



CITY OF TOPEKA

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CITY OF TOPEKA DIVERSION PROGRAM

The following guidelines have been adopted by the City of Topeka Prosecutor's Office for the diversion program in the City of Topeka Municipal Court. These guidelines supersede prior policies or guidelines, whether oral or in writing, and are effective for any offense committed on or after June 1, 2020.

Diversion is a **privilege** afforded an accused and not a right. No presumption in favor of diversion exists in any case, and the burden of persuasion rests with the applicant to establish that a diversion agreement will best serve the ends of justice and the interests of the community, public safety, and the rights of the victims.

It is not required that a defendant have an attorney for the purpose of diversion; however, a defendant has the right to employ an attorney and have him/her present throughout the diversion process.

PROCEDURES

ALL COURT APPEARANCES MUST BE ATTENDED DURING THE APPLICATION PROCESS. You may turn in this application to the City of Topeka Prosecutor's office after your first appearance. **YOUR APPLICATION MUST BE RECEIVED WITHIN 30 DAYS AFTER YOUR 1ST APPEARANCE OR YOUR APPLICATION MAY BE DENIED.** The City Prosecutor's Office will review requests for diversion and may require a diversion conference with the applicant. Please review the following steps carefully:

1. The diversion application **must** be completed on the form provided by the City of Topeka Prosecutor's Office. Photocopied reproductions will be accepted. The completed application must be turned into the Prosecutor's Office within 30 days after your first appearance.
2. You or your attorney will be notified if the diversion application has been approved and the amount of the required diversion fee. If the application is denied, you or your attorney will be notified of the reason(s) for denial.
3. If your application is approved, you must pay the full diversion fee prior to signing the diversion agreement. This diversion fee may include any outstanding balance that is owed to the Topeka Municipal Court. Payment of the diversion fee must be made to the City of

Topeka Municipal Court and will be held by the Court as a bond on your case pending the outcome of your case. Payment of the diversion fee must be completed within 6 months of the date of your 1st appearance. Please note that any bonds paid to the Court may be forfeited if you fail to appear at any scheduled court dates.

4. Once the diversion fee has been paid, you may be required to obtain a Drug and Alcohol evaluation through the City of Topeka Probation Office. The cost of the evaluation is included in the diversion fee. Failure to obtain this evaluation if required may result in your removal from the diversion program. Additionally, if you are charged with a drug or alcohol offense and your evaluation indicates continued illegal use of these substances, you may be removed from the diversion program or have additional requirements added to your diversion agreement.
5. After the above steps are completed, you will be required to sign the diversion agreement which will be filed with the Court in your case. You may sign this agreement at your next scheduled court date or you may contact the Prosecutor's Office to make arrangements to sign the agreement prior to your court date.
6. If you are charged with a drug or alcohol offense, you may be required to attend an education class through the Probation Office. If the class is required, you must contact the Probation Office to schedule the dates you will attend. Failure to complete this class may result in a motion being filed with the Court to revoke your diversion agreement.
7. You may be asked to participate in online classes depending on the circumstances of the charged offense. Other special conditions may apply if the prosecutor deems them necessary.

If the City of Topeka Prosecutor's Office approves a diversion agreement, the terms and conditions will be reduced to writing for approval and signature by both parties. The executed diversion agreement will be filed with the Municipal Court and criminal proceedings will be suspended as long as the defendant fulfills the terms and conditions of the diversion agreement. If you fail to comply with the terms of the diversion, you will be prosecuted for the underlying crime and any payments made or community service performed under the diversion agreement will be forfeited.

If you participate in this diversion program, you will be required to:

1. Waive all rights under the law or constitution to a speedy arraignment, speedy trial, and the right to jury trial;
2. Enter into a stipulation with the City of Topeka Prosecutor's Office of the facts upon which the charge is based;
3. Agree that if you fail to fulfill the terms of the diversion agreement and the proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted exclusively on the record of the stipulation of the facts relating to the complaint; and,

4. If the underlying charge is possession of Marijuana, you must stipulate that the substance is marijuana.

Upon successful completion of the diversion agreement, the City of Topeka Prosecutor's Office will move to dismiss the charge(s) with prejudice with costs assessed to the defendant. If at any time during the diversionary period, the City Prosecutor finds that the defendant is no longer fulfilling the terms of the agreement, the City Prosecutor will file a Motion to Revoke the agreement and resume criminal proceedings.

The standard diversion agreement is twelve (12) months. A general idea of the cost of diversion is found below. These are not guaranteed costs as every diversion agreement is unique to the offense and the offender.

OFFENSE	COST
Driving Under the Influence	\$1,468
Drug Offenses	\$618
Minor In Possession	\$601
Social Hosting	\$1,468
Misc. Criminal Misdemeanor Class A and B	\$593
Misc. Criminal Misdemeanor Class C and Unclassified	\$526

- **All Drug and Alcohol Offenses by persons under 21 require a Drug and Alcohol evaluation and completion of Alcohol Information School by the City of Topeka Probation Office.**
- **All Driving Under the Influence Offenses require an alcohol evaluation by the City of Topeka Probation Office.**
- **If your case involves laboratory testing by the KBI, an additional \$400 for this testing may be added to your diversion fee.**
- **If a defendant possesses a commercial driver's license (CDL) they will not be eligible for diversion for any traffic offense.**
- **A defendant will not be eligible for diversion of Driving Under the Influence if:**
 - **The defendant has a previous conviction or diversion for operation under the influence of alcohol or drugs, or**
 - **The defendant was, at the time of the alleged operating under the influence, involved in a motor vehicle accident resulting in injury or death of a person.**

CITY OF TOPEKA DIVERSION APPLICATION

This form must be legibly completed in its entirety and returned to the City Prosecutor's Office to initiate the diversion process.

Today's Date: _____ Court Case No: _____

LAST NAME: _____ FIRST NAME: _____ MIDDLE: _____
ADDRESS: _____ CITY: _____ STATE: _____
ZIP: _____ PHONE: _____
EMAIL ADDRESS: _____
DATE OF BIRTH: _____ PLACE OF BIRTH: _____

*HOW DO YOU PREFER TO RECEIVE NOTICE OF APPROVAL/DENIAL? EMAIL U.S. MAIL

LIST ALL PREVIOUS ADDRESSES FOR THE LAST 3 YEARS:

Address _____ City _____ State _____
Address _____ City _____ State _____
Address _____ City _____ State _____
Address _____ City _____ State _____

LIST ANY ALIAS/MAIDEN NAME: _____

DRIVER LICENSE NUMBER: _____ STATE OF ISSUANCE _____

COMMERCIAL DRIVER'S LICENSE: YES NO

PRESENT EMPLOYER: _____ HOW LONG: _____ TITLE: _____
ADDRESS: _____ CITY: _____ STATE: _____
PHONE: _____

HIGHEST LEVEL OF EDUCATION COMPLETED: _____

CRIMINAL RECORD (ATTACH ADDITIONAL PAGES IF NECESSARY)

List ALL prior or pending offenses, including criminal, traffic and juvenile. Include ALL arrests and convictions, even if subsequently expunged. Also, list any other diversion programs you have previously participated in.

Date	Offense	Location	Disposition

FAILURE TO MAKE FULL DISCLOSURE OF CRIMINAL HISTORY MAY RESULT IN AUTOMATIC DENIAL OF YOUR APPLICATION.

PLEASE STATE IN DETAIL THE FACTS WHICH CAUSED THE CURRENT CHARGES AGAINST YOU TO BE FILED:

PLEASE EXPLAIN WHY YOU FEEL YOU SHOULD RECEIVE A DIVERSION AND WHETHER YOU COULD SUCCESSFULLY COMPLETE THE DIVERSION PROGRAM:

I have read the foregoing application. All of the information is true and correct. I understand that if any of the foregoing information is not true and correct or if I fail to update any information, this may be a basis for denial of the diversion or a revocation of my diversion. I request a continuance of the court date for my case to allow the city time to review my application and obtain the information necessary to determine whether or not a diversion can be granted. I understand that I have a right to a speedy trial and I knowingly and voluntarily waive the right to speedy trial.

DATE

SIGNATURE OF DEFENDANT

This page for use by the City Prosecutor's Office

Date Application Received: _____

DIVERSION APPROVED

COST: _____ PAYMENT DEADLINE: _____

DIVERSION DENIED

REASON(S): _____

REVIEWED BY: _____