

BOURBON COUNTY ATTORNEY'S OFFICE
PRETRIAL DIVERSION POLICY

Updated 08/02/2021

Pursuant to K.S.A 22-2907, the Bourbon County Attorney's Office has implemented a pretrial diversion program. Upon successful completion of a pretrial diversion, charges will be dismissed with prejudice. The following policy and guidelines have been adopted by the Bourbon County Attorney's Office.

1. GENERAL

- 1.1 The County Attorney's Office will enter into a pretrial diversion agreement with a defendant only when doing so will serve the interests of justice, and be of benefit to the defendant and the community.
- 1.2 The County Attorney's Office maintains complete discretion, within the bounds of the law, in approving or denying any application for diversion.
- 1.3 The County Attorney's Office will not opine as to a particular defendant's eligibility, or potential approval for diversion prior to submission of a diversion application and fee. It is the responsibility of the defendant and/or defense counsel to be informed of a defendant's eligibility based on this policy and the laws of the State of Kansas.
- 1.4 The County Attorney's Office maintains the authority to deviate from the provisions of this policy as may be necessary to serve the interest of justice.

2. COSTS

- 2.1 ***Diversion Application Fee.*** Applications for diversion must be submitted with cash, a cashier's check, money order, or firm check, made payable to Bourbon County Attorney's Office in the following amount:

Traffic	\$25
Fish & Game	\$25
DUI	\$100
Misdemeanor.....	\$100
Felony	\$150

- 2.2 ***Fine.*** As a condition of diversion, the defendant must pay fines in the amount set out in the diversion agreement. Such fines will not be less than the statutory minimum, if applicable. Fines may be more than the statutory minimum, if applicable.
- 2.3 ***Restitution.*** For offenses resulting in a monetary loss to others, the defendant will be required to pay restitution as provided in the diversion agreement.

2.4 **Court Costs.** The defendant will be required to pay the following applicable court costs:

Traffic	\$108
Fish & Game	\$108
DUI	\$108
Misdemeanor.....	\$158
Felony	\$193

These costs are subject to change by the court.

2.5 **Payment.** All costs must be paid within the following time periods:

- i. 4 months of filing the diversion agreement in a traffic case;
- ii. 9 months of filing the diversion agreement in a Fish & Game, DUI, or misdemeanor case; and
- iii. 21 months of filing the diversion agreement in a felony case.

If additional time is needed, a written request for extension of time to pay must be submitted to the Bourbon County Attorney’s Office in advance, explaining the reason for the request and stating the amount of additional time needed.

3. TIMING

3.1 **Application.** To be considered for diversion, a defendant must submit a completed application and the applicable fee within: (1) 60 days of arraignment in misdemeanor and traffic cases; and (2) prior to preliminary hearing in felony cases. Extensions may be granted for good cause.

3.2 **Agreement.** The signed diversion agreement must be returned to the Bourbon County Attorney’s Office 14 days prior to bench trial in traffic and misdemeanor cases, or 14 days prior to preliminary hearing in felony cases. It is the responsibility of the defendant to continue the applicable court date as necessary to comply with this timeline.

4. DIVERSION PERIOD

4.1 The standard diversion periods shall apply:

Traffic	6 months
Fish & Game...	12 months
DUI	12 months
Misdemeanor...	12 months
Felony	24 months

4.2 The diversion period in any case may be modified as necessary to serve the interest of justice.

5. ELIGIBILITY

5.1 A defendant charged with any of the following is not eligible for diversion:

- i. Any offense, if diversion is prohibited by state law
- ii. An offense involving a firearm or deadly weapon

5.2 A defendant is not eligible for diversion if such defendant:

- i. Has been previously convicted of a similar offense; and/or
- ii. Fails to take responsibility for the actions which led to the current case

5.3 Additional factors to be considered in determining whether entering a diversion agreement serves the interest of justice, the defendant, and the community include, but are not limited to the following:

- i. The nature of the offense and factual circumstances
- ii. The defendant's previous criminal history, including uncharged criminal conduct
- iii. Recommendation of victims and law enforcement
- iv. To what degree the defendant accepts responsibility for his or her actions
- v. The defendant's cooperation with law enforcement officers

6. TERMS AND CONDITIONS

6.1 ***Standard Conditions.*** The following terms and conditions shall apply to all diversion agreements:

- i. Defendant shall not violate any federal, state, or local law. Should Defendant be stopped, questioned, ticketed, arrested by, or have any contact with law enforcement, Defendant shall notify the Bourbon County Attorney's Office, in writing, within 48 hours.
- ii. Defendant shall notify the County Attorney's Office, in writing, of any change of residential address within ten days of the change.
- iii. Defendant will accept service by mail to Defendant's attorney of record, or if not represented by an attorney, by mail sent to Defendant's last known address.

6.2 ***Special Conditions.*** If appropriate, special conditions of diversion may include, but are not limited to:

- i. Defendant shall not possess or consume any type of alcohol and/or illicit drug during the diversion period. Should a representative of the County Attorney's Office, law enforcement officer, or a judge request a test of your blood, breath, or urine at any time during the diversion period, Defendant shall immediately submit thereto. Defendant is responsible for any cost incurred to complete such test. Should any such test be positive for alcohol and/or illicit drugs, Defendant refuses to submit to such test, Defendant shall be considered in violation of the Agreement. Defendant stipulates the results of the any such test shall be admitted into evidence in Court without foundation testimony.

- ii. Defendant shall have no contact with the victim(s), witness(es), and/or co-defendant(s) in this case.
- iii. Defendant shall report to the County Attorney's Office by mail once a month, in the manner proscribed by the diversion agreement and on or before the date set out in the diversion agreement. Defendant shall complete the form in its entirety each month. Any false or incomplete information will be a basis to revoke the Agreement.
- iv. Defendant shall participate in a drug and alcohol evaluation, conducted by a licensed provider, and follow the recommendation thereof. Proof of completion must be provided to the County Attorney's Office 30 days prior to the completion of the period of deferred prosecution.

Bourbon County Attorney's Office
210 S National Avenue, Ste. 22
Fort Scott, KS 66701
(620) 223-2910

FOR OFFICE USE ONLY

NOTES

Case No: _____

Defendant's Attorney: _____

Date Application Received: ____/____/____

Receipt No.: _____

BOURBON COUNTY ATTORNEY'S OFFICE

APPLICATION FOR DIVERSION

Felony \$150 Misdemeanor \$100 DUI \$100 Traffic \$25 F&G \$25

NAME _____ **AGE** _____

ADDRESS _____

CITY _____ **STATE** _____ **ZIP** _____

PHONE NUMBER _____

DATE OF BIRTH ____/____/____ **PLACE OF BIRTH** _____

SOCIAL SECURITY # ____-____-____

DRIVERS LICENSE State ____ DL# _____ Commercial Drivers License (CDL)

MALE _____ **FEMALE** _____ **SINGLE** _____ **MARRIED** _____

IF MARRIED, SPOUSE'S NAME _____

IF YOU LIVE WITH SOMEONE OTHER THAN PERSON(S) LISTED ABOVE, STATE THE NAME(S) _____

PRESENT JOB

EMPLOYER _____

JOB TITLE _____

ADDRESS _____

WORK PHONE (____) ____-____ **HOW LONG** _____

PREVIOUS WORK EXPERIENCE

EMPLOYER _____

JOB TITLE _____

ADDRESS _____

WORK PHONE (____) ____-____ **HOW LONG** _____

EDUCATIONAL BACKGROUND

ELEMENTARY _____ **JUNIOR HIGH** _____

HIGH SCHOOL _____ **GRADUATE** _____

COLLEGE _____ **HIGHEST YEAR ACHIEVED** _____

HOW LONG HAVE YOU LIVED IN BOURBON COUNTY? _____

If you have moved to Bourbon County within the past 5 years, where did you live previously?

**YOU MUST ANSWER ALL QUESTIONS OR YOUR DIVERSION APPLICATION
MAY NOT BE ACCEPTED.**

PREVIOUS CRIMINAL RECORD (IF NONE, STATE "NONE" - DO NOT LEAVE BLANK)

Please state **ALL** offenses for which you have been arrested or charged at any time and in any jurisdiction. You **MUST** include offenses expunged, juvenile offenses, adjudicated and alcohol related traffic offenses. This section applies even if the charges were dismissed or someone told you the charges would not be on your record. Please use separate sheet for any additional offenses.

<u>OFFENSE</u>	<u>WHEN</u>	<u>WHERE</u>	<u>OUTCOME</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

EXPLAIN WHY YOU FEEL YOU COULD SUCCESSFULLY COMPLETE THE DIVERSION PROGRAM: _____

I have read the foregoing application. All of the information is true and correct. I understand that if any of this information is not true and correct, this may be a basis for denial of diversion or revocation of diversion.

RELEASE OF INFORMATION

I hereby authorize the County Attorney's Office to release any information in the County Attorney's file pertaining to this offense for which I am charged to the Southeast Kansas Mental Health, the Department of Children and Families, and the investigating Law Enforcement Agencies, or any other such person or agencies for use in determining whether I am a suitable candidate for diversion. I further authorize any person, agency or organization to release and provide, upon request, any information to the office of the Bourbon County Attorney in consideration of any application for Diversion.

I further authorize any person, agency or organization that is conducting an evaluation or treatment as part of the diversion application or the diversion agreement to release information to any other person, agency or organization as needed for the evaluation or treatment process.

Defendant
Date: ____/____/____