

BARTON COUNTY ATTORNEY

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DIVERSION PROGRAM – CRIMINAL

This application must be completed and returned to the County Attorney's Office within 30 days or it will not be considered. If applying for diversion for a charge involving drugs or alcohol, the application must be accompanied by a drug or alcohol evaluation report from a certified treatment provider.

Pursuant to K.S.A. 22-2906, et seq., the Barton County Attorney's (BCA) Office has established a Diversion Program for criminal cases.

Diversion is a privilege, not a right. The BCA will not prescreen or opine about the Defendant's eligibility, potential approval, or other consideration until application has been made. There is no presumption of favor of diversion in any case, and the burden of persuasion falls upon the defendant to establish that a diversion program will serve the ends of justice and the interests of the community.

The County Attorney makes all decisions regarding diversion policy. He has appointed a diversion coordinator to enforce these policies, as well as screen for eligibility and finalize conditions of the diversion agreement. The County Attorney has the final authority whether to approve or deny any application for diversion.

The prosecutor assigned to a case may request a case be denied for diversion, even though the defendant may be eligible otherwise. Additionally, the prosecutor assigned to a case may request a case be approved for diversion outside the guidelines set forth below. The final decision in all cases will be made by the County Attorney.

Each step of the diversion process must be completed timely. All applications must be made within thirty (30) days of arraignment in misdemeanor cases, and prior to a preliminary hearing in felony cases. Application must be made in all cases prior to any pretrial motions being filed. All Agreements must be signed and returned to the BCA within 30 days of final approval.

Any defendant seeking diversion without the representation of counsel will be required to sign a waiver of counsel prior to filing the agreement.

PROCEDURE AND COSTS

The defendant shall complete the Application for Pretrial Diversion and submit it to the County Attorney's office.

NO PERSONAL CHECKS WILL BE ACCEPTED

If approved for diversion, a **fee of \$250.00** for a misdemeanor crime and a **fee of \$500.00** for a felony crime will be required to be paid upon signing the Agreement. A **\$25.00 Crime Stoppers Fee is assessed in addition to the filing fee**. These are payable in the form of cash, a cashier's check, money order, or attorney's trust account check.

The standard diversion term shall be as follows:

- 12 months for Misdemeanors and Level 9 and 10 felonies.
- 12 months for Level 4 and 5 Drug felonies involving marijuana
- 18 months for Level 4 and 5 Drug felonies involving all other drugs
- 24 months for Level 6, 7, and 8 felonies and Level 3 Drug felonies

The diversion term may be for a longer period at the discretion of the Barton County Attorney. Failure to provide proper payment will result in the check being returned and the Defendant required to submit the correct payment.

The Defendant will be required to **pay the standard court costs** associated with the diversion, which are as follows:

- \$136.00 Court Costs for Misdemeanors
- \$171.00 Court Costs for Felonies
- \$ 22.00 Surcharge in all cases

All fees and costs associated with the diversion are non-negotiable and will not be waived. Standard court costs and fees are subject to change by District and/or Supreme Court rule.

GUIDELINES

Defendants charged with the following offenses shall be prohibited from receiving diversion:

- Any non-crime charged with as a Severity Level 1 through Level 3 Felony
- Severity Level 1 and 2 Felony Drug Offenses
- Burglary, when there is a prior diversion for a burglary offense
- Any crime involving a death
- Any crime involving a firearm that is used to inflict serious bodily harm
- Any crime for which diversion is prohibited by Kansas statute

Defendants with the following shall also be prohibited from receiving Diversion:

- Defendants charged with misdemeanor crimes cannot have convictions for felonies or misdemeanors within five years from date of the instant offense
- Defendants charged with felony crimes cannot have prior felony convictions
- Defendant's failure to fully cooperate with law enforcement during investigation
- Defendants failure to complete the application for pre-trial diversion completely or falsifying or omitting any required information
- Defendants with other charges pending in any municipal, state, or federal jurisdictions.
- Those who do not have a valid driver's license or are an illegal alien.

ELIGIBILITY

Other factors may be taken into consideration when determining eligibility. These factors may include, but not be limited to:

- Nature of the crime and facts of the case
- Previous criminal history, including conduct of the defendant that did not result in the filing of formal charges
- Recommendations and input of the victim and/or law enforcement officers involved
- The total amount of restitution and the probability of the defendant's ability to successfully make payments as specified
- In drug cases, the defendant must have drug treatment scheduled before application can be made for diversion.

DIVERSION CONFERENCE

The County Attorney and Diversion Coordinator may require a diversion conference be held prior to a final decision on diversion application. If a diversion conference is required, notice will be sent to the attorney of record or *pro se* defendant to schedule with the Diversion Coordinator. Diversion conferences are scheduled at the discretion of the Barton County Attorney. Both the Defendant and Defendant's Counsel must appear for the conference.

TERMS OF AGREEMENT

If granted Diversion, standard conditions of the Agreement shall include:

- Defendant must remain law abiding
- Defendant shall not have contact with victim(s), co-defendant(s), and witness(es), unless otherwise waived by the Diversion Coordinator
- Defendant must report monthly in writing
- Defendant shall not leave the State of Kansas without providing advanced written notification to the Diversion Coordinator

- Defendant shall pay fines, court costs, and other associated fees within a specified period set forth in the Agreement
- Defendant shall pay KBI laboratory fees (if applicable) within a specified period set forth in the Agreement
- Defendant shall pay restitution in full (if applicable), including extradition fees, in the monthly payment amount designated in the Agreement
- Defendant shall attend school and/or work at a lawful occupation
- Defendant shall maintain a current address on file with the Barton County Attorney
- Defendant shall surrender all firearms and ammunition to one who may lawfully possess them

If granted diversion, special conditions of the agreement may include, but shall not be limited to:

- Defendant attending and providing proof of completing treatment (i.e. alcohol, drug, anger management) and the provider to be designated by the Barton County Attorney
- Defendant making full restitution to all victims
- Defendant may not possess or consume alcohol or drugs
- Other conditions as set forth by the Barton County Attorney

EFFECT

Upon the defendant entering into an agreement for pretrial diversion, the criminal proceedings shall be suspended by the Barton County Attorney filing a stay of proceedings with the Court. When the defendant successfully fulfills the terms and conditions of diversion, the Barton County Attorney shall submit a notice of successful completion and move to have the criminal charges dismissed with prejudice.

**BARTON COUNTY ATTORNEY
BARTON COUNTY, KANSAS**

Amy J. Mellor, County Attorney

APPLICATION FOR CRIMINAL PRETRIAL DIVERSION PROGRAM

Name _____ Phone No. _____
(last) (first) (middle)

Maiden name or other names used _____

Address _____
(Street) (City) (State) (Zip)

Who do you live with _____
(Name) (Relationship)

How long have you lived at this address? _____

Age _____ Date of Birth _____ Race _____ Sex _____

City and State where you were born _____

In what other cities and states have you lived?

<u>City</u>	<u>State</u>	<u>Dates lived there</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Social Security Number _____

Driver's License Number _____ State of Issuance _____

Are you a United States Citizen? Yes / No If not, are you a documented alien? Yes / No

Marital Status _____ Spouse's Name _____

Spouse's Employment _____ Spouse's Age _____

Number of Minor Dependents _____

Names of Minor Dependents

Ages

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Education and Vocational Training (include high school or highest grade completed if not high school graduate, as well as education beyond high school).

Name of School

Location

Dates Attended

Grade or Degree

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Military Service _____ Yes _____ No Branch _____

Type of Discharge _____ Date of Discharge _____
(from active duty)

Nearest Contact

Name _____ Telephone _____

Address _____

Relation to Defendant _____

Defense Attorney

Name _____ Telephone _____

Address _____

Present Employment

Employer _____ Telephone _____

Address _____

Dates employed _____ to _____ Occupation _____

Salary \$ _____

Employment History List employment for past six years. Begin with last previous employer. If you need additional space, use blank sheet of paper.

Employer _____ Telephone _____

Address _____

Dates employed _____ to _____ Occupation _____

Reason for Leaving _____

Employer _____ Telephone _____

Address _____

Dates employed _____ to _____ Occupation _____

Reason for Leaving _____

Employer _____ Telephone _____

Address _____

Dates employed _____ to _____ Occupation _____

Reason for Leaving _____

Employer _____ Telephone _____

Address _____

Dates employed _____ to _____ Occupation _____

Reason for Leaving _____

Present Sources of Income

Defendant's Employment \$ _____ Per Month

Spouse's Employment \$ _____ Per Month

Unemployment Compensation \$ _____ Per Month

Public Assistance \$ _____ Per Month

Other \$ _____ Per Month

If other, please indicate source: Parents _____ Relatives _____ Other _____

Prior Traffic Offense Record: (List **all** juvenile and adult traffic incidents, DUI or DWI Arrests, Diversions, Deferred Prosecutions, Convictions and Expungements in Kansas or other states, including those not resulting in formal charges or convictions. Include date of arrest, citation or incident, arresting or ticketing agency, charge and disposition.

Prior Criminal Offense Record: (List **all** Juvenile and Adult incidents, Arrests, Citations, Orders to Appear, Prosecutions, Convictions, Expungements or Deferred Prosecution Agreements in Kansas or other states, including those not resulting in formal charges or convictions. Include date of incident involved, agency, charge and disposition.

Personal References (Letters of personal reference may be attached.)

Name _____ Telephone _____

Address _____

Relationship to Defendant _____

Name _____ Telephone _____

Address _____

Relationship to Defendant _____

Have you ever received or attended counseling or treatment for an alcohol, drug, emotional or psychological problem or disorder?

Yes _____ No _____

If yes, state when, where, and the reason for attendance:

I hereby apply for status as a participant in the Diversion Program and request that the County Attorney temporarily delay trial against me in order to permit consideration of this application. I understand it is my responsibility to submit a diversion application in a prompt and timely fashion and within the guidelines set by the County Attorney and that it will be my responsibility to seek any continuance or waiver of the jury trial in order to provide the necessary time for my diversion application to receive a full and complete review by the County Attorney's Office. I understand if the County Attorney's Office is required to make a decision concerning my application prior to the Office having an opportunity to make a full and complete review, my application request will be denied. I understand that the final decision to commence criminal proceedings or to defer prosecution in my case rests entirely with the County Attorney.

I authorize the County Attorney's Office to conduct an investigation to determine suitability for this program. I understand that any information by me or authorized by me to be furnished to the County Attorney's Office in connection with this investigation will be kept confidential.

A false answer to or omission of any question in this application shall be grounds for recommendation against placement into this program or removal after placement in the program, in which case, the County Attorney will resume prosecution on the original charges. I understand and agree that it is my responsibility to notify the County Attorney in the event an answer to any question in this application changes prior to the filing of my agreement for Pre-trial diversion, including, but not limited to, my listing of prior traffic and criminal offenses or arrests therefore, and failure to do so shall be considered a violation of my agreement for Pre-trial diversion and I may be taken off diversion.

I understand and agree that in the event it is learned I have falsified or omitted any part of the Application for Diversion, including, but not limited to, my listing of prior traffic and criminal offenses, it shall be considered a violation of my Agreement for Pre-Trial Diversion and I may be taken off Diversion. I agree that a criminal justice report, including, but not limited to, a Department of Justice report, KBI report, Police Department or Sheriff's Department report, and/or Department of Revenue report, may be admitted as evidence in any court, without foundation, to prove prior traffic or criminal offenses.

I understand that failure to respond to any question will render the application incomplete and the County Attorney's Office will not consider the application.

I declare (or verify, certify or state) under penalty of perjury under the laws of the State of Kansas that I have personally read or have had read to me the above Application for Diversion and responses thereto and that all information contained in the foregoing application for the Pretrial Diversion Program is true and correct.

Executed on _____
Date _____
Applicant's Signature

I authorize the County Attorney's Office to conduct a background check of my past employment record and I authorize my present and previous employers to furnish the County Attorney's Office with any information they request. I further authorize the County Attorney's Office to contact my liability insurance carrier and authorize them to release information.

Executed on _____
Date _____
Applicant's Signature

I authorize the County Attorney's Office to release all records in their possession, including but not limited to, criminal history information and investigation reports to any other evaluating agency which may participate in evaluating me during the application process.

Executed on _____
Date _____
Applicant's Signature