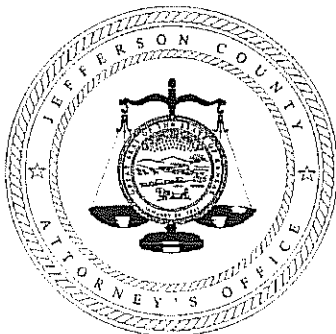


JEFFERSON COUNTY ATTORNEY'S OFFICE

Jason W. Belveal, County Attorney

Post Office Box 351
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BOATING UNDER THE INFLUENCE DIVERSION PROGRAM

Pursuant to K.S.A. § 22-2906 et seq. the Jefferson County Attorney of the Second Judicial District of Kansas has established a Diversion Program for all traffic offenders charged with Boating Under the Influence of Alcohol (hereafter "B.U.I") pursuant to K.S.A. § 32-1125 et seq.

GENERAL POLICIES

Diversion is a privilege and not a right. No presumption in favor of Diversion exists in any case, and the burden of persuasion rests with the applicant to establish that a Diversion Agreement will best serve the ends of justice; the interests of the community; public safety; and, the rights and considerations of any victims involved.

There is no guarantee Diversion will be granted in any given case.

An applicant in an adult Criminal case has the right to counsel through an attorney, and, to have the attorney involved and present throughout the Diversion Application process. Applicants that are approved for Diversion will be required to pay any Court-Appointed Attorney's Fees, if applicable.

The Jefferson County Attorney's Office cannot and will not dispense any legal advice to any potential diversion applicant/defendant. If a potential diversion applicant/defendant needs legal advice regarding his or her case, the applicant/defendant should contact an attorney.

If a Defendant wants to participate in the B.U.I. Diversion program without an attorney, the Defendant must sign and execute a valid waiver of counsel form.

Further, to obtain a B.U.I. Diversion, an attorney must represent Juvenile Offender applicants.

The Jefferson County Attorney makes all decisions regarding Diversion policy. He appoints a Diversion Coordinator to enforce such policies and determine Diversion eligibility including conditions of Diversion contracts.

The Jefferson County Attorney has the final authority to approve or deny any Diversion application. *A defendant's application for diversion may be rejected or denied if not submitted prior to arraignment.*

The Assistant County Attorney (hereafter "A.C.A.") assigned to the case may request an application be denied for Diversion even though otherwise eligible. Additionally, an assigned A.C.A. may request an

notifying the Diversion Coordinator of his/her wishes. Final approval of Diversion lies with the Diversion Coordinator in conjunction and consultation with the Jefferson County Attorney.

Diversion contracts not signed by the Defendant within 60 days of an acceptance letter being mailed will be withdrawn. It is the applicant's sole responsibility to inform the Jefferson County Attorney's Office of current contact information.

In determining whether or not to grant diversion, the Jefferson County Attorney will consider whether the applicant demonstrates a genuine sense of remorse and is prepared to acknowledge the act(s) charged and accountability for the consequences of his or her actions.

Other factors that will be considered include, but are not limited to:

- The nature of the crime and the circumstances surrounding it
- The probability that the applicant will cooperate and benefit from the program
- The impact on the community of placing the applicant on Diversion
- The recommendations of the involved law enforcement officers and
- The recommendations of any victims involved
- The amount of restitution owed
- Any mitigating and aggravating circumstances surrounding the crime

The victim, assigned A.C.A., and lead investigator will all be consulted regarding any application for diversion.

THE JEFFERSON COUNTY ATTORNEY MAY APPROVE OR DENY ANY DIVERSION APPLICATION IN THEIR SOLE DISCRETION FOR ANY LAWFUL REASON.

The B.U.I. Diversion program will be administered in accordance with K.S.A. § 32-1131; K.S.A. § 22-2907; K.S.A. § 22-2908; K.S.A. § 22-2909; K.S.A. § 22-2910; and, K.S.A. § 22-2911.

COSTS AND FEES

- Non-Refundable B.U.I. Diversion Application Fee:
\$100.00
- B.U.I. Diversion Fees if Approved:
\$500.00
- Court Costs:
\$98.00
- Fine
Not less than \$100.00 and no more than \$500.00
- Additional Diversion Costs may include, but are not limited to:
Fingerprinting
Bond Supervision
Urinalysis Testing
Lab Fees
Witness Fees
Transportation Costs
Court Appointed Attorney's Fees
Restitution

Such additional costs will be incorporated into the defendant's proposed Diversion contract.

ELIGIBILITY

All Defendants charged with B.U.I. as a First Offense *may* be eligible for Diversion **EXCEPT in the following circumstances:**

- The applicant has previously been **convicted** of or pled *nolo contendere* to a charge of B.U.I., D.U.I. or Driving While Impaired (hereafter "D.W.I.") (even if expunged) in this or any other jurisdiction
- The applicant has previously entered into any Diversion or agreement for deferred prosecution in lieu of further criminal proceedings for a charge of B.U.I., D.U.I. or D.W.I. in this or any other jurisdiction
- The case involved personal injury to another or a death is involved
- The applicant is charged with additional criminal offenses, other than traffic, in addition to B.U.I.
- The applicant's driver's license is revoked, suspended or otherwise restricted at the time of offense
- The applicant holds a Commercial Driver's License.
- The applicant is on Probation or Parole for other offenses in this or any other jurisdiction
- The applicant refused a breath or blood alcohol test
- The applicant was uncooperative with officers
- The applicant has previously been granted a Diversion for any offense in Jefferson County

PROCESS FOR APPLICATION

The B.U.I. Diversion Application is available through the Jefferson County Attorney's Office.

- **The Defendant must complete the Diversion Application.**
- **The Defendant must obtain a Drug and/or Alcohol Evaluation.**
- **The Defendant must then submit the following to the Jefferson County Attorney's Office:**
 - (1) **Completed Diversion Application;**
 - (2) **Alcohol Evaluation; and,**
 - (3) **\$100.00 NON-REFUNDABLE Application Fee to the Jefferson County Attorney's Office.**
- The Defendant shall pay a **\$500.00** B.U.I. Diversion Fee at the execution of the Diversion Agreement
- Any *additional* charges or violations requested for diversion *will increase* the Diversion Fee
- Any fees or costs must be made by cashier's check or money order made payable to Jefferson County. **CASH OR PERSONAL CHECKS WILL NOT BE ACCEPTED.**
- The Defendant may be required to participate in an interview with the Diversion Coordinator and/or the Jefferson County Attorney
- The Defendant shall give such information as may be necessary to determine his/her suitability for Diversion, including information, which would otherwise be confidential and/or privileged

CONSIDERATIONS

The following factors will be considered in determining whether diversion of the Defendant is in the best interest of justice and will be of benefit to the Defendant and the community:

- All circumstances surrounding the offense
- Level of blood or breath alcohol concentration
- Whether the Defendant, at the time of the offense, had liability insurance in force
- Any special characteristics or circumstances of the Defendant, including prior record
- The probability that the Defendant will cooperate and benefit from a Diversion
- The appropriateness of Diversion to meet the needs of the Defendant and the community
- Recommendations of law enforcement agency, County Attorney's Office and/or assessment evaluator

DETERMINATION

The Jefferson County Attorney reserves the right to accept or reject the Defendant's suitability for a Diversion. Once a Defendant is denied a Diversion, an application will not be reconsidered unless material circumstances have arisen which, with the exercise of reasonable diligence, were not initially brought to the attention of the Jefferson County Attorney's Office.

AGREEMENT

If the Defendant is found suitable for the Diversion Program, all parties shall sign the written B.U.I. Diversion Agreement, Stipulation of Facts, Stay of Proceedings and Motion/Order to Dismiss. This Agreement shall contain:

- A Waiver of all constitutional and statutory rights to a speedy trial, all rights to a jury trial and a stipulation as to the facts of the case
- A specified term of Diversion
- An agreement that the Defendant shall not violate any laws of the United States or any State, or ordinances of any City, or resolutions of any County
- An agreement that the Defendant shall report to the County Attorney's Office, or to any other person at the time he/she may be Ordered to do so by the Court, or anyone so designated by the Court
- An agreement that the Defendant maintains owner or non-owner liability insurance and provides verification that said insurance is in effect during the term of Diversion
- Payment of all Court Costs, Fines, Diversion Fees, and Attorney Fees, if applicable, are **required at the time** the signed Diversion paperwork is submitted to the County Attorney's Office
- Participation in Alcohol Information School and for the costs associated with said program.
- Any special conditions, which may include any of the following:

Maintenance of gainful employment

Participation in **any** other recommended program/counseling/outpatient treatment

Completion of a boater safety education course of instruction

Proof or Completion Certificates for each required program

Other conditions as determined by the Diversion Coordinator or Jefferson County Attorney and as set forth in the Agreement.

EFFECT

Upon the Applicant entering into the B.U.I. Diversion Program, the criminal proceeding shall be suspended by appropriate order of the Court. When the Applicant successfully fulfills the terms and conditions of Diversion, the Jefferson County Attorney shall move for the charges to be dismissed with prejudice.

If the Applicant fails to fulfill the terms and conditions of the B.U.I. Diversion Agreement, the Jefferson County Attorney will terminate the Agreement and provide notice of the termination.

After an appropriate hearing, the Court, upon finding the Applicant has failed to fulfill the terms of the Agreement shall order Diversion terminated. Criminal proceedings on the original Complaint shall be resumed with trial to the court, without a jury, on stipulated facts.

IF YOU ARE APPLYING FOR A B.U.I. DIVERSION

The Applicant has the responsibility to do the following prior to turning in an application for diversion:

- Obtain an Alcohol Evaluation, at your cost, at one of the approved agencies
- Sign a Release of Information at the Agency and they will provide a copy of the Evaluation to the Jefferson County Attorney's Office
- Obtain a copy of the Evaluation from the Agency and provide it to the Jefferson County Attorney's Office along with your Application and \$100.00 Application Fee

It is the applicant's responsibility to obtain a copy of the evaluation from the agency so that it may be submitted with the application.

A. Approved Agencies for ALCOHOL Evaluations:

D.C.C.A.
3312 Clinton Parkway
Lawrence, Kansas 66044
(785) 841-4138 or 841-2880

Heartland Clinical Consultant
2706 Iowa, Suite F
Lawrence, Kansas 66046
(785) 842-7296

Heartland Clinical Consultant
5040 SW 28th, Suite E
Topeka, Kansas 66614
(785) 272-2266 or 272-2279

The Guidance Center
1102 Walnut Street
Oskaloosa, Kansas 66066
785-863-2929

Larry Sump
Wamego, Kansas
1-800-386-3119

Alcala Counseling Services
1243 S.W. Topeka Blvd., #B
Topeka, Kansas 66612
(785) 783-7691
(English & Spanish speaking)

Sunflower Alcohol Safety Project
112 S.E. 7th Street
Topeka, Kansas 66603
(785) 232-1415

IN THE DISTRICT COURT OF JEFFERSON COUNTY KANSAS

STATE OF KANSAS,)
Plaintiff,)
)
vs.)
)
_____,)
Defendant.)
_____)

Case No. _____

APPLICATION FOR B.U.I. DIVERSION PROGRAM

(The \$100.00 Non-Refundable Application Fee MUST accompany this Application)

You must complete every blank. If a question does not apply to you, please write "N/A"

Name _____ Phone _____

Address _____ Phone _____

City/State/Zip _____ Phone _____

Date of Birth: _____

City, County, & State of Birth _____

Male - Female -

Social Security No. _____

Driver's License No. _____ Issuing State _____

If applicant is a Juvenile:

Mother's Name _____

Father's Name _____

Address _____

Address _____

Mother's Phone _____

Father's Phone _____

Case Number _____ Charge(s) _____

Date of Next Court Appearance _____

Does an attorney represent you? – Yes – No

If yes, is your attorney – Appointed – Retained

If yes, please list your attorney's name, address, and phone number

Please list the name, addresses and relationship to your of any other adult you live with:

Are you responsible for any Minor Dependents?

– Yes – No

If yes, please list:

Names

Ages

Do you live in Jefferson County, Kansas? – Yes – No

If yes, please list your length of residence _____

If no, please list your County of residence _____

List all states other than Kansas, where you have lived:

City _____

City _____

State _____

State _____

Dates of Residence _____

Dates of Residence _____

City _____

City _____

State _____

State _____

Dates of Residence _____

Dates of Residence _____

Relationship, if any, to victim of this crime

Present Employment

Title and Occupation _____
Employer _____ Telephone _____
Address _____
Dates employed _____
Salary _____ per hour week bi-weekly monthly yearly

Present Sources of Income:

Defendant's Employment	\$ _____	Per Month
Spouse's Employment	\$ _____	Per Month
Unemployment Compensation	\$ _____	Per Month
Worker's Compensation	\$ _____	Per Month
Disability Income	\$ _____	Per Month
Public Assistance	\$ _____	Per Month
Other - Type _____	\$ _____	Per Month
Other - Type _____	\$ _____	Per Month
Other - Type _____	\$ _____	Per Month

Employment History

Please list all previous employment for the past six years. Begin with the current/most recent employer. If you need additional space, use a blank sheet of paper.

Title and Occupation _____
Employer _____ Telephone _____
Address _____
Dates employed _____
Reason for leaving _____

Title and Occupation _____
Employer _____ Telephone _____
Address _____
Dates employed _____
Reason for leaving _____

Title and Occupation _____
Employer _____ Telephone _____
Address _____
Dates employed _____
Reason for leaving _____

Education and Vocational Training

Elementary _____
Junior High _____
High School _____
Vocational School _____
College _____
Graduate _____

Highest Year/Degree Achieved _____
Highest Year/Degree Achieved _____
Highest Year/Degree Achieved _____
Highest Year/Degree Achieved _____

Military Service

– Yes – No

If Yes, Branch _____
Dates of Service _____
Date of Discharge _____
Type of Discharge _____

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: _____

Please all prior Juvenile and Adult incidents, Arrests, Citations, Orders to Appear, Prosecutions, Convictions, Expungements or Deferred Prosecution Agreements in Kansas or any other jurisdiction, including those not resulting in formal charges or convictions. Please Include date of incident involved, agency, charge and disposition.

Please list all juvenile and adult traffic incidents, B.U.I, D.U.I. or D.W.I. Arrests, Diversions, Deferred Prosecutions, Convictions and Expungements in Kansas or any other jurisdiction, including those not resulting in formal charges or convictions. Please include date of arrest, citation or incident, arresting or ticketing agency, charge and disposition.

List any diversions you have received in the past five (5) years.

State any mitigating facts concerning your current charges that you believe might excuse your actions.

Explain why you feel you could successfully complete the Diversion Program. This section must be completed in the applicant's own handwriting or the application will be denied.

State in detail the facts, which caused charges to be filed. Please use the back of this page if necessary. This section must be completed in the applicant's own handwriting or the application will be denied.

If you are under 21 years of age, and the charge involved alcohol:

Where and How did you obtain the alcohol _____

Were you required to show I.D. _____ Did you use your real I.D. _____

If you were arrested, was a bond posted? Yes _____ No _____ If yes, by whom _____

Personal References

You are not required to provide the Jefferson County Attorney's Office with any personal references. You may do so if you feel the person has information that would assist in evaluating your application for Diversion.

If requested by the applicant, the Jefferson Count Attorney's Office will contact any personal reference listed. Personal references may also provide a letter instead of personal contact. Letters should be attached to the application.

Name _____ Telephone _____

Address _____

Relationship to Defendant _____

Are you requesting the Jefferson County Attorney's Office contact this reference? – Yes – No

Name _____ Telephone _____

Address _____

Relationship to Defendant _____

Are you requesting the Jefferson County Attorney's Office contact this reference? – Yes – No

Name _____ Telephone _____

Address _____

Relationship to Defendant _____

Are you requesting the Jefferson County Attorney's Office contact this reference? – Yes – No

I hereby apply for status as a participant in the B.U.I. Diversion Program and request that the Jefferson County Attorney temporarily delay criminal proceedings, including trial, against me in order to permit evaluation and 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 Jefferson 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 Jefferson County Attorney's Office.

I understand if the Jefferson County Attorney's Office is required to make a decision concerning my application without being allowed an opportunity to make a full and complete review, my application and 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 Jefferson County Attorney.

A false answer 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 Jefferson County Attorney will resume prosecution against me on the original charges.

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 Diversion and the Agreement will be revoked. I agree that a criminal justice report, including, but not limited to, a Department of Justice report; Kansas Bureau of Investigation 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 Jefferson County Attorney's Office will not consider the application.

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 B.U.I. Diversion Program is true and correct.

Date _____

Applicant's Signature

I authorize the Jefferson 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 Jefferson County Attorney's Office with any information they request. I further authorize the Jefferson County Attorney's Office to contact my liability insurance carrier and authorize them to release information.

Date _____

Applicant's Signature

I authorize the Jefferson County Attorney's Office to release all records in their possession, including but not limited to, criminal history information and investigation reports to _____

_____, or any other evaluating agency which may participate in evaluating me during the application process.

Date _____

Applicant's Signature

Subscribed and sworn to before me on this _____ day of _____, 20____.

Notary Public

My Appointment Expires:

IF YOUR SIGNATURE IS NOT NOTARIZED THE APPLICATION WILL BE DENIED