offers prison alternatives like diversion; in Rawlins County, diversion is often offered.

When Mr. Cheyenne goes before the judge, he is convicted and receives a prison sentence of three years.

Mr. Rawlins applies for a diversion from his locally elected prosecutor. The prosecutor offers him a package of community service, restitution to the victims of the offense, and treatment for an underlying behavioral health condition. If he refuses the diversion package, including its strict accountability measures, the prosecutor will pursue a three year prison sentence. Mr. Rawlins takes the diversion package, which keeps him out of prison.

While in prison, Mr. Cheyenne can no lon-

ger provide his half of the family's income, and his wife must take a part-time job on top of her fulltime job in order to support their children. Debt is starting to mount. She and the kids try to visit Mr. Cheyenne as often as they can, but her work schedule makes this tough. The family relationships are changed in ways that affect the kids' grades and their behavior at school.

Meanwhile, Mr. Rawlins is living at home with his family, continuing at his job, while working to meet his commitments to community service and restitution debt.

When Mr. Cheyenne is released from prison after two years for good behavior, he tries and fails to get his old job back. He doesn't find a job for six months, and when he does find an employer willing to hire a former prisoner, the position is for a far lower wage than before he went to prison. His family never regains financial footing.

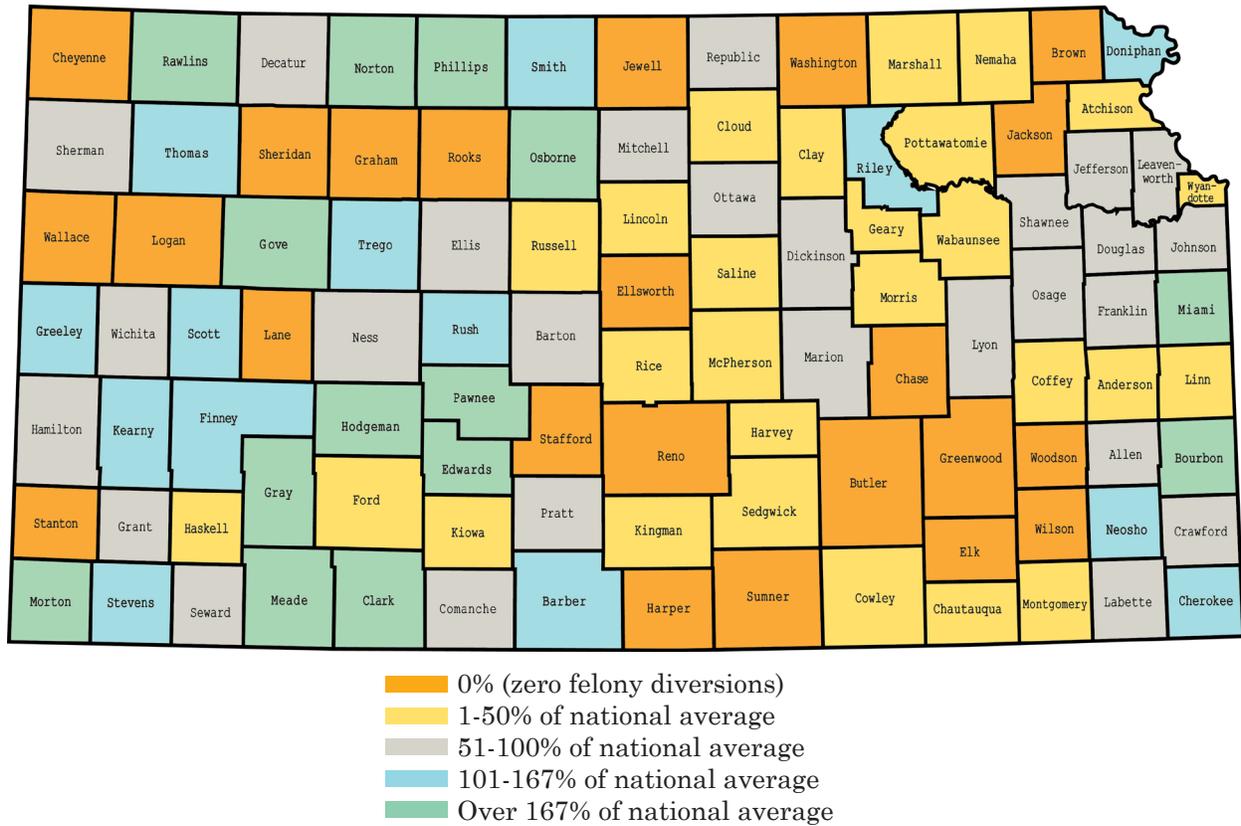
When they were charged with their crimes, the only difference between Mr. Cheyenne and Mr. Rawlins was where they lived. **Two years later, the differences between them and their families are vast.**

ders with a mental illness, something that is often exacerbated by high rates of unemployment and homelessness in this population. Diversion programs have a proven tendency to lower long-term costs associated with cyclical incarceration caused by all of these factors. Programs that help participants build human capital, such as GED preparation, vocational education and job placement assistance, have positive effects on recidivism and employment. In addition, because individuals who have been diverted do not have a felony conviction on their records, they find it easier to gain and keep employment, housing, or

other services—all factors that reduce the recidivism and crime rate.

Robust use of diversion makes communities safer and stronger, by offering treatment and services to individuals who would benefit from them, reducing recidivism, and keeping families together. The benefits of diversion programs are so overwhelming that they are in use all across the country, with most criminal justice experts focusing on ways to dramatically expand these programs.

Felony Diversion Use in Kansas, 2016



Kansas Prosecutors Reject Diversion

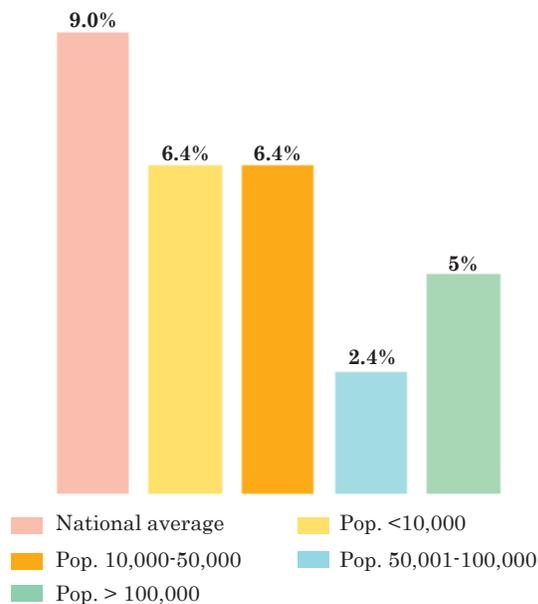
Despite a nearly-universal consensus that diversion is an effective tool for reducing incarceration while building safe and strong communities, diversion is rarely used in Kansas. While prosecutors make significant use of diversion for traffic offenses and misdemeanors, those are not offenses where diversion can make the most significant impact. In Kansas, misdemeanor and traffic convictions do not result in incarceration—only felonies do. In order to reduce the number of people who are incarcerated and to access the full benefits of diversion, the approach must be widely used with felony cases.

But in Kansas, barely 5% of felony cases result in diversion — just half the national average of 9%, a statistic which is itself too low.⁸ In 2016, 23 of 105 Kansas counties did not use diversion for felonies at all. Seventy four (74) counties used diversion less frequently than the national average, and 50 counties used diversion at rates less than half of the national average.⁹

Most troublingly, the places where diversion would make the *most* difference are also the places that use it the *least*. Contrary to common assumptions, the problem of low diversion use is most pronounced in the state’s largest counties, which presumably have the highest staff capacity.

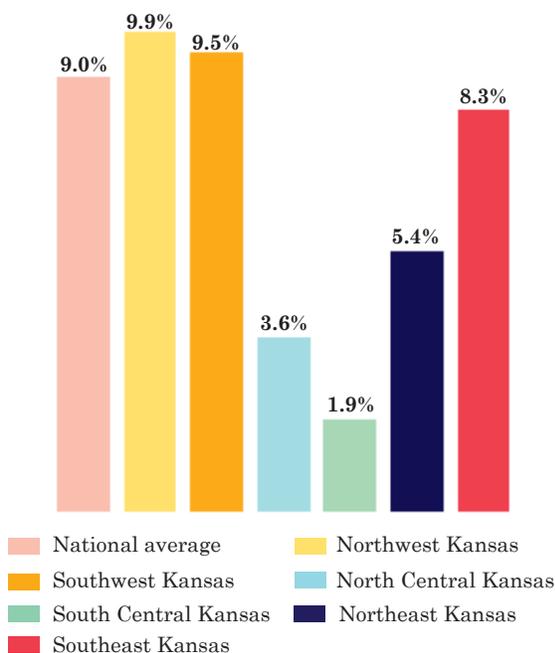
In fact, the six large counties that collectively account for nearly half of all felony

Felony Diversion Use by County Size, 2016



cases in the state processed less than one third of all diversions. By contrast, thirty of the state’s smallest counties have diversion rates more than double the national average; collectively, they comprise less than 15% of Kansas’s felony cases but succeeded at generating over 40% of all felony diversions in the state. Overall, counties with less than 10,000 people used diversion 40% more often than the state’s largest counties. It was not just the smallest counties, where absolute numbers of offenses are low, that demonstrated this trend. Counties with less than 50,000 people were significantly more likely to use diversion than were counties over 50,000 people.

Felony Diversion Use by Region, 2016



Prosecutors in Western Kansas are far more diversion friendly than other parts of the state. Counties in western Kansas—many of which have very small populations—consistently see 10% of felony dispositions resulting in diversion. That is significantly higher than the diversion rate in central and eastern counties. South central Kansas appears to be especially hostile to diversion. The large counties of Butler, Sedgwick, and Reno, in particular, utilize diversion at very low rates and send large numbers of people to prison. Sedgwick County’s diversion rate in 2016 was just 2%, while Butler and Reno Counties are the two largest counties in the state that refuse to grant felony diversions *at all*.

If Kansas were to use felony diversion more widely, it would provide immediate relief on the state’s correctional system and badly-strained budget. Expanding the use of felony diversion would result in fewer people being sent into the state’s over-crowded prisons, and reduce expenditures on correctional facilities. The costs of community-based treatment are lower than prison, so even if the state were to expend resources providing treatment for diverted individuals, there would be a net cost savings to the state.

In fact, if Kansas prosecutors were to simply catch up to their counterparts in the rest of the country in the use of felony diversion, it could reduce the prison population by up to 10%. That would mean 951 fewer people in the state’s correctional facilities almost immediately, with even larger gains in future years. Since taxpayers save \$9,118 per year for each person that a local prosecutor diverts, bringing Kansas in line with the national average on diversion would mean total savings to taxpayers of around \$8.7 million each year.¹⁰ Appendix A provides an estimate of the impact that increased use of diversion could have, for each county in the state.

Why Is Diversion Underused in Kansas?

Diversion policies in Kansas are like a patchwork quilt, varying from county to county depending upon the proclivities of individual prosecutors. State law gives prosecutors nearly unfettered discretion in how they manage the diversion process, which offenses may be diverted, when or if they notify individuals about diversion, and who has their diversion application granted.

The ACLU of Kansas conducted an exhaustive analysis of the diversion policies and outcomes of all 105 counties. Each county prosecutor or diversion coordinator was contacted in order to ensure that accurate, up-to-date information on diversion policies was received. Almost all counties provided information, though the scale and scope of the information they provided (or were able to provide) varied widely. Ap-

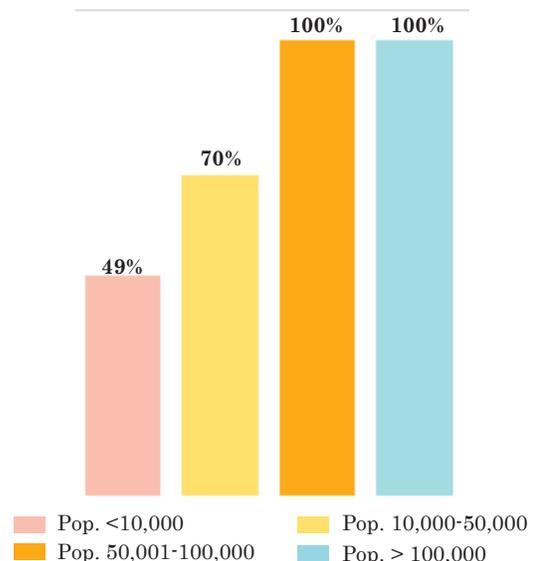
pendix B provides all available details about the diversion practices in place in each Kansas county.

The resulting analysis shows that Kansas’s prosecutors are making full use of the flexibility they are given by the law—but primarily use that flexibility in ways that drastically reduces the number of diversions that take place in Kansas.

State Law Requiring Formal Diversion Policies Is Violated

Kansas law, in K.S.A. 22-2907, calls for all counties to have written diversion policies, drafted and implemented by the local prosecutor. Despite the law’s requirement, only about three-fourths of the state’s judicial districts do in fact have a written policy, including about 3% whose current policies are undergoing modifications. The remaining one-fourth of counties violate the law and do not have a policy, expressing a preference for a “case-by-case”

County Has Formal Diversion Policy, by County Size



approach. While policies show variation among counties, they generally include many of the same features: eligibility; procedure for application; criteria used to approve or deny an application; and general terms of diversion. Occasionally, policies will contain information on fines and fees involved in the diversion. Many counties, but not all, post policies online.

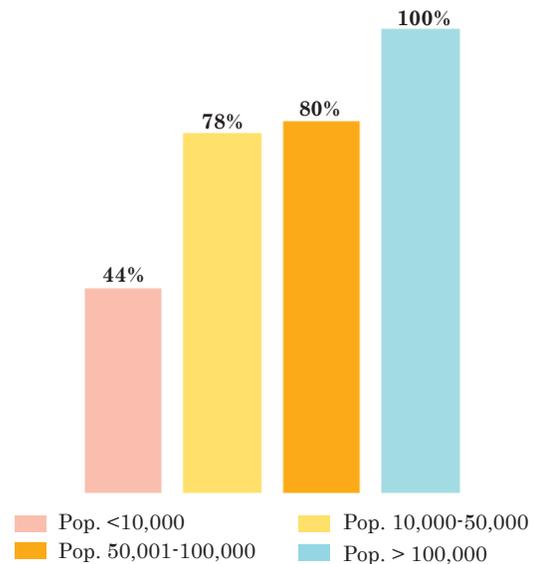
Without an official, written policy to guide the use of diversion, it is virtually impossible for defendants to determine whether they would be eligible. Some individuals who might be good candidates for a diversion refrain from applying, because the absence of a policy causes them to wrongly believe that they are not a good candidate for the tool. Moreover, the lack of a formal policy undermines relationships between law enforcement and the community, as the community has no way of assessing whether prosecutorial decisions are being made in an objective, fair manner.

Harsh Eligibility Guidelines Prevent Second Chances

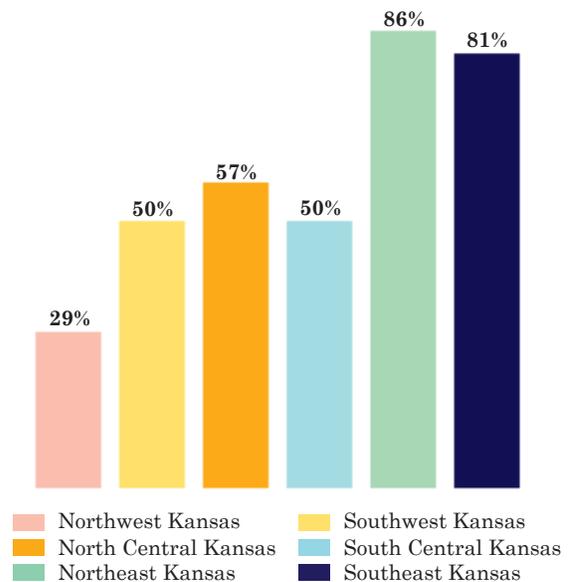
Prosecutors set the eligibility guidelines for their respective counties, within a very broad and flexible framework established by state law. One of the most significant reasons that diversion goes underused in Kansas is that local prosecutors have used that power to make eligibility guidelines so stringent that very few people qualify.

In most Kansas counties, the likelihood of eligibility for diversion depends on the type and severity of offense. About 44% of counties limit diversions only to first-time offenders, excluding others even when they pose no threat or when community interests might be better-served through diversion. In these first-time cases, the defendant has no serious criminal history, and has never completed a diversion or proba-

Drug Offenses May Be Diverted, by County Size



Drug Offenses May Be Diverted, by Region



tion in lieu of a jail sentence. The remaining 56% of counties will consider granting diversions for a defendant with a criminal history, although with restrictions and limitations. A defendant being charged with a second offense of the same crime is

typically ineligible, as are those who have been convicted of a crime of any nature within an indicated period, typically a misdemeanor within the past five years or a felony within the past 10 years.

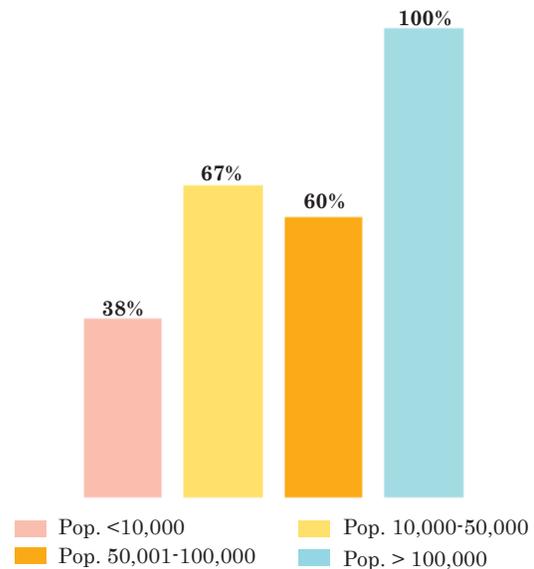
Drug-related offenses are the single-largest contributor to the growth of Kansas’s prison population. Every year, more people are admitted to Kansas prisons for drug possession offenses than any other crime. Many of those sentenced to prison time for drug offenses have mental or behavioral health challenges, and few of these offenders pose a danger to others.

Yet, despite these facts, fully one fifth (21%) of Kansas counties will not even consider granting diversions for drug offenses. Of the majority of counties that take the more sensible approach of considering drug offenses for diversion, many unnecessarily limit eligibility only to those who would be charged with a possession of marijuana and who have no prior convictions of any type.

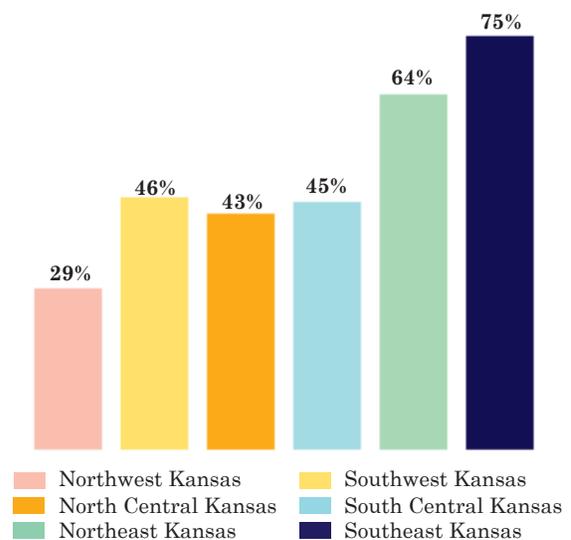
Most troubling of all, 33% of Kansas counties do not divert felony offenses at all or presumptively disqualify them from consideration. In the two-thirds of counties whose prosecutors will consider diverting felonies, eligibility is limited to very low-level offenses (typically levels 8-10) and usually explicitly excludes drug felonies.

Some Kansas prosecutors stated that they set an annual limit on the number of felony diversions they would grant, regardless of the eligibility or circumstances of the defendants. Others stated that although their formal policies made felony offenses eligible for diversion, in practice they simply chose to never divert felony defendants. Given the facts that felony offenses are the ones that result in prison time—and carry life-long consequences—these defendants are frequently the ones that could most benefit from a second chance, especially

Felonies May Be Diverted, by County Size



Felonies May Be Diverted, by Region



when they also have mental or behavioral health challenges.

To categorically exclude felony offenses from diversion is not consistent with established best practices, and ignores the

benefits that felony diversion has produced both for many Kansas counties and other jurisdictions around the United States.

If this maze of eligibility criteria were not enough to dissuade individuals from seeking a diversion, many prosecutors create additional eligibility barriers. The state statute on diversion, K.S.A. 22-2908, is intended to guide prosecutors' decisions and mentions several specific items to be considered when granting diversion, including: special circumstances pertaining to the defendant, the prosecutor's sense of whether the defendant will be likely to cooperate with and benefit from diversion, the impact of diversion on the community, and recommendations from the victim and police. But many counties add extra considerations, such as requiring that the defendant first plead guilty to be considered for diversion.

Additional non-statutory criteria mentioned by prosecutors that they consider include work history, level of education, financial status, family background, citizenship status, and whether the defendant lives in the county in which they face charges.

Diversion Programs Are Secret

Even when individuals meet the onerous eligibility requirements that prosecutors have created for diversion programs, there is an excellent chance that they will not know about it. That is because there is no uniform standard by which defendants learn that they may apply for diversion – something the state of Kansas needs to address. The judge or prosecutor may notify the defendant at their first appearance, or a defendant's attorney may provide this information. Information about diversion may be attached to a defendant's charge

sheet, or a defendant may learn of the application by word-of-mouth or by finding it on a county's webpage. Only 64 counties have a formal application process, only 27 of those make the application available online, and only a handful of counties say that they proactively tell individuals about the possibility of diversion. The individuals most likely to know about and apply for diversion are those who have legal counsel to advise them, a very small sub-set of the total eligibility pool. As a result, diversion programs are essentially a "secret" known only to a small group of people. That substantially reduces the pool of applicants, and reduces the number of diversions that are actually granted in Kansas.

The process for misdemeanor and felony diversion stands in stark contrast to the process used with traffic citations. There, motorists who receive traffic citations typically are informed by the officer issuing the citation that they can contact the County

**Only 64
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**Diversion
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Attorney's office to ask for a diversion.

Misdemeanor offenders – such as those with DUIs, open containers or other non-violent crimes – may be notified at their first court appearance that diversion may be an option. It is far less common for persons charged with felonies, drug offenses or “high severity” offenses to be given an application for diversion.

Expensive Fines and Fees Discourage Participation

Diversion can be a very costly process for individuals seeking it. Prosecutors often charge significant fines and fees. As a result, many individuals who are excellent candidates for diversion are excluded because they lack ready access to thousands of dollars in cash.

The number of fines and fees, as well as the total dollar amount, involved in diversion is staggering. About half (54%) of prosecutors participating in the study said their county charges a non-refundable diversion application fee. Fees range from \$10 to \$250, generally based on whether the offense is a misdemeanor or felony. The average application fee for diversion for a misdemeanor is \$54, while felony diversion application fees average \$65.

Assuming a diversion is granted, there are fees for diversion itself. Fees vary depending on the classification of the crime. The maximum diversion fee for a misdemeanor ranges from \$75 to \$800, the average being \$224. Felony diversion fees range from \$100 to \$1,000, with an average of \$341.

Other common charges include booking and processing fees (\$45), screening fees (\$40), jail assessment fees (\$30/day), Alcohol and Drug Evaluation fee (\$150), KBI Lab fee (\$400), random drug testing (\$25/

How Much Can Diversion Cost Applicants?

Diversion Fee	\$ 800
+ Statutory Fine	\$ 2,500
+ Supervision Fee	\$ 500
+ KBI Lab Fee	\$ 400
+ Random drug tests	\$ 300
+ Court-appointed attorney's fees	\$ 200
+ Court Costs	\$ 158
+ Alcohol and drug evaluation fee	\$ 150
+ Alcohol and drug information school	\$ 140
+ Standard booking fee	\$ 45
+ Criminal background check	\$ 45
+ Donation to non-profit (restitution)	\$ 25
+ Community service “sign-up” fee	\$ 10
+ Monitoring fee	\$ 10

TOTAL \$5,283

*Estimate is based on the maximum amount that a potential defendant could be charged for a simple marijuana possession charge. Not all counties charge all of the listed fees and fines.

test), donation to nonprofits or Crime Stoppers (varies), and supervision fees (\$100-\$500), to name just a few. Then there are statutory court costs: \$108 for traffic violations, \$158 for misdemeanors, and \$193 for felonies.

These many fees and fines add up and are a significant obstacle. As just one example, after all fees, fines, and court costs are taken into consideration, the total possible cost of diversion for a conviction of simple possession of marijuana—among the most common offenses in Kansas—is an eye-popping \$5,283.

Payment of fines and fees is a mandatory term of diversion. In some counties, prosecutors opt to use their discretion to allow some—not all—defendants to perform community service in lieu of fees, except for statutory fines, which must be paid. A handful of prosecutors will waive fees for low-income defendants, provided they complete the terms of diversion and “stay out of trouble.” In the vast majority of counties, fines and fees are mandatory, expensive, and pose a significant barrier to accessing diversion for many defendants.

Prosecutors make the argument that fines and fees are necessary in order to help fund the operation of diversion programs. Although the proceeds from fines and fees are used to help fund programs, there are better alternatives. For example, diversion results in a net cost savings for taxpayers when compared to prison time. Using a portion of those cost savings to fund diversion programs would be a far superior alternative to fees and fines, because it would produce a more sustainable revenue source, would result in more diversions, and would yield even greater cost savings.

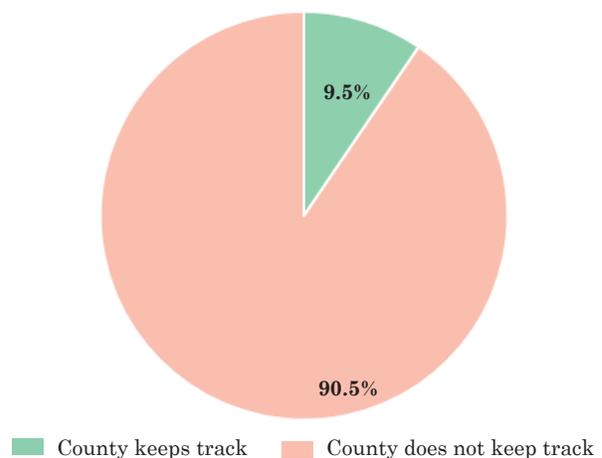
Information about fees and fines is, like almost everything about diversion in Kansas, very hard to come by. Indeed, when contacted for this report, only 58 of Kansas’s 105 counties were able to produce a diversion fee and fine schedule.

Data Limitations Prevent Accountability and Improvement

Although diversion is widely recognized as an essential part of a functioning criminal justice system, there is startlingly little data on diversion in Kansas. Other than annual data released by the Kansas Sentencing Commission on the total number of diversions granted in each county, there is virtually no data available at either the statewide or county level. The lack of data and transparency makes holding elected prosecutors accountable very challenging, and impedes efforts to improve the diversion process. Indeed, the near-total absence of data on diversion in Kansas is what prompted the research that produced this report.

Moreover, there appears to be no interest on the part of local prosecutors in addressing this issue—even at the local level, for their own purposes. Of counties that responded to requests for information for this report, only 10 said that they keep any kind of running record of application numbers and approvals. Of those, only 8 counties were willing to disclose those numbers. None of the counties could disclose how

County-Level Tracking of Diversion Applications



many of the diversions granted were for felonies, and not one single county in the entire state was able to produce racial and demographic data for diversion applicants.

Fully 95 counties in Kansas have no record whatsoever of the number of diversion applications they receive, or any way of assessing how often diversion applications are granted. When respondents did not keep a running record, they were asked to provide an estimate of how often diversions were granted. The most common response was “90%,” but these estimates included traffic diversions (which are high volume and offenders are immediately notified of the possibility of diversion) and respondents admitted they were basing the estimate on gut instinct only. Without any widespread data on the number of diversion applications, it is impossible for local prosecutors to independently make any assessment of whether their policies are working.

In addition, the lack of data makes it difficult to ascertain whether the diversion process in Kansas is affected by racial bias. It is clear that there is racial bias in the state’s criminal justice system; after all, only 15% of Kansas’s population is made up of people of color, yet roughly half of the prison population is comprised of people of color. National evidence amply demonstrates that institutional bias and racism affect which defendants have opportunities to apply for diversion. For example, a 2013 study showed that white defendants are much more likely to receive diversion than black defendants. In 25 years of data from 40 of the most populous counties in the U.S. offering pre-trial diversion, black defendants were diverted 42% less often than white defendants—even when the severity of the charge and type of crime were taken into account. The lack of data in Kansas makes it impossible to conduct a similar study here, but there is no reason to believe that the state has escaped simi-

lar racial patterns. Indeed, even a cursory review shows that, in Kansas, counties with relatively little racial diversity seem to use diversion more often than do counties with more racial diversity.

Capacity Challenges Limit Participation

Although the granting of a diversion is itself a simple matter, some diversion programs are highly structured. Many counties do not have the staff capacity to manage programs with high administrative burdens or large caseloads, or the funding to hire diversion coordinators. The state government provides no funding for diversion, or even funding to incentivize counties to use diversion. However, staff capacity plays a relatively minor role on the use of diversion in Kansas. That is demonstrated by the fact that, on average, smaller counties with less staff are much more likely to use diversion. In fact, Kansas counties of less than 10,000 people (where the local prosecutor’s staff frequently consists of one person, the county attorney her- or him-self) used diversion 40% more frequently than the Kansas counties of over 100,000 people (all of which have full-time diversion coordinators). That is likely due, at least in part, to local prosecutors in smaller communities being forced by their own limited time and staff capacity to give serious thought to which cases they should actually pursue, versus divert. Larger counties, with more prosecutors and prosecutorial staff, are not always quite as sensitive to the burdens of a heavy caseload.

Another staff capacity challenge concerns language. Some parts of Kansas—especially the urban areas and parts of southwest Kansas—have large populations that are not native speakers of English. Many of these individuals are Spanish-speaking,

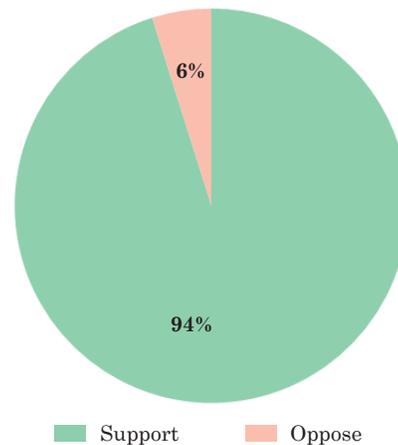
but there is a wide diversity of languages spoken in Kansas. District courts in most parts of the state do not have in-house translators, and communication between law enforcement, prosecutors, and potential defendants who are not native speakers of English can be very difficult. That impedes the access of individuals to diversion. Chase, Lyon and Butler Counties notably provide applications online in Spanish in order to address this challenge.

The shortage of options for mental health, substance abuse, and behavioral health treatment programs can be problematic for those seeking a diversion. The shortage of options—and the lack of access to the options that do exist—prevents some defendants from applying for, being approved for, or successfully completing diversion. These barriers can be especially cumbersome in rural counties, where an individual might need to drive miles to the next county to receive services or attend classes.

Kansas Prosecutors Refuse to Use Diversion

Many prosecutors say that they would happily use diversion more often, if they had the opportunity to do so. However, virtually every barrier to diversion mentioned here is something that is fully and exclusively within the power of the locally elected prosecutor to change. If local policies discourage or limit the use of diversion, it is because prosecutors want it that way. Many prosecutors already have excellent official policies in place, but still grant few diversions. Sedgwick County is an excellent example. The county has policies in place that are largely in alignment with best practices related to diversion, but only 2% of all felony dispositions are ultimately diverted. That is because the prosecutor simply does not grant diversions.

Would you support your local prosecutor diverting offenders more often?



When prosecutors are committed to making ample use of diversion, they find it easy to do so. That is reflected in the fact that many Kansas counties have diversion rates that state and national averages.

On other occasions, elected prosecutors in Kansas have said that the reason that diversion is not more widely-used, especially for felony offenses, is that there is no public support for such a move. That assertion is directly contradicted by available public opinion data. A 2016 survey conducted by the Docking Institute found that fully 75% of Kansans strongly supported greater use of diversion, and another 19% somewhat supported using diversion more often.¹² When Kansas prosecutors refuse to use diversion more often, it is not because their constituents and the public are constraining them from doing so.

Ultimately, the reason that diversion is not more effective and more widely used in Kansas is, quite simply, that too many locally elected prosecutors refuse to use it. Rather than using the tools at their disposal to build safer, stronger communities, Kansas's elected prosecutors actively choose incarceration as their preferred strategy.

Reform Is Urgently Needed

The continued growth in Kansas’s prison population—especially at a time of falling crime rates—is neither sustainable nor tolerable. It is imperative that the state take action immediately to reduce incarceration, reduce the number of people with serious mental health challenges who are being imprisoned rather than receiving healthcare treatment, reduce the exploding costs to taxpayers, and make communities safer and stronger.

Diversion is one of the most powerful tools that Kansas has to simultaneously achieve all of these goals. Felony diversion is badly under-utilized in Kansas. Ultimately, the reason for that underutilization is that locally elected prosecutors have constructed a set of patchwork quilt policies that actively discourage diversion, or use their discretion to refuse to divert offenders at all. This has resulted in a pattern where some counties excel at diversion, while others fall far behind the national average and best practices.

Rather than falling further behind the nation, Kansas can and should be a national leader in the effective use of diversion.

To do so, Kansas will need to address the inequities, inconsistencies, and harmful practices in diversion policies in Kansas counties. This is particularly true in larger counties that are disproportionately responsible for the prison population in Kansas, and which use diversion far less than smaller counties. To become a national leader on diversion, reforms are urgently needed at the state legislative level and at the local level by elected prosecutors.

Recommendations for State Legislative Reform

- **Prosecutors in Kansas should be required by state statute to make all defendants aware that they can request diversion.** It is especially vital that prosecutors use diversion when offenders are experiencing mental illness and that diversion be the preferred option for low-risk offenders.
- **State statute should require that a single, uniform diversion application form be available in all Kansas counties, and made available online and in Spanish.**
- **State statute should require law enforcement officials to inform defendants about the potential for diversion at the time of their arrest, the same way that traffic offenders are informed when they receive a citation.**
- **When a diversion application is denied, prosecutors should be required by state statute to provide a written explanation to the defendant.**

Recommendations for Reforms by Local Prosecutors

- **Defendants should be given greater options for payment of fees, including payment plans and the possibility for community service in lieu of fines and fees.**
- **Diversion fees should be reduced and standardized. Fees vary widely by county and discourage participation.**

- **Defendants who receive diversion should be given the option of completing mandatory courses online.** This would eliminate transportation barriers and financial burdens, especially among rural and low-income populations.
- **There should be greater transparency regarding the use of diversion by county.** Prosecutors should be required to keep running records of application numbers, approvals, and denials, as well as demographic data on all applicants. Data collection would help Kansans understand whether the state is mimicking national trends on diversion, where national studies suggest that people of color are between 30% and 40% less likely to be granted a diversion for the very same crimes as whites. Voters should use the resulting data to assess the records of their elected prosecutors, and to make decisions about how to cast their ballots in prosecutorial elections.
- **Citizens can and should advocate with their local prosecutors to use diversion more often.** Over 90% of Kansans already believe that prosecutors should use diversion more often. However, constituents should begin hold their locally elected prosecutors accountable for instituting diversion policies that are in alignment with best practices and for using diversion more often.

Expanding the use of diversion would have enormous benefits for Kansas. Communities are safer and stronger when people who need services receive them, rather than being sent to prison. Individuals who participate in diversion programs can remain with and provide for their families, make meaningful contributions to their communities, and avoid the lifetime consequences of a felony conviction. With smart-

er justice policies, taxpayer money now spent on prisons could instead be used to invest in education, healthcare and crime prevention.

As this report shows, the primary reason that diversion is not more widely used in Kansas is because prosecutors refuse to make use of the tool. It is highly unlikely that prosecutors across the state will suddenly and independently initiate the necessary changes that would increase the use of diversion. Instead, the impetus must come from legislators and an informed and concerned public calling for immediate and significant reforms like those outlined above.

Only through these reforms can Kansas fully realize the potential that diversion offers, transforming our state into the safe, strong, vibrant, just, and free state that Kansans demand and deserve.

Endnotes

¹ Kansas Department of Corrections. (2016). *Annual report - Fiscal Year 2016*. Topeka: Kansas Department of Corrections.

² In the only nationwide study of diversion, the U.S. Department of Justice found that 9% of all felony cases were diverted in the nation's large urban counties.

Reaves, B. A. (2013). *Felony defendants in large urban counties, 2009*. Washington: U.S. Department of Justice, Bureau of Justice Statistics.

³ ACLU of Kansas calculation, based on the daily marginal cost of incarceration in Kansas and the number of felony dispositions in counties that use diversion at rates below the national average.

⁴ Kansas Department of Corrections. (2016). *Annual report - Fiscal Year 2016*. Topeka: Kansas Department of Corrections. P. 15.

⁵ Kansas Department of Corrections. (2015). *Annual report - Fiscal Year 2015*. Topeka: Kansas Department of Corrections. P. 10.

⁶ Schneider, R. (2010). Mental health courts and diversion programs: A global survey. *International Journal of Law and Psychiatry*, 33, 202.

⁷ Morrison, A. (2013). Everybody matters: An exploration of diversion programs benefitting mentally ill nonviolent offenders in Michigan and federal legal systems. *The Journal of Law in Society*, 177.

⁸ Kansas Judicial Administrator. (2016). *Annual report on the courts of Kansas*. Topeka: Kansas Judicial Branch.

⁹ Reaves, B. A. (2013). *Felony defendants in large urban counties, 2009*. Washington: U.S. Department of Justice, Bureau of Justice Statistics.

¹⁰ Alvarez and Marsal. (2016). Kansas statewide efficiency review. Available online at <http://www.kslegresearch.org/KLRD-web/Publications/AppropriationsRevenue/KansasStatewideEfficiencyInterim-Rpt2016Jan12.pdf>.

¹¹ Schlesinger, T. (2013). Racial disparities in pre-trial diversion: An analysis of outcomes among men charged with felonies and processed in state courts. *Race and Justice*, 3(3), 210-238.

¹² Docking Institute. (2016). *Smart Justice Survey*. Hays: Ft. Hays State University.

Acknowledgements

The ACLU of Kansas thanks the following individuals whose work made this report possible: Sarah Baum, Anne Canfield, Rachael Eastlund, Vignesh Ganapathy, Micah Kubic, Greg Monaco, Lois Orth-Lopes, Reggie Robinson, Rosanne Rosen, and Harrison Rosenthal.

We gratefully acknowledge the many county attorneys and diversion coordinators who responded to ACLU of Kansas inquiries, providing information that was essential to the compiling of this report.



This report was made possible through generous support from the ACLU Campaign for Smart Justice, an unprecedented, multiyear effort to reduce the U.S. jail and prison population by 50% and to combat racial disparities in the criminal justice system.

Appendix A

County Level Costs of Refusing to Use Diversion

Most Kansas counties use felony diversion at rates far below the national average. That failure carries enormous costs for Kansans, by creating weaker communities, increasing the size of the prison population, and the escalating costs of prisons.

For each county in the state, the table below estimates the impact that greater use of diversion could have on the size of the prison population and taxpayer expenditures on prisons. Calculations are based on the county reaching the national felony diversion rate (9%) and on the annualized marginal cost of sending one additional person to prison in Kansas. For counties already at or above the national average, no calculation is made because they are not creating unnecessary burdens for communities and taxpayers.

County	Elected Prosecutor	Current Diversion Rate	Potential Reduction in Prison Population	Potential Annual Cost Savings
Allen	Jerry Hathaway	5.1%	7	\$63,826
Anderson	Brandon Jones	3.8%	4	\$36,472
Atchison	Gerald Kuckelman	2.1%	7	\$63,826
Barber	Gaten Wood	11.1%	NA	NA
Barton	Amy Mellor	6.1%	7	\$63,826
Bourbon	Justin Meeks	27.3%	NA	NA
Brown	Kevin M. Hill	0%	6	\$54,708
Butler	Darrin C. Devinney	0%	25	\$227,950
Chase	William Halvorsen	0%	1	\$9,118
Chautauqua	Ruth Ritthaler	2.8%	2	\$18,236
Cherokee	Nathan Coleman	12.0%	NA	NA
Cheyenne	Leslie Beims	0%	0	0
Clark	Allison Kuhns	16.7%	NA	NA
Clay	Richard E. James	1.3%	6	\$54,708
Cloud	Robert A. Walsh	0.8%	10	\$91,180
Coffey	Christopher Phelan	4.0%	4	\$36,472
Comanche	Allison Kuhns	6.3%	0	0
Cowley	Larry Schwartz	3.5%	17	\$155,006
Crawford	Michael Gayoso, Jr.	8.7%	1	\$9,118
Decatur	Steven W. Hirsch	7.1%	0	0
Dickinson	Andrea Purvis	5.5%	7	\$63,826
Doniphan	Charles Baskins	9.6%	NA	NA

County	Elected Prosecutor	Current Diversion Rate	Potential Reduction in Prison Population	Potential Annual Cost Savings
Douglas	Charles Branson	5.6%	17	\$155,006
Edwards	Mark Frame	16.7%	NA	NA
Elk	Joe Lee	0%	1	\$9,118
Ellis	Tom Drees	8.6%	1	\$9,118
Ellsworth	Paul J. Kasper	0%	3	\$27,354
Finney	Susan Richmeier	13.7%	NA	NA
Ford	Kevin Salzman	3.1%	24	\$218,832
Franklin	Stephen A. Hunting	5.4%	5	\$45,590
Geary	Krista Blaisdell	3.2%	33	\$300,894
Gove	Mark F. Schmeidler	25.0%	NA	NA
Graham	Jill Elliott	0%	1	\$9,118
Grant	Jessica Akers	5.0%	2	\$18,236
Gray	Curtis E. Campbell	15.7%	NA	NA
Greeley	Charles Moser	12.5%	NA	NA
Greenwood	Joe E. Lee	0%	5	\$41,031
Hamilton	Robert H. Gale, Jr.	4.5%	1	\$9,118
Harper	David C. Graham	0%	8	\$72,944
Harvey	David E. Yoder	1.4%	33	\$300,894
Haskell	Lynn Koehn	2.4%	3	\$27,354
Hodgeman	Mark A. Cowell	28.6%	NA	NA
Jackson	Shawna Miller	0%	18	\$164,124
Jefferson	Josh Ney	9.1%	NA	NA
Jewell	Darrell E. Miller	0%	0	\$0
Johnson	Stephen M. Howe	5.3%	82	\$747,676
Kearny	Kenny Estes	9.5%	NA	NA
Kingman	Matthew W. Ricke	1.6%	5	\$45,590
Kiowa	J. Scott James	2.7%	2	\$18,236
Labette	Stephen Jones	4.8%	7	\$63,826
Lane	Dale E. Pike	0%	0	\$0
Leavenworth	Todd Thompson	6.7%	7	\$63,826
Lincoln	Jennifer O'Hare	4.0%	1	\$9,118
Linn	James Brun	2.5%	8	\$72,944
Logan	Craig Uhrich	0%	2	\$18,236
Lyon	Marc Goodman	7.2%	6	\$54,708
Marion	Courtney Boehm	5.3%	3	\$27,354
Marshall	Laura Johnson-McNish	3.6%	5	\$45,590
McPherson	Gregory T. Benefiel	0.5%	15	\$136,770
Meade	Laura Lewis	25.0%	NA	NA

County	Elected Prosecutor	Current Diversion Rate	Potential Reduction in Prison Population	Potential Annual Cost Savings
Miami	Elizabeth Sweeney-Reeder	16.0%	NA	NA
Mitchell	Mark Noah	6.0%	2	\$18,236
Montgomery	Larry Markle	1.7%	22	\$200,596
Morris	Laura E. Allen	3.3%	2	\$18,236
Morton	Eric Witcher	27.3%	NA	NA
Nemaha	Brad M. Lippert	1.8%	4	\$36,472
Neosho	Linus Thuston	15.0%	NA	NA
Ness	Kevin B. Salzman	6.7%	0	\$0
Norton	Melissa Schoen	16.0%	NA	NA
Osage	Brandon Jones	5.5%	4	\$36,472
Osborne	Paul Gregory	21.4%	NA	NA
Ottawa	Jason C. Parks	4.9%	2	\$18,236
Pawnee	Douglas W. McNett	16.7%	NA	NA
Phillips	Melissa Schoen	24.0%	NA	NA
Pottawatomie	Sherri Schuck	3.5%	6	\$54,708
Pratt	Tracey T. Beverlin	4.5%	4	\$36,472
Rawlins	Charles A. Peckham	37.5%	NA	NA
Reno	Keith Schroeder	0%	70	\$638,260
Republic	Marlea James	8.3%	0	\$0
Rice	Scott E. McPherson	2.8%	4	\$36,472
Riley	Barry Wilkerson	13.9%	NA	NA
Rooks	Danielle N. Muir	0%	3	\$27,354
Rush	Tony Rues	14.3%	NA	NA
Russell	Daniel W. Krug	4.3%	3	\$27,354
Saline	Ellen Mitchell	0.6%	74	\$674,732
Scott	Rebecca J. Faurot	13.5%	NA	NA
Sedgwick	Marc Bennett	1.7%	214	\$1,951,252
Seward	Russell Hasenbank	6.3%	13	\$118,534
Shawnee	Michael F. Kagay	8.1%	13	\$118,534
Sheridan	Harry Joe Pratt	0%	1	\$9,118
Sherman	Charles Moser	5.2%	4	\$36,472
Smith	Tabitha Owen	10.0%	NA	NA
Stafford	Michael Robinson	0%	1	\$9,118
Stanton	David C. Black	0%	1	\$9,118
Stevens	Paul Kitzke	9.6%	NA	NA
Sumner	Kerwin Spencer	0%	19	\$173,242
Thomas	Rachel Lamm	13.8%	NA	NA
Trego	Chris Lyon	12.6%	NA	NA

County	Elected Prosecutor	Current Diversion Rate	Potential Reduction in Prison Population	Potential Annual Cost Savings
Waubunsee	Timothy Liesemann	1.8%	4	\$36,472
Wallace	Charles Moser	0%	1	\$9,118
Washington	Elizabeth Baskerville Hiltgen	0%	1	\$9,118
Wichita	Laura Lewis	6.7%	0	\$0
Wilson	Kenley Thompson	0%	8	\$72,944
Woodson	Zelda Schlotterbeck	0%	1	\$9,118
Wyandotte	Mark Dupree	3.6%	68	\$620,024
TOTAL		5%	951	\$8,666,659

Note: The table above estimates the maximum impact of reaching the national diversion rate. For purposes of estimation, the table above assumes that each new felony diversion granted would result in one less person being sentenced to prison. In some cases, felony convictions would result in probation rather than a prison sentence. Data limitations prevent us from projecting the number of diversions that would result in probation avoidance, rather than reductions in the prison population.

Some counties show diversion rates of less than 9%, but no potential reduction in the prison population or in annual cost savings if they were to increase their diversion rate. These are counties where the number of felony dispositions is so small that increasing to a 9% diversion rate would result in less than one person being diverted. In order to achieve measurable gains in reducing the prison population in these counties, the diversion rate would have to climb above 9%.

Appendix B

Assessing County Diversion Policies

The ACLU of Kansas contacted all 105 counties in the state to request information about their diversion policies. The results of those inquiries are featured in the table below. Where information was not provided or not available, “NA” is printed in the table. Green check marks indicate that the county is in alignment with diversion policy best practices that increase use of the tool. Red “X”s indicate that the county is not in alignment with best practices that would increase diversion use.

County Name	Formal Policy	Policy Online	Formal App.	App. Is Online	Drug Offenses Eligible	Felonies Eligible	More Than First-Time Offenses	App. Fee
Allen	✓	✓	✓	✓	✓	✓	NA	NA
Anderson	✓	✓	✓	✓	✓	✓	✓	\$0
Atchison	✗	✗	✗	✗	✗	✗	NA	NA
Barber	✗	✗	✗	✗	NA	NA	NA	NA
Barton	✗	✗	✗	✗	✗	✗	NA	NA
Bourbon	✓	✗	✓	✗	✓	✓	✓	\$25
Brown	✗	✗	✗	✗	✓	✗	✗	\$0
Butler	✓	✓	✓	✓	✓	✗	✗	\$25
Chase	✓	✗	✓	✗	✓	✓	✗	\$20
Chautauqua	✗	✗	✗	✗	NA	NA	NA	NA
Cherokee	✓	✗	✓	✓	✓	✓	✓	\$100-150
Cheyenne	✓	✓	✓	✗	✓	✓	✓	NA
Clark	✓	✗	✓	✗	✓	✓	✓	NA
Clay	✗	✗	✓	✗	✗	✗	✓	NA
Cloud	✓	✗	✓	✗	✓	✓	✓	NA
Coffey	✓	✓	✓	✓	✓	✓	✓	NA

County Name	Formal Policy	Policy Online	Formal App.	App. Is Online	Drug Offenses Eligible	Felonies Eligible	More Than First-Time Offenses	App. Fee
Comanche	✓	✗	✓	✗	✓	✓	✓	NA
Cowley	✗	✗	✗	✗	✓	✓	✓	\$50
Crawford	✓	✓	✓	✓	✓	✓	✓	\$85-115
Decatur	✓	✗	✓	✗	NA	NA	NA	NA
Dickinson	✗	✗	✓	✗	✓	✓	NA	NA
Doniphan	✓	✗	✓	✗	NA	NA	NA	NA
Douglas	✓	✓	✓	✓	✓	✓	✗	\$100
Edwards	✗	✗	✗	✗	✓	✓	✓	\$0
Elk	✓	✗	✓	✗	✓	✓	✓	NA
Ellis	✓	✗	✓	✗	✓	✓	✓	\$0
Ellsworth	✗	✗	✓	✗	✓	✓	✓	NA
Finney	✓	✓	✓	✓	✓	✓	✓	\$40
Ford	✓	✗	✓	✓	✓	✓	✓	\$0
Franklin	✓	✗	✓	✗	✓	✓	✓	\$25
Geary	✓	✗	✓	✗	NA	NA	NA	NA
Gove	✓	✗	✓	✗	NA	NA	✓	NA
Graham	✗	✗	✗	✗	NA	NA	NA	NA
Grant	✓	✗	✓	✗	✓	✓	NA	\$0
Gray	✗	✗	✓	✗	NA	NA	NA	NA
Greeley	✓	✓	✓	✓	✗	✓	NA	NA
Greenwood	✓	✗	✓	✗	✓	✓	✓	NA

County Name	Formal Policy	Policy Online	Formal App.	App. Is Online	Drug Offenses Eligible	Felonies Eligible	More Than First-Time Offenses	App. Fee
Hamilton	✗	✗	✗	✗	✓	✓	✓	\$0
Harper	✓	✓	✓	✓	✓	✗	✗	NA
Harvey	✓	✗	✓	✗	✓	✓	✓	\$25
Haskell	✓	✗	✓	✗	✓	✓	✓	\$0
Hodgeman	✗	✗	✗	✗	NA	NA	NA	NA
Jackson	✗	✗	✗	✗	✓	✓	NA	NA
Jefferson	✓	✗	✓	✗	✓	✓	✓	\$100
Jewell	✗	✗	NA	✗	✗	✗	NA	NA
Johnson	✓	✓	✓	✓	✓	✓	✓	\$30-50
Kearny	✗	✗	NA	✗	NA	NA	NA	NA
Kingman	✓	✗	✗	✗	✓	✗	✗	\$50
Kiowa	NA	✗	NA	✗	NA	NA	NA	NA
Labette	NA	✗	NA	✗	NA	NA	NA	NA
Lane	✓	✗	✓	✗	✓	✓	NA	NA
Leavenworth	✓	✓	✓	✓	✓	✓	✗	NA
Lincoln	✓	✗	✓	✗	✓	✓	✓	\$0
Linn	NA	✗	NA	✗	NA	NA	NA	NA
Logan	✗	✗	✗	✗	NA	NA	NA	NA
Lyon	✓	✓	✓	✓	✓	✓	✗	\$20
Marion	✓	✓	✓	✓	✓	✓	✗	\$45
Marshall	✗	✗	✓	✗	✗	✓	✓	\$0

County Name	Formal Policy	Policy Online	Formal App.	App. Is Online	Drug Offenses Eligible	Felonies Eligible	More Than First-Time Offenses	App. Fee
McPherson	✓	✓	✓	✓	✓	✗	✗	\$50
Meade	✓	✗	✓	✗	NA	NA	NA	NA
Miami	✓	✗	✓	✗	✓	✓	✗	\$0
Mitchell	✓	✗	NA	✗	✓	✓	✓	NA
Montgomery	NA	✗	NA	✗	NA	NA	NA	NA
Morris	✗	✗	✗	✗	✗	✗	NA	NA
Morton	✗	✗	✗	✗	✓	✓	✗	NA
Nemaha	✗	✗	✗	✗	✓	✗	✗	\$0
Neosho	✓	✓	✓	✓	✓	✓	✗	\$30
Ness	✓	✗	✓	✗	✓	✗	✓	NA
Norton	NA	✗	NA	✗	NA	NA	NA	NA
Osage	✓	✓	✓	✓	✓	✓	✗	\$0
Osborne	✓	✗	✓	✗	NA	NA	NA	NA
Ottawa	NA	✗	NA	✗	NA	NA	NA	NA
Pawnee	✓	✗	✗	✗	✓	✓	✓	\$0
Phillips	NA	✗	NA	✗	NA	NA	NA	NA
Pottawatomie	✓	✓	✓	✓	✓	✗	NA	\$10
Pratt	NA	✗	NA	✗	NA	NA	NA	NA
Rawlins	NA	✗	NA	✗	NA	NA	NA	NA
Reno	✓	✓	✓	✓	✓	✗	✗	\$200
Republic	NA	✗	NA	✗	NA	NA	NA	NA

County Name	Formal Policy	Policy Online	Formal App.	App. Is Online	Drug Offenses Eligible	Felonies Eligible	More Than First-Time Offenses	App. Fee
Rice	NA	✗	NA	✗	NA	NA	NA	NA
Riley	✓	✗	✓	✗	✓	✓	✓	\$0
Rooks	NA	✗	NA	✗	NA	NA	NA	NA
Rush	✗	✗	✗	✗	✓	✗	✗	NA
Russell	✗	✗	✗	✗	NA	NA	NA	NA
Saline	✓	✓	✓	✓	✗	✓	✗	\$125-250
Scott	✗	✗	✗	✗	✓	✓	✓	NA
Sedgwick	✓	✓	✓	✓	✓	✓	✓	\$45
Seward	✓	✓	✓	✓	✓	✓	✓	\$25
Shawnee	✓	✓	✓	✓	✓	✓	✓	\$100
Sheridan	NA	✗	NA	✗	NA	NA	NA	NA
Sherman	✓	✗	✓	✗	✗	✓	✗	NA
Smith	✓	✗	✓	✗	✓	✗	✗	\$0
Stafford	✓	✗	✗	✗	✓	✗	✗	\$50
Stanton	✗	✗	✗	✗	✗	✗	NA	NA
Stevens	NA	✗	NA	✗	NA	NA	NA	NA
Sumner	✓	✓	✓	✓	✗	✗	✓	\$25
Thomas	✓	✗	✓	✗	✓	✓	✗	\$0
Trego	✓	✗	✓	✗	✓	✓	✗	\$10
Wabunsee	✓	✓	✓	✓	✓	✗	NA	NA
Wallace	✓	✓	✓	✓	✗	✗	✗	NA

County Name	Formal Policy	Policy Online	Formal App.	App. Is Online	Drug Offenses Eligible	Felonies Eligible	More Than First-Time Offenses	App. Fee
Washington	✗	✗	✗	✗	✗	NA	NA	NA
Wichita	✗	✗	✓	✗	NA	✗	✗	NA
Wilson	✗	✗	✗	✗	✗	✗	NA	NA
Woodson	✓	✓	✓	✓	✗	✓	✗	\$30
Wyandotte	✓	✗	✓	✗	✓	✓	✗	\$90-100

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