

**OFFICE OF THE BUTLER COUNTY ATTORNEY:
DIVERSION PROGRAM FOR 1ST OFFENSE PROPERTY CRIMES
WORTHLESS CHECK MISDEMEANOR/FELONY**

A. IN GENERAL:

Effective 07-01-02, the Butler County Attorney is revising the diversion program for **property crimes (Ch. 21, Art. 37)** certain felonies. The Butler County Attorney has established a Diversion Program for first time misdemeanor property offenses, including worthless checks. The County Attorney's decision to grant diversion will be based upon the following criteria as well as the other statutory factors, including whether diversion will be in the interests of justice and of benefit to the community.

The burden is on the defendant to initiate the application process and thereafter follow proper procedures. If the defendant is granted diversion and successfully completes the same, the diverted charges will be dismissed. If the defendant does not fulfill the conditions of diversion, prosecution of the case will go forward. **IF YOU HAVE RETAINED COUNSEL OR COURT APPOINTED COUNSEL, PLEASE TURN IN THE APPLICATION TO YOUR ATTORNEY.**

B. CRITERIA FOR ELIGIBILITY:

All defendants applying for diversion under this program shall be eligible unless one or more of the following factors exists.

1. Defendant was under 18 when the offense was committed. (If you are under 18, see juvenile diversion program established by the District Court for eligibility criteria.)
2. Property offenses that are diversion eligible only include Misdemeanor Theft, Felony Theft, Misdemeanor Criminal Damage to Property, Felony Criminal Damage to Property, Auto Burglary where vehicle is not stolen or forcefully entered, Unemployment Fraud, Welfare Fraud, Forgery and False Writing.
3. Defendant has prior property crime diversion or conviction (felony or misdemeanor), or defendant has prior felony conviction or diversion for any offense.
4. No diversion is offered on Burglary cases: residential business, dwellings or identity theft charges.
5. No diversion is offered on theft or fraud cases that involve an employer/employee relationship or fiduciary relationship or entrustment.

C. OTHER FACTORS WHICH MAY EXCLUDE DIVERSION:

1. Present property crime involves theft of or damage to property valued at greater than \$5,000.00.
2. Present case involves crimes committed against more than one victim as part of a crime spree.
3. Defendant was belligerent, obnoxious, or un-cooperative with the law enforcement officers involved.
4. Defendant fails to submit the diversion application in a timely manner, or the defendant provides

false or misleading information in the diversion application.

5. Diversion is not in the best interest of the community.

NOTE: If one or more of the above factors exist, diversion may and will generally be declined. However, the County Attorney's office reserves to right to grant diversion (unless prohibited by statute) even where the criteria for eligibility are not met. The County Attorney must approve such variance decisions.

D. PROCEDURE:

1. **Submit the appropriate diversion application**, completely filled out, dated and signed.
2. Following receipt of the application, the County Attorney's Diversion Coordinator will receive the file from the secretary. The Diversion Coordinator will then review the file and advise the prosecuting attorney whether the applicant meets diversion eligibility criteria. This review process should not take more than one week.
3. If the defendant is accepted for diversion, the agreement will be prepared by the Diversion Coordinator and signed by the prosecutor. A date and time will be scheduled for the defendant and attorney (if any) to come to the CA's office and sign the agreement. This **diversion conference** will be with the CA Diversion Coordinator. In felony cases, Court Services will also be present.

This **diversion conference** will generally be the same date and time as already scheduled for the defendant's next court appearance. However, instead of going to court, the defendant and counsel will come to the CA office for the diversion conference. Defendant must pay the **\$100.00** diversion fee at time of signing the agreement.

4. Once the defendant and his\her counsel (if any) have reviewed and signed the diversion agreement, the CA Diversion Coordinator will file the agreement and give copies to the defendant and Court Services (in felony cases). The Diversion Coordinator will send a file-stamped copy of the agreement to the Kansas Bureau of Investigation (KBI).
5. Thereafter, it is the responsibility of the defendant to ensure that all conditions of the agreement are fulfilled in a timely manner. The defendant must report in person to the County Attorney Diversion Coordinator or Court Services (in felony cases) as directed.
6. The period of diversion will be for **3, 6 or 12 months** from date of signing depending upon the type of crime involved, unless the defendant fails to comply with all terms and conditions within that timeframe. If all requirements of the agreement are completed in a timely manner, the CA Diversion Coordinator or Court Services (in felony cases) will prepare a **journal entry of dismissal with prejudice** for the prosecutor's approval. The same shall then be filed with a copy to the defendant.
7. If the defendant fails to complete one or more of the conditions of the diversion agreement in a timely manner, the CA or Court Services will seek revocation or extension of the agreement.
8. The application for diversion and decision on the same must be prior to preliminary hearing.

E. CONDITIONS/ REQUIREMENTS:

1. No fine. However, the defendant shall make restitution if any is owed.
2. All court costs including filing fee, witness fees (if any), court-appointed attorney fees (if any), etc.
3. A diversion fee of **\$100.00** payable when the agreement is signed. **In misdemeanor worthless check cases, the diversion fee is \$50.00.**
4. Complete any and all other special conditions of the diversion agreement, including that the defendant will not violate any laws during the pendency of the diversion.
5. Stipulate to certain facts upon which the charges were based and upon which the case will be tried if the diversion agreement is for some reason later set aside.
6. The **length** of the diversion shall be **3 months** for misdemeanor worthless check cases; **6 months** for all other misdemeanor property crimes; and **12 months** for felony property crimes unless extended by agreement of the parties, revoked for violation of the conditions thereof, or terminated early.