

**OFFICE OF THE BUTLER COUNTY ATTORNEY**  
**DIVERSION PROGRAM FOR 1ST OFFENSE DRUG CASES**

**A. IN GENERAL:**

The Butler County Attorney has established a Diversion Program for first time misdemeanor controlled substance and drug paraphernalia offenses. 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 defendant and the community.

The burden is on the defendant to initiate the application process and thereafter follow proper procedures. If you are granted diversion and successfully complete the same, the diverted charges will be dismissed. **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 offense committed. Violators under 18 will be charged as juvenile offenders. If the District Court enacts a diversion program for juvenile offenders pursuant to K.S.A. 38-1635, juvenile may qualify for that program.
2. Prior controlled substance or drug paraphernalia conviction or diversion. Prior felony conviction or diversion for any offense.
3. Possession in the instant case of a felony quantity of any controlled substance.
4. Defendant was belligerent, obnoxious, or un-cooperative with the law enforcement officers involved.
5. Defendant fails to submit the diversion application or the drug and alcohol evaluation in a timely manner, or the defendant provides false or misleading information in the diversion application or to the drug and alcohol evaluator.
6. Alcohol and drug evaluator recommends against diversion.
6. 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 the 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.

**C. PROCEDURE:**

1. Obtain a **drug and alcohol (D&A) evaluation** at the defendant's expense at one of the facilities listed in **APPENDIX A**. These are the facilities approved by the 13th Judicial District.

2. **Submit the attached diversion application**, completely filled out, dated and signed. A **copy of the drug and alcohol evaluation report should accompany the diversion application** when it is submitted. An application for diversion will not be considered unless or until the D&A evaluation is also received by this office. **Note:** County Attorney will not consider a diversion application submitted **after a suppression hearing**.

3. Following receipt of the application and D&A evaluation, 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 2-3 days.

4. 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.

The 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 **\$200.00 diversion fee** at time of signing.

5. 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. The Diversion Coordinator will send a file-stamped copy of the agreement to the Kansas Bureau of Investigation (KBI).

6. 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 CA Diversion Coordinator at the date and time set out in the agreement for the **compliance conference**.

7. At the **compliance conference**, the CA Diversion Coordinator will go through whatever paperwork the defendant provides. If all requirements of the agreement were completed in a timely manner, the Diversion Coordinator will prepare a **journal entry of dismissal with prejudice**. The Diversion Coordinator will send a file-stamped copy of the journal entry of dismissal to the KBI.

8. If the defendant fails to complete one or more of the requirements of the diversion

agreement in a timely manner, the prosecutor shall seek revocation of the diversion agreement unless a decision is made to modify the terms of the agreement to allow the defendant more time to comply. If the decision is to seek revocation, the file will be transferred back to the secretary.

**D. CONDITIONS/ REQUIREMENTS:**

1. Defendant may be ordered to pay a fine of **\$150.00**. The defendant shall make restitution to the KBI lab in the amount of **\$400.00** to cover the KBI's expense in testing the drugs. This is pursuant to K.S.A. 28-176.

2. All court costs, filing fee, witness fees (if any), court-appointed attorney fees (if any), etc.

3. A diversion fee of **\$200.00** payable when agreement signed.

4. Obtain a drug and alcohol evaluation and pay for the same.

5. Enroll in and successfully complete the Alcohol and Drug Information School at defendant expense. Comply with all recommendations of the drug and alcohol evaluation and pay all costs.

6. 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.

7. 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.

8. Defendant shall be subject to random and immediate urinalyses whenever and at the discretion of the Diversion Coordinator. Defendant shall pay for the same. If the defendant shows positive for a controlled substance in this test, the defendant may request that a part of the same sample be sent to a lab for confirmation testing at defendant's expense.

9. The **length** of the diversion shall be **12 months** unless extended by agreement of all parties.