

IN THE SUPREME COURT OF THE STATE OF KANSAS

KANSAS CROSSROADS FOUNDATION)	
and KARENA WILSON;)	
)	
Petitioners,)	
)	
)	
vs.)	Original Action No. _____
)	
LARRY MARKLE, in his official capacity)	
as County Attorney of Montgomery County;)	
)	
)	
Respondent.)	
_____)	

PETITION FOR WRIT OF MANDAMUS

Petitioners Kansas Crossroads Foundation (“KCF”) and Karena Wilson hereby respectfully seek a Writ of Mandamus requiring Respondent Larry Markle, County Attorney for Montgomery County, Kansas to (1) create written diversion policies and guidelines that fully and accurately describe the county’s entire diversion program, particularly all eligible charges and eligibility requirements, (2) provide written notice of that diversion program, and the policies and guidelines related to the program, to all defendants charged in his jurisdiction, prior to conviction or other disposition, and (3) provide a diversion conference to those defendants who are offered diversion, with the defendant present and an opportunity for the defendant to be represented by counsel. Respondent has a clearly defined legal duty to inform each defendant, in writing, about his diversion policies and guidelines under K.S.A. §22-2907(3), which means that the policies and guidelines must fully and accurately describe the program in the first place. Moreover, Respondent has an obligation to provide in-person diversion conferences to defendants offered diversion under K.S.A. § 22-2907(2).

Petitioners seek this order because Respondent Markle has failed to abide by the above-referenced procedural requirements in K.S.A. §22-2907. Respondent's persistent failure to comply with K.S.A. §22-2907 has constituted and will continue to constitute the unlawful performance of public duties and the unlawful exercise of public office. Further, Respondent's failures are representative of a trend of noncompliance that spans Judicial Districts and impacts untold numbers of defendants in dozens of counties across Kansas. *See Exhibit A.* Accordingly, Petitioners respectfully request that the Court review this case and grant a writ of mandamus at its earliest convenience.

In support of their petition, Petitioners allege and state as follows:

I. JURISDICTION

1. This Court has original jurisdiction over Petitioners' mandamus action under K.S.A. 60-801 *et seq.*, Article III, § 3 of the Kansas Constitution, and Rule 9.01(a) of the Rules of the Supreme Court.
2. In accordance with Rule 9.01(a) of the Rules of the Supreme Court of Kansas, Petitioners are filing a Memorandum of Points and Authorities, together with documentary evidence supporting the facts alleged.
3. An original action in this Court for mandamus is necessary because adequate relief is not available to Petitioners in the district courts. *See Sup. Ct. R. 901 (b).* Further, access to diversion is a matter of great public importance and resolution in this Court will provide speedy adjudication of these important questions and provide much needed guidance to prosecutors across the state. Given the importance of fairness in diversion access and the widespread

noncompliance with the statute provisions, adequate relief is not available in the district court.

II. PARTIES

4. Petitioner Kansas Crossroads Foundation (“KCF”) is a 501(c)(3) nonprofit organization. KCF is incorporated in Kansas and is headquartered in Neodesha, Wilson County, Kansas.
5. Petitioner KCF provides ministry and support services to the rural poor of Southeast Kansas, specifically to individuals recovering from drug and alcohol addiction. A number of defendants who were prosecuted and confined in Montgomery County on drug or alcohol related offenses participate in KCF's addiction recovery program. As a result, KCF spends significant staff and volunteer time, as well as financial resources, helping defendants convicted in Montgomery County comply with the terms of their parole and reconstruct their lives after long periods of incarceration.
6. KCF often must divert time and resources away from other rehabilitation services to help low-level offenders manage their lives post-release. Petitioner KCF provides room and board to individuals who no longer have stable housing because of their time in jail. Moreover, KCF spends significant time and money transporting clients to and from Fredonia and Independence to attend meetings with parole officers and undergo court mandated drug testing. Finally, KCF must dedicate substantial resources to help defendants who have lost proof of identity and citizenship documents during their incarceration to rebuild their identity. KCF has had to divert significant time and resources

away from providing critical drug rehabilitation services in order to offer prison re-entry assistance to diversion eligible defendants who were not able to take advantage of diversion because of Respondent's failures.

7. Petitioner Karena Wilson is a resident of Montgomery County, Kansas who was prosecuted by the Respondent and is serving a probation sentence.
8. Ms. Wilson is a 19 year old resident of Independence, Kansas who was prosecuted in Montgomery County on charges of theft of property under \$1,500. In or around mid-June 2017, Ms. Wilson was arrested for breaking into a soda machine outside of a liquor store in Independence, Kansas. Ms. Wilson pled guilty to three counts of misdemeanor theft and received one year probation. As a result, Ms. Wilson is required to pay a fine of more than \$2,000 which she has struggled to afford despite having a job. Ms. Wilson was never informed in writing about Montgomery County's diversion policy. She was also not told about program verbally. Ms. Wilson has no prior convictions, and under Markle's policy and past practice, likely would have been eligible to apply for diversion in Montgomery County. Thus both Petitioners have standing under Kansas law to assert their interest.
9. Respondent Larry Markle is the County Attorney for Montgomery County. He may be served at 300 East Main Street Independence, Kansas 67301.

III. STATEMENT OF FACTS

10. Mr. Markle was appointed to serve as the Montgomery County Attorney in 2006.

11. Mr. Markle currently maintains some documents concerning the Montgomery County diversion program and has maintained a policy throughout his tenure as Montgomery County Attorney. *See Exhibit B; Exhibit C.*
12. Mr. Markle does not provide written notice of the Montgomery County diversion program to defendants charged with diversion-eligible offenses. Further, he only provides verbal notice of the Montgomery County diversion program to eligible defendants if they appear in court.
13. Mr. Markle also consistently fails to provide statutorily required diversion conferences in misdemeanor cases to defendants who are offered diversion.
14. Mr. Markle's current policies would provide defendants little insight into whether they would be eligible for diversion even if Markle did provide them.
15. When Ms. Wilson was charged with Class A Misdemeanor Theft as an 18-year-old, first-time offender, she was not provided with written notice of Montgomery County's diversion program. Moreover, Mr. Markle did not inform Wilson about Montgomery County's diversion program during any of her court appearances even though she was charged with a crime Respondent would consider diversion under terms of his current policies. *See Exhibit B.*
16. KCF has also been injured by Mr. Markle's failure to provide its clients with access to diversion. Due in part to Mr. Markle's refusal to comply with the diversion statute, KCF has been forced to counsel more clients in Montgomery County jail and devote resources towards helping them meet probation and parole obligations.

17. In an effort to resolve the matter without resorting to litigation, the undersigned counsel, on behalf of Petitioners, contacted Mr. Markle on May 30, 2018. *See Exhibit D.* Mr. Markle replied to Petitioners, declining to take action to resolve the matter and directing Petitioners to “take whatever legal action you feel appropriate.” *See Exhibit E.*

IV. GROUNDS FOR RELIEF

18. Here, Respondent has a clear statutory duty to create written policies and guidelines regarding his diversion program, and further to provide eligible defendants with written notice of those policies and guidelines under K.S.A. §22-2907(3). Further, Respondent has a clear statutory duty to provide defendants who have been offered diversion with an in-person diversion conference. That duty is also set forth in K.S.A. §22-2907(2), which provides “such policies and guidelines shall provide for a diversion conference and other procedures in those cases where the district attorney elects to offer diversion in lieu of further criminal proceedings on the complaint.”

V. RELIEF SOUGHT

19. For the forgoing reasons, and those stated in the supporting exhibits, Petitioners seek the following relief:

- a. An order compelling Respondent to create diversion policies and guidelines that fully and accurately describe the entire diversion program, including what charges are eligible and what factors are disqualifying.

- b. An order compelling Respondent to provide written notice of diversion to all defendants in accordance with Respondent's clearly defined legal duty under K.S.A. §22-2907(3).
- c. An order compelling Respondent to provide diversion conferences to all eligible defendants in accordance with Respondent's clearly defined legal duty under K.S.A. §22-2907 (2) and (3).
- d. Such other relief as this Court deems just and proper.

Dated: June 8, 2018

Respectfully submitted,

/s/ Lauren Bonds
Lauren Bonds, #27807
ACLU FOUNDATION OF KANSAS
6701 W. 64th Street, Suite 210
Overland Park, KS 66202
T: (913) 490-4114
F: (913) 490-4119
lbonds@aclukansas.org

/s/ Somil Trivedi
Somil Trivedi*
American Civil Liberties Union Foundation
915 15th St., NW
Washington, DC 20005
Tel. (202) 715-0802
strivedi@aclu.org
**pro hac vice application pending*

*Counsel for Petitioners Kansas Crossroads
Foundation and Karena Wilson*

CERTIFICATE OF SERVICE

The undersigned person hereby certifies that a true and correct copy of the above and foregoing document was placed with a courier service on June 8, 2018 for delivery to:

Larry Markle
Montgomery County Attorney
300 East Main Street
Independence, KS 67301

/s/ Lauren Bonds
Lauren Bonds

IN THE SUPREME COURT OF THE STATE OF KANSAS

KANSAS CROSSROADS FOUNDATION and KARENA WILSON;)	
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Petitioners,)	
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vs.)	Original Action No. _____
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LARRY MARKLE, in his official capacity as County Attorney of Montgomery County;)	
)	
Respondent.)	

MEMORANDUM OF POINTS AND AUTHORITIES

Come now Petitioners and submit the following Memorandum in support of their Petition for Writ of Mandamus filed herewith:

INTRODUCTION

Petitioner Karena Wilson is a 19 year old from Independence, Kansas in Montgomery County. In June of last year, Ms. Wilson was driving around Independence when a person she was driving got out of the car and broke into a soda machine, stealing the coin collection boxes inside. Despite later assisting the police to help apprehend the man, Ms. Wilson was herself charged with theft. Between June and December, no one at the Montgomery County Attorney's Office, including Respondent County Attorney Larry Markle, provided her with written notice of the MCAO's diversion policies and guidelines, much less offered her the option to apply.

Instead, she took a plea deal. At the time of the arrest, she had no criminal record. Now she has a criminal record and one year of probation.¹

Petitioner Kansas Crossroads Foundation (“KCF”) provides spiritual, drug counseling, and job placement services to individuals impacted by poverty and the criminal justice system in Southeastern Kansas, including Montgomery County. Jack Kyle founded KCF. Mr. Kyle and his employees spend significant time and money providing housing, food, and other post-release assistance to recently incarcerated individuals; connecting clients with a positive, drug-free community; and helping formerly addicted people find stable employment. Mr. Kyle would like to expand the employment component of KCF’s work to better support the Kansas economy, but has been unable to do so because of so much need for direct services for clients who are in jail or on probation instead of benefitting from diversion.

Under K.S.A. § 22-2907 *et seq.* (hereinafter, the “Kansas Diversion Statute”), district and county attorneys are ***required to maintain written policies and guidelines describing their diversion programs, and must provide written notice of those policies and guidelines to all criminal defendants.*** K.S.A. § 22-2907(2) and § 22-2907(3). These policies ***must provide for, and, where the defendant is offered diversion, the prosecutor’s office must also provide, a diversion conference at which defendants must be present and have a meaningful opportunity to be represented by counsel.*** *Id.* The purpose of these requirements is to give criminal defendants a meaningful opportunity to avail themselves of diversion, which the people of Kansas, via their Legislature, have determined to be an important component of a healthy, cost-effective criminal justice system. *See State v. Greenlee*, 620 P.2d 1132, 1138 (Kan. 1980)

¹ Ms. Wilson now has a pending theft charge in Neosho County that did not exist at the time she was arraigned or made initial appearances in her Montgomery County case.

("[T]he objective sought by the legislature would appear to be to encourage a uniform procedure to provide an alternative to formal conviction."); Kansas House Judiciary Committee Report on H.B. 3130 at 48 ("The Committee has examined the pretrial diversion approach and believes that such a program should be available in Kansas to reduce the number of persons committed to institutions."); *see also* XXXI Kan. Op. Att'y Gen. 32 (1997) (plain language of the Diversion Statute "indicate(s) the Legislature's intent to provide for diversion programs throughout the State and to create uniform requirements for prosecutors to follow in carrying out those programs" and that "the purpose of the notification requirement is to safeguard a defendant from discrimination by a prosecutor"); XXXI Kan. Op. Att'y Gen. 15 (1997) (noting that the *Greenlee* court "cautioned the district attorney to take immediate action to bring his program into compliance with the [diversion] statutes[]" and determining that the diversion program in question "must comply with the statutory diversion requirements set forth in K.S.A. 22-2906 *et seq.*").

Mr. Markle is in open violation of the Kansas Diversion Statute. First, based on his response to a Kansas Open Records Act request, Mr. Markle only has standalone, written diversion policies related to traffic infractions and DUIs, even though he offers diversion for more charges than those. *See* Exhibit B. There is a document called "County Attorney's Policies for Diversion" which lists some eligibility requirements for certain other charges, but the document does not contain all eligible charges or what criminal history (e.g., what type or amount of prior arrests, convictions, or diversions) is disqualifying. For example, there is no mention of felonies in Mr. Markle's policies, even though the office has offered a (very low) number of felony diversions in the past. *Id.* It is at best unclear whether Ms. Wilson's charges and circumstances are eligible or not. Further, as noted, these documents were only produced in

response to a Kansas Open Records Act request for a cost of \$20.75; they are not provided in writing or otherwise to criminal defendants. Petitioners' counsel's investigation also indicates that Mr. Markle does not provide the statutorily required diversion conference for misdemeanor diversions, in the rare instances in which he offers them at all. In all these ways, Mr. Markle is violating the Kansas Diversion Statute.

These violations extend beyond the named Respondent to other district and county attorneys. *See, e.g.*, Exhibit A (collecting responses to KORA requests from other county and district attorneys). Their failure to comply with Kansas law has negatively impacted Petitioners and is likely to impact defendants and service providers across the state. Defendants who could have charges dismissed instead lose their liberty via jail time and/or probation restrictions. Moreover, first-time offenders now have a criminal record, and with it tens of thousands of negative state and federal "collateral consequences" like restrictions on employment, housing, voting, and professional licenses that make it difficult to re-enter society and contribute to the Kansas economy.² And, because diversion often comes with mental health, substance abuse, and other treatment that may not be available in jail or on probation, successful programs in other states show that diversion recipients are less likely to commit crimes again.³

² *See* National Inventory of Collateral Consequences of Conviction, *available at* <https://niccc.csgjusticecenter.org/search/?jurisdiction=20> (last accessed June 7, 2018); Catherine E. Forrest, *Collateral Consequences of a Criminal Conviction: Impact on Corrections and Reentry*, *Corrections Today* (January/February 2016), *available at* <https://www.ncjrs.gov/pdffiles1/nij/249734.pdf> (last accessed June 7, 2018).

³ For example, in neighboring Oklahoma, a Smart on Crime initiative placed non-violent offenders with mental health or addictive disorders into a variety of diversion programs, which, after a three-year investment in cost overruns, are now saving the state \$123 million a year. *See* Richard D. Schneider, *Mental Health Courts and Diversion Programs: A Global Survey*, 33 *Int'l J. Law Psychiatry* 201, 202 (2010). According to an ACLU of Kansas report, if Respondent's county increased its use of felony diversion to meet the national average of 9% of all charges just next year, the prison population would decrease by roughly 22 people, and those counties' taxpayers could save over \$200,000. *See* ACLU of Kansas, *Choosing Incarceration* (2018),

Accordingly, Petitioners respectfully request that this Court issue a Writ of Mandamus requiring compliance with the above-referenced provisions of the Kansas Diversion Statute, as outlined in the Relief Sought in the attached Petition.

ARGUMENT

I. MANDAMUS IS APPROPRIATE IN THIS CASE

a. Legal standard

An original action in mandamus is an appropriate vehicle for compelling a public official such as Respondent Markle to perform a required action. K.S.A. § 60-801 (mandamus is “a proceeding to compel some inferior court, tribunal, board, or some corporation or person to perform a specified duty, which duty results from the office, trust, or official station of the party to whom the order is directed, or from operation of law.”); *see also Legislative Coordinating Council v. Stanley*, 957 P.2d 379, 382 (Kan. 1998). “The right to mandamus relief requires the fulfillment of three conditions: (1) that the petitioners have a clear right to relief; (2) that the respondent's duty is clearly defined; and (3) that the petitioners have no other adequate remedy.” *Merryfield v. Kansas Soc. & Rehab. Services*, 253 P.3d 386 (Kan. Ct. App. 2011).

b. Petitioner has suffered an injury and has a clear right to relief

Mandamus petitioners establish a clear right to relief by showing “an injury or interest specific and peculiar to himself, and not one that he shares with the community in general.” *Mobil Oil Corp. v. McHenry*, 436 P.2d 982, 1007 (Kan. 1968). In other words, petitioners must establish standing to sue. “Whether or not a private individual has brought himself within the

narrow limits of the well-established rule must be determined from the particular facts of each individual case.” *Id.*

Ms. Wilson and KCF have both shown particular and specific injuries. Ms. Wilson did not receive written notice of Montgomery County’s diversion policies and guidelines. She believes she was likely diversion eligible but, because of Mr. Markle’s failure, she was never able to explore that option.⁴ Instead, she now has a criminal conviction.

KCF has also alleged a particularized, unique injury. At least in part because of Mr. Markle’s failures to give defendants their due process under the Diversion Statute, KCF has been forced to counsel more clients in the Montgomery County jail, rather than expand its employment programs and, with it, economic development in Southeast Kansas.

This Court has also considered the public importance of the question at hand to inform the standing question. “*Turning to standing*, this court has allowed original actions in mandamus when the petitioner demonstrates a need ‘to secure a speedy adjudication of questions of law for the guidance of state officers and official boards in the discharge of their duties.’” *Ambrosier v. Brownback*, 375 P.3d 1007, 1010 (Kan. 2016) (quoting *Kansas Bar Ass’n v. Judges of the Third Judicial Dist.*, 14 P.3d 1154 (Kan. 2000) (emphasis added)).

Petitioners are seeking exactly that: speedy adjudication of a question of statutory construction to guide district and county attorneys in the discharge of their duties under the Kansas Diversion Statute. As this Court is well aware, the Kansas criminal justice system processes thousands of criminal defendants a day. Every day that this question is not resolved, more of these individuals across the state are being deprived of their rights to complete and

⁴ Even if Ms. Wilson was not ultimately diversion eligible under Mr. Markle’s requirements, Ms. Wilson would have been in a better position to negotiate for inclusion, or negotiate her plea deal, had she been made aware in writing of the diversion program, as required by statute.

accurate written notification of diversion programs and, where eligible, a diversion conference with counsel present. This Court's immediate attention is warranted.

c. The Kansas Diversion Statute creates a clearly defined legal duty, and Mr. Markle is illegally ignoring it

To be compelled to act via mandamus, the respondent official must have a clear legal duty to take the action at issue, and the required action must be strictly ministerial in nature, i.e., an action the official is clearly obligated to perform in a prescribed manner. *See Kan. Med. Mut. Ins. Co. v. Svaty*, 244 P.3d 642 (Kan. 2010); *Schmidlien Elec., Inc. v. Greathouse*, 104 P.3d 378, 394 (Kan. 2005). While the content of a particular county's diversion policy and the ultimate decision to grant diversion are discretionary, prosecutors have a clearly prescribed duty to (1) create a program with written policies and guidelines that fully and accurately describe the program, including what charges are eligible and criminal history is disqualifying, (2) provide written notice of the program, including its policies and guidelines, to all defendants, and (2) provide an in-person diversion conference, with the opportunity for counsel to attend, to those offered diversion.

The Kansas Diversion Statute states that district attorneys "shall" perform these functions. K.S.A § 22-2907(3) ("Each defendant shall be informed in writing of the diversion program and the policies and guidelines adopted by the district attorney."); *id.* at § 22-2907(2) and (3) ("Such policies and guidelines shall provide for a diversion conference and other procedures in those cases where the district attorney elects to offer diversion [and] [i]n all [such] cases, the defendant shall be present and shall have the right to be represented by counsel at the diversion conference with the district attorney."). This wording is strong if not dispositive evidence of a clear legal duty.

Even if the plain language is not dispositive, “[s]hall’ provisions affecting a party’s rights are more likely to be seen as mandatory[,]” while those that merely “fix[] a mode of proceeding and a time within which an official act is to be done and is intended to secure order, system and dispatch of the public business” are “discretionary.” *State v. Raschke*, 219 P.3d 481, 485, 487 (Kan. 2009). The *Raschke* opinion highlighted a statute and question analogous to ours: “We have also held that a statutory provision requiring officers to provide oral and written notice to individuals suspected of driving under the influence before administering a breath test is mandatory.” *Id.* at 486-87 (citing cases interpreting the notice provision of K.S.A. 1997 Supp. 8-1001).

Given the statute’s clear statutory language requiring complete and accurate written notice and a diversion conference with counsel present—as well as the fact that those provisions impact defendants’ rights—Mr. Markle cannot argue that the legal duty here is unclear. He is simply choosing to ignore it.

d. There is no other adequate remedy for Petitioners or others in their position, and even if there were, mandamus is appropriate in a case of public importance like this one

Mandamus is appropriate for petitioners who lack judicial redress through a plain and adequate remedy at law. *Schmidtlien Elec., Inc.*, 104 P.2d 378. This relief can only be obtained through writ of mandamus. Criminal defendants cannot compel a prosecutor to perform his statutorily mandated diversion duties in a criminal appeal, as the ultimate decision to grant diversion is discretionary. *See Greenlee*, 620 P.2d at 1138. Nor do these Petitioners have an express private right of action under K.S.A § 22-2907 to bring affirmative civil litigation to compel performance.

And even if there were an adequate alternative remedy at law—which there is not—this Court still may (and should) take up this petition in order to provide clear guidance to Kansas district and county attorneys on a matter of vital public importance. *See Wilson v. Sebelius*, 72 P.3d 553, 556 (Kan. 2003) (“Numerous prior decisions have recognized mandamus is a proper remedy where the essential purpose of the proceeding is to obtain an authoritative interpretation of the law for the guidance of public officials in their administration of the public business, notwithstanding the fact that there also exists an adequate remedy at law.”).

II. THIS COURT MAY AND SHOULD EXERCISE ORIGINAL JURISDICTION

Though mandamus petitions may be filed in a district court, *see, e.g., Krallman v. Hecht*, 143 P.3d 421 (Kan. Ct. App. 2006), this Court may exercise original jurisdiction for proceedings in mandamus as well, *see Kan. Const. art. III, § 3*. “To support an original action in this court, a petitioner is required to state ‘the reason why the action is brought in the appellate court instead of in the district court.’” *Ambrosier*, 375 P.3d at 1009 (citing Kansas Supreme Court Rule 9.01(b)). “[J]udicial economy, the need for speedy adjudication of an issue, and avoidance of needless appeals” are all considerations that augur in favor of the Supreme Court exercising original jurisdiction. *Id.*; *see Legis. Coordinating Council v. Stanley*, 957 P.2d 379, 387 (Kan. 1998) (“This court will entertain a mandamus action if the issue is a matter of great public interest and concern.”).

As noted above, this Court has also consistently invoked its original jurisdiction for mandamus petitions that present an “important public question of statewide importance appropriate for this court’s attention in the first instance.” *Ambrosier*, 375 P.3d at 1010. Finally, mandamus is the “proper remedy,” and original jurisdiction in the Supreme Court is appropriate, where “the essential purpose of the proceeding is to obtain an authoritative interpretation of the

law for the guidance of public officials in their administration of the public business,” and where similar cases statewide are likely to present the same questions. *Manhattan Bldgs., Inc. v. Hurley*, 643 P.2d 87, 93 (Kan. 1982); *State ex rel. Stephan v. Finney*, 836 P.2d 1169, 1175 (Kan. 1992) (using same language); see *State ex rel. Smith v. State Highway Comm’n*, 295 P. 986, 990 (Kan. 1931) (“The use of mandamus to secure a speedy adjudication of questions of law for the guidance of state officers and official boards in the discharge of their duties is common in this state.”); see also *State ex rel. Schmidt v. Moriarty*, 2014 Kan. LEXIS 570 (2014) (inconsistent application of state marriage-license requirements by statewide officials merited original jurisdiction).

Every factor this Court has articulated in favor of exercising original jurisdiction exists here. First, this is an urgent matter that requires immediate redress and also happens to be a straightforward question of statutory interpretation. Filing in the lower courts only to appeal the legal question and inevitably end up in this court several months from now will be inefficient and delay the resolution of a question that could impact countless Kansans.

Second, it bears repeating this is an important public question affecting the lives and liberty of thousands of current and future criminal defendants in Kansas. Requiring written notice of diversion ensures that defendants are fully informed of their options under Kansas law, and that prosecutors do not arbitrarily withhold the opportunity to apply to the program or restrict the opportunity to apply only to defendants who are represented by counsel. Pro se defendants without previous contact with the criminal justice system likely will not know what diversion is, much less whether they are eligible to apply for it under their elected prosecutor’s guidelines. K.S.A. § 22-2907’s written notice requirement ensures all defendants have an equal opportunity to apply for diversion, regardless of whether they can afford counsel.

Diversion conferences are similarly a matter of sufficient public concern to warrant the original jurisdiction of the court. Diversion conferences provide defendants with an opportunity to learn more about the benefits and costs of entering diversion, and negotiate the terms of their diversion agreements. Participation in the conference is critical to the success of the defendant, and the opportunity to be represented ensures that defendants fully understand the proceedings.

Prosecutors across the state are either entirely failing to comply with these provisions, or, at best, are complying with them in wildly inconsistent ways. For the benefit of criminal defendants statewide, as well as the fair, efficient, consistent administration of criminal justice as a whole, this Court should exercise original jurisdiction and issue the requested writ.

III. CONCLUSION

For the reasons set forth above, Petitioners respectfully request that the Court issue a writ of mandamus directing Respondent to create written policies and guidelines that provide sufficient notice of the diversion program's requirements for all charges, actually provide written notification of those policies and guidelines to defendants, and provide a diversion conference to all defendants to whom diversion is offered pursuant to K.S.A § 22-2907.

Respectfully submitted,

/s/ Lauren Bonds
Lauren Bonds, #27807
ACLU FOUNDATION OF KANSAS
6701 W. 64th Street, Suite 210
Overland Park, KS 66202
T: (913) 490-4114
F: (913) 490-4119
lbonds@aclukansas.org

/s/ Somil Trivedi
Somil Trivedi*
American Civil Liberties Union Foundation

915 15th St., NW
Washington, DC 20005
Tel. (202) 715-0802
strivedi@aclu.org
**pro hac vice application pending*

Counsel for Petitioners

CERTIFICATE OF SERVICE

The undersigned person hereby certifies that a true and correct copy of the above and foregoing document was placed with a courier service on June 8, 2018 for delivery to:

Larry Markle
Montgomery County Attorney
300 East Main Street
Independence, KS 67301

/s/ Lauren Bonds
Lauren Bonds

Exhibit A

OFFICE OF
ATCHISON COUNTY ATTORNEY
P.O. BOX 75
ATCHISON, KANSAS 66002

GERALD R. KUCKELMAN
COUNTY ATTORNEY



PHONE
913-804-6020
FAX
913-367-8221

December 18, 2017

Lauren Bonds
Legal Director
ACLU of Kansas
6701 W. 64th Street, Suite 210
Overland Park, KS 66202

Re: Request for Diversion Records

Dear Ms. Bonds:

I am in receipt of your recent open records request concerning diversion documents from Atchison County. Enclosed please find a copy of the Atchison County Attorney's diversion guidelines dated January 1, 2001 and a copy of the guidelines as modified on January 1, 2005. These are the only documents available concerning diversions.

You also requested a copy of any application for diversion however we do not have a form for that purpose. We permit defendants and counsel to request a diversion by simply writing a letter making the request and frequently we accept an oral request. ←

I hope this is the information you need, however, if you should need anything else please feel free to contact me.

Sincerely,



Gerald R. Kuckelman



Lauren Bonds

From: Kevin Hill <khill@brcoatty.com>
Sent: Monday, December 18, 2017 1:34 PM
To: Lauren Bonds
Subject: Brown County, Kansas Diversion Policy
Attachments: Diversion Policy 2015- County.pdf; Br. Co. Diversion Policy.pdf

Ms. Bonds, I am in receipt of your letter dated December 13, 2017 and received December 18, 2017 regarding Brown County's diversion policy. I am not aware of the extent of the ACLU's investigation that formed the basis for their recent report "Choosing Incarceration," but the same would be incorrect if it states that Brown County does not have a written diversion policy. We have had a written diversion policy since approximately 1993 when I first took office. A copy of said policy that was in effect on January 1, 2009 as well as the diversion policy that was revised in 2015 to include first time marijuana cases is attached. Said documents are submitted to comply with your requests numbered (1) and (3) in your letter.

The procedure for notifying defendants of the potential for diversion involves the judge informing eligible defendants of the same at their first appearance with instructions to contact my Administrative Assistant if they would like to request diversion or desire more information on the same. A written copy of the policy is provided upon request. There are no documents concerning this procedure so I cannot produce the same for production under KORA. 

If you should have any questions concerning this matter upon review of the attached, please feel free to contact me.

Kevin M. Hill
BROWN COUNTY ATTORNEY
601 Oregon, Suite 101
Hiawatha, Kansas 66434
(785) 740-7401 (phone)
(785) 740-7403 (fax)
khill@rainbowtel.net

CONFIDENTIALITY STATEMENT:

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PO Box 466

Gray County Attorney

Curtis E. Campbell
Cimarron, KS 67835-0466

Phone (620) 855-3645


December 19, 2017

ACLU Foundation of Kansas
Legal Department
6701 West 64th Street, Suite 210
Overland Park, Kansas 66202

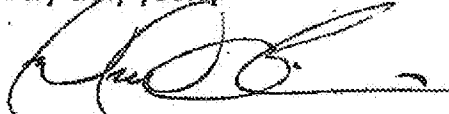
Re: Public Records Request Regarding Pretrial Diversion Practices and Policies under
K.S.A. 22-2907

Greetings:

This letter is written in response to your requests of December 13, 2018. In responding to each of your enumerated paragraphs, respectively:

1. Enclosed you will find a copy of the policies and guidelines utilized by the Gray County Attorney regarding pretrial diversion.
2. The office of the Gray County Attorney does not have documents concerning the process or procedures for notifying defendants about pretrial diversion. Rather, Defendants are notified in person at the first appearance/arraignment hearing of opportunity to apply for diversion. 
3. Enclosed you will find a copy of the guidelines for pretrial diversion including application process. Also included are the statutory guidelines for Defendants seeking pretrial diversion.

Very truly yours,



Michael Giardine
GRAY COUNTY ATTORNEY'S OFFICE

MG/lc

Enclosure

HAMILTON COUNTY ATTORNEY

Robert H. Gale, Jr.
P.O. Box 906
211 N. Main
Syracuse, Kansas 67878
Phone: 620-384-5110 Fax: 620-384-5231
galelaw@pld.com

December 14, 2017

Ms. Lauren Bonds
A.C.L.U. Foundations of Kansas
6701 W. 64th, Suite 210
Overland Park, KS 66202

VIA MAIL
AND EMAIL: lbonds@ACLUKansas.org


RE: KORA request for Pretrial Diversion Policy

Dear Lauren,

Pursuant to your email dated 12/13/17, please find enclosed the Pretrial Diversion Policy for Hamilton County, Kansas.

This policy was revised and adopted July 1, 2004, revising the policy I adopted January 10, 2001, when I first took office.

Also, enclosed please find a copy of the diversion application used in Hamilton County, Kansas.

In Hamilton County we encourage the use of the diversion, when appropriate, and defendants are commonly provided direction by the Clerk of the Court, the Magistrate Judge and by the County Attorney to make application for diversion. 

I believe this letter and the enclosed policy and application provides you with the records you requested. Should there be any additional information that you find helpful please contact me.

kindest Regards,



Robert H. Gale, Jr.

RHG:js
Enclosures

Office of the

RUSSELL COUNTY ATTORNEY

County Attorney
Daniel W. Krug

P.O. Box 3
Russell County Courthouse
Russell, Kansas 67665-0003

Phone: (785) 483-3119
Fax: (785) 483-5376

December 18, 2017

ACLU Foundation of Kansas
Legal Department
6701 W. 64th Street, Suite 210
Overland Park, KS 66202

Dear Ms. Bonds:

Please find enclosed our response to your letter of December 13, 2017.

1. Diversion Policy is attached.
2. No documents are in existence with respect to the process or procedure for notification of defendants.
3. There are no document concerning the application process. Defendants or their attorney should simply make contact with the Russell County Attorney's Office. ←

If you need further information please let us know.

Sincerely,



Daniel W. Krug

DWK/js
Enclosure

STANTON COUNTY ATTORNEY

David C. Black
(820) 492-8898
Fax (820) 492-1373
dblack@pfd.com

P.O. Box 430
181 S. Main Street
Johnston, Kansas 67208


December 15, 2017

SENT VIA E-MAIL TO: lbonds@aclukansas.org

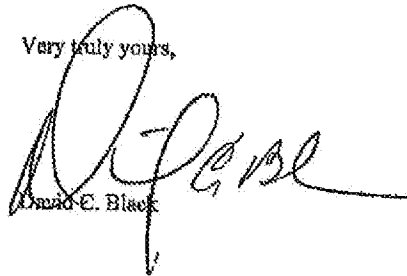
Lauren Bonds
ACLU

Re: Stanton County Diversion Policy

Dear Ms. Bonds,

Attached please find a copy of the current Stanton County diversion policy and application. The Judge, the Clerk or I generally inform the Defendants that they may apply for a diversion. 

Very truly yours,



David C. Black

Enclosures
DCB:crs

ELIZABETH BASKERVILLE HILTGEN

WASHINGTON COUNTY ATTORNEY

209 C Street, Washington, Kansas 66968

Phone: (785) 325-2149

Fax: (785) 325-2831

December 19, 2017

Lauren Bonds, Legal Director
ACLU Foundation of Kansas
6701 W. 64th St., Suite 210
Overland Park, Kansas 66202
lbonds@aclukansas.org
VIA FIRST CLASS MAIL AND E-MAIL

Re: Public Records Request Regarding Pretrial Diversion Practices and
Policies under K.S.A. 22-2907

Dear Ms. Bounds:

This letter serves as response to your request pursuant to the Kansas Open Records Act for the Diversion Practices and Policies for Washington County, Kansas; said request dated December 13, 2017, and received in this office on December 15, 2017.

Enclosed find the Washington County Diversion Policy Guidelines for Juvenile, Adult Offenders, and Speeding. Said policies were initially adopted June 1, 1998, and are updated periodically to reflect changes in court costs, fees and fines. Additionally enclosed is the Application for Diversion Program.

Defendants are notified of diversion program eligibility and requirements upon request by the defendant or defense counsel, or if after an initial review of a case file it appears an individual may be diversion eligible. While the factors set forth in K.S.A. 22-2908 are taken into consideration, each case is given an independent examination and review to determine eligibility.

Thank you for your time and consideration of this matter. Should you have any questions, or need additional information, let me know.

Respectfully,

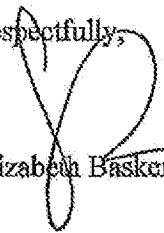

Elizabeth Baskerville Hiltgen

Exhibit B



LARRY MARKLE
County Attorney

TELEPHONE (620) 330-1020
FAX (620) 331-7230

OFFICE OF THE COUNTY ATTORNEY
MONTGOMERY COUNTY, KANSAS
FOURTEENTH JUDICIAL DISTRICT
MONTGOMERY COUNTY JUDICIAL CENTER
300 EAST MAIN STREET - INDEPENDENCE, KANSAS 67301
April 23, 2018

Larry Markle
Co. Attorney

Lauren Bonds, ACLU
6701 W. 64th Street
Suite 210
Overland Park, KS 66202

Re: Diversion Policy

Dear Lauren Bonds,

Please find the following documents enclosed; as per your KORA request.

- 1) Copy of the Montgomery County Diversion Policy
- 2) Copy of our county diversion application
- 3) Copy of our DUI diversion information sheet
- 4) Sample of our traffic diversion
- 5) Sample of our criminal/DUI diversion

Please advise if my office may be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Markle", written over a horizontal line.

Larry Markle
Montgomery County Attorney

LM:ls

Larry Markle, #12345
County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: lmarklelawyer@gmail.com

**FOURTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS**

State of Kansas,
Plaintiff,

vs.

Case No. 2018-CR-000000-I

(Suspect's Name),
(Address)
Independence, KS 67301
DOB: XX/XX/XXXX
Defendant.

DIVERSION AGREEMENT

This DUI Diversion Agreement is entered into on this _____ day of April, 2018 by the above-captioned parties with the approval of their attorneys, if any, and shall continue in force and effect for a term of 12 months.

1. ELIGIBILITY FOR DIVERSION:

- a. _____ I affirmatively state that I have no other charges pending in this or another court that have not been previously disclosed to the District Attorney's Office on my Diversion Application.
- b. _____ I affirmatively state that I have no prior diversion in my LIFETIME for either driving under the influence (DUI/DWI/OU), boating under the influence or refusal to submit to a blood, urine, or breath alcohol test in connection with a DUI/DWI/OUI investigation.

- c. _____ I affirmatively state that I have no prior conviction in my LIFETIME for driving under the influence (DUI/DWI/OUI), boating under the influence, or refusal to submit to a blood, urine, or alcohol test.
- d. _____ I understand and acknowledge that any pending charges that have not been disclosed to the District Attorney's Office shall be grounds for revocation of this DUI Diversion Agreement.
- e. _____ I further understand that discovery of any prior diversion in my LIFETIME or any prior conviction in my LIFETIME for driving under the influence (DUI/DWI/OUI), boating under the influence, or refusal to submit to a blood, urine, or breath alcohol test shall be grounds for revocation of this DUI Diversion Agreement.

2. I, the Defendant, fully understand and agree to the following:

- a. _____ My full name is _____.
- b. _____ My full name at the time the Information or Complaint in this case was filed was:
_____.
- c. _____ I have been charged with the following crime(s), which were filed via Information or Complaint in the District Court of Montgomery County, Kansas, on 8/2/2017:

Count 1

Example: DUI

Count 2

(if applicable)

- d. _____ I understand that I have the right to demand a prompt, full and complete evidentiary hearing and trial in this matter.
- e. _____ I understand and acknowledge that I have the right to retain an attorney to represent me concerning this agreement. I further understand that if I cannot afford an attorney, I may apply to the court for appointment of an attorney, and if the court determines that I am unable to afford to hire an attorney, an attorney would be appointed to represent me concerning this agreement. I have been given ample time to consult with an attorney concerning this agreement or, if choosing to represent myself, I have been given ample time review this agreement and am freely and voluntarily waiving the right to have an attorney represent me concerning this agreement.

- f. _____ The prosecution of this matter is being deferred pursuant to K.S.A. 22-2906 et. seq. and the policies and guidelines of the District Attorney, which have been provided to me in writing and which I have been given ample time to read.
- g. _____ I understand and acknowledge that a diversion for a violation of driving under the influence (DUI) or refusal to submit to a blood, urine, or breath alcohol test may be used to enhance the severity level of either or both of these crimes if I am charged with them in the future.
- h. _____ I understand that if I am not a citizen of the United States a diversion or conviction for a criminal offense may result in deportation from the United States, exclusion from admission to the United States, and/or denial of naturalization.
- i. _____ I understand that I may be eligible for expungement of this diversion pursuant to K.S.A. 21-6614, and amendments thereto.

3. I, the Defendant, agree to do each of the following things:

- a. _____ I waive all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment.
- b. _____ I waive all rights under the law or the constitution of Kansas or of the United States to preliminary examinations and hearings.
- c. _____ I waive all rights under the law or the constitution of Kansas or of the United States to a speedy trial.
- d. _____ I waive all rights under the law or the constitution of Kansas or of the United States to a trial by jury.
- e. _____ I understand and acknowledge that I have the right to retain an attorney, and that if I cannot afford an attorney, I may apply to the court for appointment of an attorney, and if the court determines that I am unable to afford to hire an attorney, an attorney would be appointed to represent me. Understanding this, if choosing to represent myself, I freely and voluntarily waive all rights under the law or the constitution of Kansas or of the United States to counsel.
- f. _____ I agree not to violate the laws of the United States, of any State, or of any political subdivision of any State during the term of this diversion agreement. Traffic infractions shall not be considered violations of the law, however, a traffic violation of a traffic statute classified as a misdemeanor may be considered a violation of the law for purposes of this agreement.
- g. _____ I agree to notify my attorney and the District Attorney in writing within seven (7) days of any change in address, telephone number or place of employment and not

to move from the State without the prior approval of the District Attorney's Office. Any mail addressed to me at my last known address returned to the District Attorney's Office or to the District Court as not deliverable, no forwarding address on file, etc., will be considered prima facie evidence and will be admissible in Court to establish that I failed to meet this condition of the diversion agreement.

- h. _____ I stipulate that I am the individual named in the Information, and that the offense(s) charged occurred in Montgomery County, Kansas. I agree that the facts as set forth in Addendum A, *Stipulation of Facts*, are true and accurate. I further stipulate to the facts as contained in the official report by:

Montgomery County Sheriff, Report Number: 17-1065 , written witness statements, and any lab or other test results prepared or taken in connection with this case as being true and accurate. I am agreeing to and waiving my right to require the State to call witnesses to testify and that I am waiving my rights under the law or the constitution of Kansas or of the United States to confront those witnesses or to call witnesses to testify on my behalf.

- i. _____ I agree and understand that violation of the terms and conditions of this agreement will result in revocation of diversion and this matter proceeding to trial based solely upon the Information, Addendum A, *Stipulation of Facts*, official reports identified above, written witness statements, lab or other test results, and any other evidence associated with this case. I stipulate that the previously described items shall be admitted into evidence without objection by me and without further foundation. I further stipulate that any trial on this matter and any proceedings on appeal shall be conducted solely on the stipulations contained herein, and that I will not be entitled to present additional evidence at the trial of the matter or any proceedings on appeal.

- j. _____ I agree to pay as follows:

Payment of Diversion cost - All Payments must be submitted to the Clerk of the Montgomery County District Court; the Court accepts cash, money orders or cashier's checks.

I shall pay the diversion cost in the amount of \$300.00, court costs in the amount of \$1XX.00, fingerprint fee of \$45.00, appointed attorney fees** of \$XXX.00, and total fines** of \$XXX.00, totaling \$XXX.00, at the time of signing the diversion agreement. The diversion agreement will not be processed until all monies due are paid into the District Court.

Any cash bond posted by me shall be applied to the balance due. The cash bond cannot be used to pay the diversion cost. Any remaining cash bond, after being applied to amounts due, will be returned to me.

* FINES BY CHARGE:

DUI
XXXX

\$750.00
\$ XX.00

**Attorney Fees shall be subject to approval by the Court but shall not exceed the amount stated above *unless subsequent legal action relating to the diversion is initiated*. No voucher will be approved if it is received more than 30 days after the execution of the diversion agreement. Subject to approval by the Court, it is my responsibility to pay any additional attorney fees or other Court related fees not specified in this diversion agreement

- k. _____ I acknowledge and understand that if this diversion is revoked, the criminal proceedings on the original charge(s) will be resumed and the clauses waiving all rights to a speedy trial, all rights to preliminary examinations and hearings, and all rights to a trial by jury, will remain in effect. I acknowledge and understand that Addendum A Stipulation of Facts and all stipulations set forth in paragraphs 2(i) and 2(j) will remain in effect. I acknowledge and understand that if the Court finds me guilty, the Court may impose any and all fines and/or incarceration as allowed by law for the original charge(s).
- l. _____ I agree that the County Attorney's Office shall have thirty (30) days following expiration of this diversion to discover violations of this diversion and to proceed thereon.
- m. _____ **Special Conditions:**

I agree to abstain from the use of alcohol and recreational drugs during the diversion period. I agree to submit to a test of breath, blood or urine at my cost at any time during the period of this DUI Diversion Agreement, if requested to do so by any treatment provider, Judge, or any Law Enforcement Officer. I further agree and stipulate that the results of said breath, blood or urine tests shall be admissible against me in any revocation hearing without further foundation. Notwithstanding the provisions of K.S.A. 8-1012, and amendments thereto, I agree and stipulate that any breath-alcohol tests completed with a preliminary breath-screening test device (PBT) approved by the Kansas Department of Health and Environment shall be admissible against me in any revocation hearing without further foundation.

3. The State agrees to do each of the following things:
- a. To suspend prosecution of the captioned case so long as the Defendant continues to fulfill the terms and conditions of the diversion agreement.
 - b. To dismiss with prejudice and with costs assessed to the Defendant all charges in the captioned case at the end of the diversionary term upon a satisfactory showing that the Defendant has successfully fulfilled the terms of the diversion agreement.

The parties understand that it is the Defendant's responsibility to provide the District Attorney's Office with the required documentation.

The parties understand that if a motion to revoke diversion and reinstate prosecution is filed, the motion to revoke diversion and reinstate prosecution and a notice of hearing will be mailed directly to the last address provided by the Defendant. It is the Defendant's responsibility to contact his or her attorney in reference to the motion to revoke diversion and reinstate prosecution.

The parties understand and agree that should any section, subsection, sentence, clause, phrase, provision, or exemption of this DUI Diversion Agreement be declared invalid for any reason, such invalidity shall not affect the remaining portions or provisions contained within the diversion agreement.

By signing this agreement, I, the Defendant, agree, affirm and stipulate that I have read the entire diversion agreement, understand all of its terms and their meaning, including the rights I am waiving and the obligations I am assuming, and that my decision to enter this agreement is my own free and voluntary act.

Dated this _____ day of April, 2018

I have read this diversion agreement, fully understand its contents, and agree to its provisions.

Current Address: _____

(Name), Defendant

Approved by: _____
Larry Markle, #12345
County Attorney
Montgomery County Attorney's Office
300 East Main Street
Independence, Kansas 67301
Phone: (620) 330-1020
FAX: (620) 331-7230
Email: lmarklelawyer@gmail.com

Approved by:

(Attorney Name)
Attorney for Defendant
Independence, KS 67301
Phone: (620) 331-0000
FAX: (620) 331-0000
Email: (Attorney E-mail)

IN THE DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS
SETTING AT COFFEYVILLE, KANSAS

STATE OF KANSAS

Plaintiff

Vs.

Case No. 18 TR 0000 -C

JOHN DOE

Defendant

DIVERSION AGREEMENT-TRAFFIC

Street Address: MAIN STREET
City, State and Zip Code: Independence, Kansas 67301
Sex: XXXX Race: XXXX DOB: XX-XX-XXXX

Driver's License No. K00000000
Complaint Filing Date: January 1, 2018

THIS AGREEMENT is dated this ____ day of xxxxxxxxxxxx, 2018 .

Charges and facts stipulated to: On or about the ____ day of _____ 2018, Defendant above named, operated a vehicle on the streets or highways of Montgomery County, Kansas, as more specifically stated in the Complaint filed in this case, and the following additional evidence, if any, all of which are incorporated herein by reference, are stipulated to:

- A. Kansas Highway Patrol Citation
- B. Defendant operated a motor vehicle

Fine: Court costs of \$ ____ and the standard fine of \$ ____.
MUST be paid in full at the time of filing of this Diversion Agreement.

Diversion costs: Defendant shall pay the diversion costs of \$200.00 at the time of filing of this Diversion Agreement.

Diversion Officer: Traffic Attorney
Judicial Center
300 E. Main St.
Independence, KS 67301
(620) 330-1020

Term of Diversion: 180 days.

Special conditions of the Diversion:

- 1) Defendant states that he has read the conditions in full and agrees to comply with them.

Defendant

County Attorney

CONDITIONS OF PRETRIAL DIVERSION AND DIVERSION AGREEMENT

You have been charged with committing one or more violations of Kansas Statutes regulating traffic. Upon your acceptance of responsibility for those violations and after investigation of the violations and your background, it appears that you are eligible for diversion and that the interest of the State of Kansas, your own interest, and the interest of justice will be best served by the following procedure, THEREFORE:

On the authority of the prosecuting attorney, prosecution on this offense shall be deferred for a period of ninety (90) days from the date hereof, provided you abide by the conditions and the requirements of the program as set forth in this Diversion Agreement.

Should you violate any of the conditions of this agreement during the diversionary period, the prosecuting attorney may ask the Court to reinstate this case on the trial docket for further prosecution. If you violate any of the conditions, and prior to re-initiating prosecution, you will be furnished notice at your last known address as shown in the prosecuting attorney's files, specifying the conditions of this Diversion Agreement you have violated.

If, upon completion of your period of supervision, the prosecuting attorney's records reflect that you have complied with all of the conditions of this Diversion Agreement, the Complaint will be dismissed with prejudice.

CONDITIONS OF PRETRIAL DIVERSION

1. You shall not violate any federal, state, or local law. You shall immediately contact your diversion officer if arrested by any law enforcement officer.
2. You shall maintain your current residence. If you intend to move to another residence, you shall inform the prosecuting attorney in writing before moving. You shall notify the prosecuting attorney of any change of address in writing within five (5) days of any change. If any mail is returned after having been mailed to you addressed to your last known address, such return will be considered prima facie evidence that you have failed to meet this condition of the Diversion Agreement.
3. You shall report in writing to your diversion officer within ten (10) days prior to the termination of the Diversion Agreement to confirm that you have not been issued any additional traffic ordinance or state traffic statute violations during the period of diversion.
4. You shall comply with all other conditions of diversion.

DEFENDANT'S WAIVER OF RIGHTS AND STIPULATIONS

I, the Defendant herein named, by agreeing to this Diversion, do hereby waive all my rights to a speedy trial under the laws and statutes of the State of Kansas and under the constitutions of the State of Kansas and the United States.

I agree that if I violate the terms and conditions of this Diversion Agreement, this case will proceed to trial based upon the charge and facts stipulated to as shown on the reverse side hereof, including all evidence attached to this Diversion Agreement, if any. Therefore in return for acceptance into the diversion program, I hereby stipulate and agree to the facts stated as the "charge and facts stipulated to" herein, the facts alleged in the Complaint filed in this case, and the facts as contained in the additional evidence attached to this Agreement, if any.

WAIVER OF RIGHTS TO COUNSEL

I do hereby state that I have read and reviewed the entire Diversion Agreement, including the above Waiver of Rights and Stipulations, and the same have been explained to me. I understand that I have the right to consult with counsel of my choosing before entering into this Diversion Agreement and understand that I may be eligible for court appointed attorney's services if I am unable to hire an attorney to represent me in this matter. However, by my signature below I acknowledge both my right to counsel and my free, knowing, voluntary and intelligent waiver of that right and that I desire to proceed without further assistance of counsel herein. I have read all of the Diversion Agreement, including the waivers above, and will comply with its terms.

Defendant

STATE OF KANSAS

Plaintiff

Vs.

Case No. 18 TR 0000 -C

JOHN DOE

Defendant

ORDER OF CONTINUANCE AND DISMISSAL-TRAFFIC

NOW ON THIS _____ day of _____, 2017, the above-entitled matter comes on before the Court. The State appears by and through County Attorney, Larry Markle, The Defendant appears in person.

WHEREUPON, THE COURT FINDS THAT:

1. A Diversion Agreement has been filed in the above captioned case.
2. This matter should be continued by agreement of the parties.
3. Unless notified otherwise, this matter shall be dismissed 180 days from this date.

JUDGE

SUBMITTED BY:

Defendant

County Attorney

MONTGOMERY COUNTY ATTORNEY'S OFFICE
APPLICATION FOR DIVERSION

NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

SOCIAL SECURITY NUMBER: _____

PHONE NUMBER: _____

DATE OF BIRTH: _____ AGE: _____

SEX: _____ MALE _____ FEMALE RACE: _____

MARITAL STATUS: _____ Married _____ Single

IF MARRIED, GIVE SPOUSE'S NAME: _____

DEPENDENTS (List how many and ages) _____

WORK EXPERIENCE:

CURRENT EMPLOYER:

NAME: _____ LOCATION: _____

JOB TITLE: _____ LENGTH OF EMPLOYMENT: _____

SALARY: _____ MONTHLY _____ HOURLY _____ WEEKLY

PREVIOUS WORK EXPERIENCE:

NAME: _____ LOCATION: _____

JOB TITLE: _____ LENGTH OF EMPLOYMENT: _____

SALARY: _____ MONTHLY _____ HOURLY _____ WEEKLY

REASON FOR LEAVING: _____

EDUCATIONAL BACKGROUND:

ELEMENTARY: _____ JUNIOR HIGH: _____

HIGH SCHOOL: _____ YEAR OF GRADUATION: _____

COLLEGE: _____ YEAR OF GRADUATION: _____

HOW LONG HAVE YOU LIVED IN MONTGOMERY COUNTY? _____

IF LESS THAN FIVE (5) YEARS, GIVE PREVIOUS ADDRESSES: _____

MEDICAL HISTORY:

PHYSICAL CONDITION: _____ POOR _____ FAIR _____ EXCELLENT

LIST ANY PREVIOUS PSYCHIATRIC OR PSYCHOLOGICAL TREATMENT RECEIVED.
PLEASE STATE WHEN AND WHERE. (Write on back if necessary)

1. _____

2. _____

3. _____

PREVIOUS CRIMINAL RECORD:

(Attach additional page or write on back if needed)

OFFENSE

DATE

LOCATION

OFFENSES FOR WHICH DIVERSION IS REQUESTED:

ARE THERE ANY FACTS ABOUT THIS INCIDENT WHICH YOU THINK WE SHOULD CONSIDER WHICH MAY EXCUSE YOUR ACTIONS OR INVOLVEMENT IN THIS INCIDENT?

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

STATE IN DETAIL THE FACTS WHICH CAUSED THE CHARGES TO BE FILED:

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

Defendant

Date

DUI DIVERSION INFORMATION SHEET

You have been charged with driving under the influence of alcohol and/or drugs. As a first time offender the Montgomery County Attorney will consider your application for entry into the Montgomery County Diversion Program only if you have not:

- a. Previously participated in Diversion of an alcohol related offense.
- b. Previously been convicted of or pleaded nolo contendere to a violation of an alcohol related offense.
- c. At the time of the alleged alcohol related offense you were not involved in a motor vehicle accident or collision resulting in personal injury or death.

Diversion means that the County Attorney will postpone for a period of six (6) months any criminal proceedings (including trial) relating to the DUI charge against you. In order to apply for Diversion, you must do the following:

- a. You **MUST** pay a \$300.00 non-refundable diversion application fee to the Montgomery County Clerk of the District Court and provide a receipt for this payment to the Montgomery County Attorney's Office.
- b. Read, sign and date this DUI Diversion Information Sheet. Provide this Information Sheet to the Montgomery County Attorney's Office.

You will be required to obtain and pay \$150.00 for a Drug/Alcohol Evaluation (ADSAP) prior to a Diversion being approved by the Montgomery County Attorney. You MUST obtain a Drug/Alcohol Evaluation (ADSAP) with one of the following agencies:

ROAD TO RECOVERY
3751 W. Main St., P.O. Box 688
Independence, KS 67301
Phone: 620-331-1748

FOUR COUNTY MENTAL HEALTH CENTER
1601 W. 4th
Coffeyville, KS 67337
Phone: 620-251-8180

ANY EVALUATION BY AND OTHER AGENCY OTHER THAN THOSE LISTED ABOVE MUST BE APPROVED IN WRITING BY THE MONTGOMERY COUNTY ATTORNEY PRIOR TO OBTAINING THE EVALUATION.

YOU MUST PAY A FEE OF \$150.00 FOR THE DRUG/ALCOHOL EVALUATION (ADSAP) DIRECTLY TO THE AGENCY PROVIDING THE EVALUATION.

You must also provide a copy of your receipt for payment of your \$300.00 Diversion Application fee to the agency providing your Drug/Alcohol Evaluation.

If you are accepted into the Diversion Program, you will be required to pay the following fees, costs and assessments:

- A. To the Clerk of the District Court of Montgomery County, Kansas prior to the Drug/Alcohol (ADSAP) Evaluation; Diversion Application fee of \$300.00.
- B. To the evaluating agency a fee of \$150.00 for the Alcohol/Drug (ADSAP) Evaluation, prior to the Alcohol/Drug (ADSAP) Evaluation.
- C. To the CLERK OF THE DISTRICT COURT:
 - 1. A fine of \$750.00 for the DUI
 - 2. Court costs of \$108.00
 - 3. Attorney fees of \$150.00 (if appointed)
 - 4. Booking/Processing Fee of \$45.00 (if applicable)
 - 5. Any additional diversion fees and fines for additional charges, as instructed by the County Attorney.

In addition to the above you shall:

- 1. Attend and complete an Alcohol/Drug Information School at one of the agencies listed on page #2 and provide proof of completion to the Montgomery County Attorney's Office PRIOR to the filing of the Diversion Agreement. **COMPLETION OF AN ALCOHOL/DRUG INFORMATION SCHOOL FROM ANY OTHER AGENCY NOT LISTED ON PAGE #2 WILL NOT SATISFY THIS REQUIREMENT UNLESS PRIOR WRITTEN APPROVAL IS OBTAINED FROM THE MONTGOMERY COUNTY ATTORNEY.**
- ** A fee of \$100.00 MUST be paid directly to the school/agency for this program.
- 2. Agree to waive your constitutional rights to a speedy trial and a jury trial on the charges against you.

3. Agree to abide by whatever conditions the Montgomery County Attorney feels appropriate in your case. These may include:
 - a. Paying restitution to persons injured or damaged as a result of your actions.
 - b. Attending counseling sessions.
 - c. Maintaining gainful employment.
 - d. Not violating the law.
 - e. Not committing any additional alcohol related offenses.

If you are accepted for Diversion, you will be required to sign a Diversion Agreement which sets out what you must do in order to complete the program.

The Diversion Agreement shall include a stipulation, agreed to by yourself and the County Attorney, of the facts upon which the charge is based and a provision that if you fail to fulfill the terms of the specific Diversion Agreement and the criminal proceedings on the Complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the Stipulation of Facts relating to the Complaint.

If you successfully complete the Diversion Program, the County Attorney will have the DUI charge against you dismissed with prejudice. If you fail to live up to the terms of the Diversion Agreement, the County Attorney will resume the criminal proceedings against you as provided for by K.S.A. 12-4416 and amendments thereto.

The following deadlines MUST be satisfied:

1. The \$300.00 non-refundable diversion application fee must be paid to the Clerk of the District Court the week of the first formal court appearance.
2. The signed and dated Diversion Information Sheet must be delivered to the Montgomery County Attorney's Office the week of the first formal court appearance date.
3. The Drug/Alcohol Evaluation (ADSAP) MUST be completed and the completed Diversion Application delivered to the Montgomery County Attorney's Office with six (6) weeks of the first formal court appearance date.

4. The Alcohol/Drug Information School MUST be completed and written proof of satisfactory completion MUST be provided to the Montgomery County Attorney's Office with nine (9) weeks of the first formal court appearance date.

5. All prerequisites to Diversion MUST be completed and written proof of completion provided to the Montgomery County Attorney's Office within twelve (12) weeks of the first formal court appearance date.

Failure to comply with any of the foregoing deadlines may, in and of itself and without further notice to the applicant, result in withdrawal of the offer of Diversion, or, in the sole discretion of the County Attorney, imposition of a new \$300.00 diversion application fee.

THE DEFENDANT UNDERSTANDS AND AGREES THAT ALL CHARGES OTHER THAN DUI WILL BE DISPOSED OF EITHER BY SEPARATE PLEADINGS OR BY PLEAS OF NOLO CONTENDERE OR GUILTY DULY ENTERED IN OPEN COURT, UNLESS IN THE SOLE DISCRETION OF THE MONTGOMERY COUNTY ATTORNEY, SUCH ADDITIONAL CHARGES ARE DISPOSED OF AS PART OF THE ANTICIPATED DUI DIVERSION AGREEMENT. IF DISPOSED BY DIVERSION, ADDITIONAL DIVERSION FEES AND FINES WILL BE ASSESSED AND SUCH FEES AND FINES MUST BE PAID IN FULL IN THE SAME MANNER AS SET FORTH ABOVE PER DUI FINES AND ASSESSMENTS.

THE MONTGOMERY COUNTY ATTORNEY HAS THE RIGHT TO WITHDRAW AN OFFER OF A DIVERSION AT ANY TIME PRIOR TO THE APPLICANT'S FULL AND COMPLETE FULFILMENT OF THE CONDITIONS PRECEDENT TO FILING OF A DIVERSION AGREEMENT.

DEFENDANT

DATE

COUNTY ATTORNEY'S PROCEDURE FOR DIVERSIONS

1. The defendant must fill out and submit the application form.
2. The County Attorney's Office will check for criminal records through NCIC and KBI.
3. The defendant must be charged with a crime specified for eligibility in the diversion guideline:
 - a. **DUI - 1st**
 1. Non-Injury accident (excludes person charged with DUI); and
 2. Non-Death Accident.
 - b. **Fish and Game Violations:**
 1. The county attorney may enter into a diversion agreement in lieu of further criminal proceedings on a complaint for violations of article 10 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto, if such diversion carries the same penalties as the conviction for the corresponding violations. *The minimum diversion fee is \$100.00*
 2. If the defendant has previously participated in one or more diversions for violations of article 10 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto, then each subsequent diversion shall carry the same penalties as the conviction for the corresponding violations. *The county attorney may also charge an additional diversion fee.*
 - c. **Traffic Infractions/Misdemeanors:**
 1. Driver's License must be in good standing before the Diversion is filed with the Court.
 2. Insurance current at time of offense or brought current before the Diversion is filed with the Court.
 3. On speeding cases, no more than 30 m.p.h. over posted maximum; and no speeds in excess of 100 m.p.h.
 4. On diversion of a ticket, the minimum diversion fee will be \$100.00. The fine and costs will also be collected.
 5. The Diversion Agreement must be in this office, together with all costs, fines and diversion fees, prior to the court date on the Notice to Appear. Failure to return the Diversion Agreement, along with the required fees, to this office prior to the court date on the Notice to Appear may result in either an additional administrative fee or revocation of the diversion offer.
 6. Eligible offenses: All cases, EXCEPT where there has been an accident or in which drugs and/or alcohol is involved.
 7. The offender can have only 2 other moving violations in the last year immediately preceding issuance of the ticket.

8. This privilege cannot be exercised more often than twice every 12 months.
9. There can be no alcohol or drug related offenses.
10. Length of Diversion shall be 90 days for speeds 1-15 MPH over the speed limit and other minor offenses and Six (6) months for speeds 16-30 MPH over the speed limit.

d. Other Crimes: Factors to consider. In determining whether diversion of a defendant is in the interests of justice and of benefit to the defendant and the community, the county attorney shall consider at least the following factors among all factors considered:

1. The nature of the crime charged and the circumstances surrounding it;
2. Any special characteristics or circumstances of the defendant;
3. Whether the defendant is a first-time offender and if the defendant has previously participated in diversion, according to the certification of the Kansas bureau of investigation or the division of vehicles of the department of revenue;
4. Whether there is a probability that the defendant will cooperate with and benefit from diversion;
5. Whether the available diversion program is appropriate to the needs of the defendant;
6. The impact of the diversion of the defendant upon the community;
7. Recommendations, if any, of the involved law enforcement agency;
8. Recommendations, if any, of the victim;
9. Provisions for restitution; and
10. Any mitigating circumstances.

e. A Defendant shall not be eligible for Diversion if:

1. The complaint alleges a violation of K.S.A. 8-1567 and amendments thereto and the defendant: (A) Has previously participated in diversion upon a complaint alleging a violation of that statute or an ordinance of a city in this state which prohibits the acts prohibited by that statute; (B) has previously been convicted of or pleaded *nolo contendere* to a violation of that statute or a violation of a law of another state or of a political subdivision of this or any other state, which law prohibits the acts prohibited by that statute; or (C) during the time of the alleged violation was involved in a motor vehicle accident or collision resulting in personal injury or death; or
2. The complaint alleges that the defendant committed a class A or B felony or for crimes committed on or after July 1, 1993, an off-grid crime, a severity level 1, 2 or 3 felony for nondrug crimes or drug severity level 1 or 2 felony for drug crimes.
3. If all criteria are met, and
 - a. A Defendant is not represented by an Attorney, the County Attorney's Office or ADSAP officer, will draft a Diversion and

contact the defendant to review the agreement. If approved, the agreement will be filed.

b. A Defendant is represented by an Attorney, the Attorney, will draft a Diversion and contact the defendant to review the agreement. If approved, the agreement will be filed.

4. The defendant must pay the costs, fines, fees and restitution prior to the filing of the Diversion.

5. Diversion agreements will be reviewed regularly to check compliance; if violated, a Motion to Revoke will be filed.



LARRY MARKLE
MONTGOMERY COUNTY ATTORNEY

Effective: 7/1/08

Exhibit C

Lauren Bonds

From: Larry Markle <lmarklelawyer@gmail.com>
Sent: Thursday, March 29, 2018 1:26 PM
To: Lauren Bonds
Subject: Re: Public Records Request Regarding Diversion Policies

Ms. Bonds:

My office has had an official Diversion policy since I was appointed CA in 2006. Please send \$20.75 to:

Montgomery County Attorney
Attn: Larry Markle
300 E. Main
Independence, KS 67301.

This fee is for the staff time and copying expense associated with this request. I will respond to your KORA request upon receipt of payment

Larry Markle
MG County Attorney
300 E. Main
Independence, KS 67301

On Tue, Mar 27, 2018 at 5:13 PM, Lauren Bonds <lbonds@aclukansas.org> wrote:
Good Evening Mr. Markle,

Please find attached an open records request regarding Montgomery County's pre-trial diversion policies. Feel free to call me if you have any questions or need additional information to process this request.

Best,

Lauren

Lauren Bonds

Legal Director

Direct Dial: [\(913\) 490-4114](tel:(913)490-4114)

ACLU

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Kansas

--

Larry Markle
COUNTY ATTORNEY
(620) 330-1020 Independence

Exhibit D



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Kansas

6701 W. 6th Street
Suite 210
Overland Park, KS 66202
T/913-490-4100
www.aclu-kansas.org

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Robert Eye
Mark Johnson
Raymond Ben
Jeffrey Weeks

Micah W. Kubo
Executive Director

May 30, 2018

Larry Markle
Montgomery County Attorney
300 East Main Street
Independence, KS 67301

Re: Diversion Practices in Montgomery County

Dear Mr. Markle,

Thank you for your April 23, 2018 letter responding to the ACLU of Kansas's open records request. We appreciate the information you have provided. However, it remains unclear whether your office is fulfilling its statutory duties under K.S.A. §22-2907(2) and K.S.A. §22-2907(3). In particular, we are concerned that Montgomery County Attorney's Office ("MCAO") is not informing defendants in writing about diversion opportunities and is failing to provide defendants with a diversion conference, as required by law.

While county prosecutors have discretion to set eligibility requirements for diversion programs in their jurisdiction, Kansas law explicitly requires them to provide written notice of these policies and guidelines to all defendants. *See* K.S.A. §22-2907(3). The notice requirement promotes awareness about diversion and eliminates guesswork surrounding which offenses are eligible.

The diversion statute further requires county attorneys to provide eligible defendants with the opportunity to participate in an in-person conference and be represented by counsel during their meeting with the prosecutor. *Id.* The conference gives defendants the opportunity to learn about the requirements of diversion and negotiate the terms their agreement.

Our open records letter requested documents detailing your office's process and procedures for notifying defendants about MCAO's pretrial diversion program. None of the documents that your office provided addressed how defendants are notified about diversion. Based on an investigation, which included conversations with members of the local defense bar, it is our understanding that defendants do not receive written notice of Montgomery County's diversion program. Written policies and applications are not publicly

Mr. Larry Markle, County Attorney
May 30, 2018
Page 2

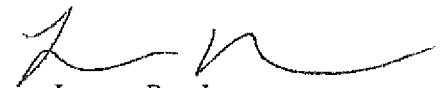
available in your office, at the District Courthouse, or on the MCAO website.¹ Moreover, copies of the MCAO diversion guidelines are reportedly not provided to defendants at their first appearance.

We have also learned that the MCAO does not consistently provide eligible defendants with the opportunity to participate in a diversion conference. MCAO has regularly failed to initiate conferences with defendants who have been determined to be eligible for diversion. Further, there is no mention of the right to a diversion conference in the guidelines or sample agreement provided by your office. We request that you provide a description of your current practices for initiating and conducting diversion conferences. To the extent records on this subject exist, we request, pursuant to the Kansas Open Records Act (KORA), all documents related to MCAO diversion conferences. K.S.A. 45-215 *et. seq.* In accordance with KORA we look forward to receiving a response to this request within three (3) business days. If the request is denied, please provide a basis for the denial within three (3) business days.

Please let us know if we have inaccurate information. If the above information regarding your current diversion practices is correct, however, they violate K.S.A. § 22-2907, and we urge you to implement policies that fulfill your obligations. The MCAO can meet its statutory obligation by completing the following steps: (1) adopt a method for notifying defendants of the office's diversion policies and guidelines in writing; (2) start implementing the aforementioned notification method; and (3) begin providing in-person diversion conferences for all diversion eligible defendants. Further, MCAO should clarify in its guidelines what charges are eligible for diversion in addition to listing which offenses are excluded.

Please respond with a plan to begin complying with the statute no later than June 6, 2018. If we do not hear from you, we will consider taking further legal action.

Sincerely,



Lauren Bonds
Legal Director
ACLU of Kansas

cc: Somil Trivedi
Trone Center for Equality

¹ <http://mgcountyks.org/county-depts/county-attorney>

Exhibit E

Lauren Bonds

From: Larry Markle <lmarklelawyer@gmail.com>
Sent: Wednesday, May 30, 2018 1:14 PM
To: Lauren Bonds
Subject: Re: Diversion Practices in Montgomery County

Ms. Bonds:

This is to acknowledge your most recent letter dated May 30, 2018. This office has fully complied with your KORA request. Therefore, no further responses will be made.

Take whatever legal action you fell appropriate.

Larry Markle
MG County Attorney

On Wed, May 30, 2018 at 12:56 PM, Lauren Bonds <lbonds@aclukansas.org> wrote:
Dear Mr. Markle,

Please find attached a letter from the ACLU of Kansas outlining our questions and concerns about diversion practices in Wilson County. Feel free to contact me at (913) 490-4114 if you would like to discuss.

Best,

Lauren

Lauren Bonds

Legal Director

Direct Dial: (913) 490-4114

ACLU

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Kansas

—
Larry Markle
COUNTY ATTORNEY
(620) 330-1020 Independence

IN THE SUPREME COURT OF THE STATE OF KANSAS

KANSAS CROSSROADS FOUNDATION;
and KARENA WILSON;

Petitioners,

vs.

Original Action No. _____

LARRY MARKLE, in his official capacity as
County Attorney of Montgomery County;

Respondent.

DECLARATION OF JACK H. KYLE, JR.

1. I, Jack H. Kyle, Jr., have personal knowledge of the matters in this Declaration and could and would competently testify to these facts.
2. I am 54 years old and a resident of Montgomery County, Kansas. I have worked in Wilson County for 11 years.
3. I have been the Executive Director of the Kansas Crossroads Foundation-New Life Cooperative since I founded the organization in 2014. The Kansas Crossroads Foundation (KCF) is a faith-based 501(c)(3) nonprofit incorporated in Kansas with an office located in Neodosha, Wilson County, Kansas.
4. KCF has a mission to provide economic development opportunities and addiction rehabilitation services to the rural poor in Southeast Kansas, including those from Montgomery County.
5. KCF has two full-time staff, including myself and Jennifer Davis. Ms. Davis and I each earn a salary of \$20,000 per year.
6. In addition to staff, KCF has three volunteers who work approximately 20 hours per week.

7. KCF has five core programs to advance its mission: an alternative energy cooperative, a micro-farming cooperative, a consignment store, a homeless shelter, and addiction recovery counseling.
8. Addiction recovery is the primary service that KCF provides, and many of our other programs are designed as wrap-around support for our addiction recovery clients, including the homeless shelter and the consignment store.
9. KCF offers drug rehabilitation program participants one-on-one counseling, housing support, community connections, and employment assistance. While all four components of that program are important, stable employment is a strong predictor of recovery success and employment assistance has become a priority for KCF over the last two years.
10. Participation in the program is open to any person who is struggling with addiction and is willing to commit to staying sober and taking responsibility for their recovery.
11. Many of our clients are incarcerated in Montgomery County jail in Independence, Kansas. To serve our incarcerated clients, KCF spends significant time at the Montgomery County jail to conduct counseling and mentorship sessions.
12. KCF Board Member Susan Whitfield Harding conducts similar counseling sessions once per week at the Montgomery County jail. Many of the individuals Harding counsels are incarcerated on addiction related charges including misdemeanor possession.
13. Harding counsels between five and eight clients in Montgomery County jail each week.
14. In my experience as a drug rehabilitation support minister, extended periods of incarceration make it more difficult for people to restart their lives and recover from addiction. Many of our incarcerated clients lose their job, housing, and other critical resources while they are in prison. Additionally, the stigma of serving time in jail makes it more difficult for people to have successful, independent lives once they are released.
15. Incarceration also makes it more difficult for KCF to provide drug rehabilitation services. KCF must travel to Montgomery County jail to provide treatment. Moreover, we have to divert resources away from other programs to help provide jail-to-community transition support services to clients who were recently incarcerated.
16. Travel to Montgomery County jail requires KCF staff and volunteers to drive 45 minutes round-trip twice every week. Not only does the travel time reduce staff and volunteer

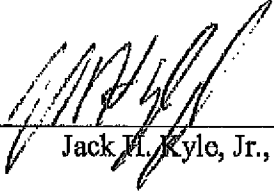
time available for other tasks and programs, KCF must reimburse staff and volunteers for gas used traveling to the jail. For instance, KCF reimburses Harding up to \$130 per week to compensate her for travel to and from the jail Independence.

17. Once incarcerated clients are released, KCF often must spend time and resources to help them reintegrate into society. KCF is the only support system many clients have when they are released from jail, and we assist them with any issue that may compromise their ability to stay in the recovery program.
18. First, KCF staff and volunteers drive clients to and from meetings with their parole and probation officers. On average, KCF staff and volunteers spend approximately 12 hours per month helping clients meet their parole and probation obligations. I estimate that we reimburse volunteers \$100 per month for their help transporting clients to and from probation and parole meetings.
19. Second, KCF staff and volunteers spend at least seven hours each month helping clients recover identity documents that are lost during long periods of incarceration. I estimate that approximately 30% of our clients do not have a valid photo ID when they are released from jail. Nearly 10% do not have any type of documentation proving their identity.
20. Third, many of our clients have no housing when they are released from jail. We operate a shelter that houses approximately six people at a time. Temporary housing is in high demand among our client base. Therefore, KCF staff and volunteers spend considerable time finding housing options for recently released clients.
21. In four years of operating KCF, I have found that stable employment is among the most important predictors of success in maintaining sobriety. Therefore, KCF has made connecting drug rehabilitation clients with jobs our top priority.
22. KCF has an arrangement with Cobalt Boats, LLC, a boat manufacturing company located in Neodesha, Kansas. KCF and Cobalt entered into a partnership where we refer clients to the company in exchange for a charity donation.
23. While a job at Cobalt helps many of our clients, it is not an ideal fit for recovering addicts who are from Neodesha and have negative influences and addiction triggers in the city. Consequently, KCF is actively searching for businesses similar to Cobalt located in other communities that would be willing to hire people struggling with addiction.

24. Locating a company to whom KCF can make employment referrals has been a time consuming and labor-intensive process. I would like to dedicate more time and money to this effort. However, we have had to divert time and resources away from employer recruiting to provide incarceration-related services.
25. KCF would spend less staff time and money helping with parole and identity assistance if Montgomery County did not have a practice of using the jail to warehouse the poor. The over-incarceration of people struggling with addiction places stress on our organization.
26. Many of our clients serve jail sentences for low-level drug offenses and nonviolent misdemeanors.
27. I estimate that approximately 10% of our clients are individuals who have been incarcerated in Montgomery County for nonviolent misdemeanor offenses. It is my understanding that some of our clients convicted on drug charges would be eligible for a diversion under the under the Montgomery County Attorney's current diversion policies.
28. Even though many of our clients should be eligible to be considered for diversion, I understand that the Montgomery County Attorney's Office does not provide written notice of diversion opportunities to them.
29. Access to diversion unequivocally would help our clients in their recovery. First, diversion would reduce the amount of time our clients spend in jail, allowing them to maintain housing, employment, and relationships with their families. Second, diversion would increase many of our clients' employment opportunities.
30. A criminal conviction compounds the stigma most of our clients already face as former drug addicts. Generally, the opportunity to apply for and possibly participate in diversion would enable our clients to focus on rehabilitation rather than rebuilding their lives after a long stint in jail.
31. Increasing diversion access for eligible defendants would also benefit KCF. The time KCF staff and volunteers spend on providing incarceration-related services has taken away from time available for other important KCF work, including expanding employment referral services, building community connections, and increasing the capacity of our various cooperatives.

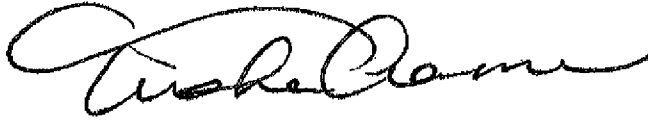
I declare under penalty of perjury that the foregoing statements, including all statements in this Declaration, are true and correct.

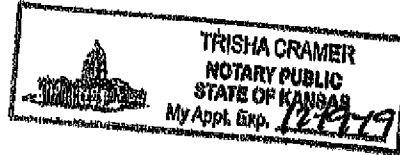
Executed on June 7, 2018.



Jack H. Kyle, Jr.,

Wilson County, Kansas
Signed before me on June 7th, 2018





IN THE SUPREME COURT OF THE STATE OF KANSAS

KANSAS CROSSROADS FOUNDATION;)
and KARENA WILSON;)
)
Petitioners,)
)
)
vs.) Original Action No. _____
)
LARRY MARKLE, in his official capacity as)
County Attorney of Montgomery County;)
)
Respondent.)
_____)


DECLARATION OF KARENA WILSON

1. I, Karena Violet Wilson, have personal knowledge of the matters in this Declaration and could and would competently testify to these facts.
2. I am 19 years old and a resident of Montgomery County, Kansas. I have lived in Independence, Montgomery County, Kansas since I was about 11 years old.
3. Prior to my June 2017 arrest for theft, I had never been charged with a crime.
4. On or about June 14, 2017, I was driving around Independence with my boyfriend. A person whom we did not know well asked us for a ride to the north part of town. My boyfriend agreed and the person got in our car. When we arrived at a liquor store, the person suggested we start breaking into soda machines. He then got out of the car and broke into a soda machine and took the coin collection box inside.
5. The Independence Police Department learned that we had driven the person who had broken into the soda machine to the liquor store. Even though my boyfriend and I assisted the police in identifying the person who broke into the machines, we were both charged with theft as accomplices.
6. My bond was set at \$1,500, and I spent three days in jail.
7. I was initially charged with felony theft of property of \$1,500 or less from three businesses in 72 hours.

8. I had to appear in court approximately five times for this case.
9. On or about December 12, 2017, my charges were reduced to three counts of misdemeanor theft of property less than \$1,500. I pled guilty to the misdemeanor charges.
10. I was sentenced to one year of probation. The terms of my probation require me to pay approximately \$2,300 in fines. I have made payments toward the fine whenever I can but still have close to \$2,000 left to pay.
11. I am also required to be employed as part of my probation. Even though I have a job paying minimum wage as a housekeeper at a hotel, my probation officer has told me that I need to get a higher paying job at a factory.
12. I had to spend an additional three days in jail in April 2018 for a probation violation.
13. At no point before I took my plea deal did anyone from the Montgomery County Attorney's Office (MCAO), including County Attorney Larry Markle, provide me with written notice of the MCAO's diversion policies and guidelines.
14. Additionally, nobody in the MCAO ever verbally told about their diversion program. Because this is my first time getting in trouble with the law, I had never heard of a diversion.
15. Since being sentenced to probation, I have learned that the MCAO will consider offering diversions to people charged with misdemeanors if it is their first time offense and they will otherwise benefit from diversion.
16. I would have applied for the MCAO diversion program if the MCAO had given me notice of any kind.
17. Even if MCAO ultimately denied my application, I feel that I would have benefited from being fully informed about my options.
18. The opportunity to apply for a diversion would have given me the possibility of a second chance to have a clean criminal record and could have helped me avoid my current and likely future limitations in employment and other endeavors.

I declare under penalty of perjury that the foregoing statements, including all statements in this Declaration, are true and correct.

Executed on June 6, 2018.



Karena Wilson