

# City of Topeka Misdemeanor Diversion Program



## CITY OF TOPEKA – LEGAL DEPARTMENT

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## MISDEMEANOR DIVERSION PROGRAM

The City of Topeka has a diversion program that is offered for *first time offenders* on a case by case basis. Diversion is an agreement not to prosecute you on your present case if you comply with certain conditions.

### DEFINITIONS

The following words and phrases as used in this policy shall mean:

**Conviction:** a judgment of guilt, whether resulting from a plea of guilty or nolo contendere or by trial, on any charge or charges constituting either a traffic infraction, misdemeanor or felony offense(s) in this or any other jurisdiction. This term shall include juvenile adjudications and cases that have been expunged from a defendant's criminal record.

**Diversion or Deferred Prosecution:** a referral of a defendant to a supervised performance program prior to adjudication.

**Diversion Agreement:** the specification of formal terms and conditions which a defendant must fulfill in order to have the charge(s) against him or her dismissed.

### YOU MAY NOT BE ELIGIBLE FOR DIVERSION IF:

- You have previously been convicted of or received diversion for the same or similar type of offense during your lifetime;
- You have other pending misdemeanor or felony charges in this or any other jurisdiction;
- You have previously participated in a diversion within the past five years in any jurisdiction for any other type of misdemeanor or felony offense;
- You have three or more prior misdemeanor convictions that result in fingerprinting or a prior felony conviction during your lifetime;
- Your case involves traffic offenses and at the time of the offense you were the holder of a commercial driver's license in this or any other state;
- Your case involves a traffic offense that resulted in an injury accident.
- You owe money to the Topeka Municipal Court;
- It appears to the prosecutor, after reviewing all the facts and circumstances that a diversion is not in the interests of justice and of benefit to the defendant and the community.
- Repeat violations for the same or similar offense will result in disqualification for diversion.

### FACTORS CONSIDERED

The decision whether to offer a diversion is discretionary with the prosecutor. There are several factors the Legal Department's Prosecution Section will consider (*See TMC 2.110.490*). The overriding consideration is whether a diversion is in the interests of justice, and of benefit to the defendant and the community.

### PROCEDURE

To be granted a diversion, you must do each of the following steps:

1. You must pay or have paid all diversion costs and fees no later than six months from the date of the offense. The costs are to be paid to the Topeka Municipal Court as a bond on your case. The total costs will vary depending on the type of

offense:

Class A & B Misdemeanors.....	\$593.00
Class C & Unclassified Misdemeanors....	\$526.00
Drug Offenses.....	\$618.00
Possession of Alcohol by a Minor.....	\$601.00

These amounts may be different if the specific crime you are charged with has a statutory minimum fine. If your case required forensic testing, a \$400.00 laboratory analysis fee will also be assessed. You may also be required to pay any restitution applicable to your case.

2. If you are charged with a drug or alcohol related offense, you may be required to arrange for and complete a drug and alcohol evaluation with the Municipal Court Probation Department. You must comply with any recommendations agreed to by the Probation Department and the Legal Department's Prosecution Section regarding treatment and keep all scheduled appointments.

**Failure to pay all fees by the deadlines or have an evaluation may result in disqualification from the diversion program.**

3. You will be required to sign a written diversion agreement waiving all rights under the law to a speedy arraignment, speedy trial and the right to a trial. If you choose to proceed without an attorney, you will also be required to waive your right to counsel. You must also stipulate or agree that the facts of the case are those contained in the official police report for the incident and that any trial or subsequent appeal will be based solely on those stipulated facts.

**Any of the following events may result in ineligibility or revocation of your diversion agreement:**

- *Failure to appear in Court.*
- *Failure to pay costs and fees by the deadline.*
- *Failure to complete an evaluation.*
- *Having a warrant issued for your arrest.*
- *Failure to comply with agreed recommendations for treatment.*
- *Failure to comply with any agreed special conditions in the diversion.*
- *Refusing a breath, blood or urine test requested by a law enforcement officer.*
- *Failure to remain law abiding.*

### EFFECT OF DIVERSION

Should you successfully complete the diversion, the Legal Department's Prosecution Section will dismiss the case against you after one year and it cannot be refilled. However, if you fail to meet all of the requirements, a motion to revoke your diversion may be filed with the Municipal Court seeking to resume prosecution of your case on the original charge(s).

Entering into and successfully completing a diversion will keep you from having a *conviction* on your record. However, your record may still indicate that you received a diversion and this fact may be considered in any future criminal prosecution.