

OFFICE OF THE BUTLER COUNTY ATTORNEY
DIVERSION PROGRAM FOR DWS CASES & NO PROOF OF INSURANCE

A. IN GENERAL:

The Butler County Attorney has established a Diversion Program for first time driving while suspended (**DWS**) violations. 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. However, your participation in a **DWS** diversion program will still be reflected on your driving record and in your criminal history. **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. Prior DWS conviction or diversion.
2. Prior felony conviction or diversion for any offense.
3. Physical abuse of the officers was involved.
4. Suspension due to refusal or failure of breath test or DUI conviction.
5. Suspension for failure to maintain liability insurance and no current insurance at time of arrest.
(However, providing the defendant shows proof of reinstatement and that he/she currently has liability insurance, diversion will be considered.)
6. An accident resulting in personal injury or death. If someone other than the defendant receives documentable injuries, no diversion. If the defendant is the only injured party, diversion may be declined on that basis. If no bodily injury but there is property damage, diversion may also be declined on that basis.
7. Defendant's driving was reckless under the circumstances. (Driving was erratic or excessive speed.
8. Defendant was belligerent, obnoxious, or un-cooperative with the law enforcement officers.
9. Defendant fails to submit the diversion application in a timely manner, or the defendant provides false or misleading information in the diversion application.
10. 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. Such variance decisions must be approved by the County Attorney.

C. PROCEDURE:

1. **Submit the attached 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 takes 2-3 days.

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.

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. The **\$50.00 diversion fee must be paid** at the time of signing.

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. The Diversion Coordinator will send a file-stamped copy of the agreement to the Kansas DMV.

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

6. 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**. Diversion Coordinator will send a file-stamped copy of the journal entry of dismissal to the Kansas DMV.

7. 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, file will be transferred back to the secretary.

D. CONDITIONS/ REQUIREMENTS:

1. A minimum mandatory fine of \$25.00 will be assessed.

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

3. Defendant shall provide proof that he has valid Driver's License.

4. Defendant shall provide proof that he has current insurance on a no insurance charge.

5. 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.

6. 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.

7. Do not operate a motor vehicle unless/until the license is reinstated by the State of Kansas.

8. The **length** of the diversion shall be **6 months** unless extended by agreement of the parties.