

# City of Topeka

## DUI Diversion Program



Topeka City Attorney  
Prosecutors Office  
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### DUI DIVERSION PROGRAM

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

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### YOU ARE NOT ELIGIBLE FOR DIVERSION IF:

- You have previously participated in diversion of an alcohol related offense;
- You have previously been convicted of or pleaded nolo contendere to an alcohol related offense in this state or have previously been convicted of or pleaded nolo contendere to a violation of K.S.A. 8-1567 and amendments thereto or of a law of another state, or of a political subdivision thereof, which prohibits the acts prohibited by that statute;
- You were involved in a motor vehicle accident or collision resulting in personal injury or death, even if you were the only person injured.
- You took a breath, blood or urine test and your test result was at or above 0.15
- You have a prior felony conviction
- You owe money to the Topeka Municipal Court
- If, in the prosecutor's opinion, your acts constituted the offenses of attempting to elude a law enforcement officer or Interference/Obstructing a law enforcement officer
- If 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

### FACTORS CONSIDERED

The decision of whether to offer someone diversion is totally discretionary with the prosecutor. There are several factors a prosecutor will consider (See §50-86(a) of the City Code). 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:

1. Arrange for and complete an evaluation with the Municipal Court Probation Department. The evaluation must be completed no later than 90 days after the date of the offense. You must comply with any recommendations agreed to by the probation department and the city attorney's office regarding treatment, and keep all scheduled appointments.
2. 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 a \$500.00 diversion fee, \$150.00 evaluation fee, \$50.00 administrative fee and actual court costs. Court costs will vary, but

will normally be \$133.00. The total cost for most diversions is \$833.00. If your case requires forensic testing, a \$400.00 laboratory analysis fee will also be assessed. **Failure to have an evaluation or pay all fees by the deadlines may result in declination or revocation of a diversion.**

3. You will be required to waive all rights under the law to a speedy arraignment, speedy trial and the right to a trial. You have the right to an attorney, but if you choose to proceed without an attorney, you must waive your right to be represented by an attorney.
4. You must stipulate or agree to the facts of the case with the City Attorney, and that any trial or subsequent appeal will be based on those stipulated facts.
5. **Any of the following events may result in ineligibility or revocation of your diversion agreement:**
  - **Failure to appear in Court**
  - **Failure to complete an evaluation by the deadline**
  - **Failure to pay costs and fees by the deadline**
  - **Having a warrant issued for your arrest**
  - **Failure to comply with agreed recommendations for treatment**
  - **Refusing a breath, blood or urine test offered by a law enforcement officer.**

### EFFECT OF DIVERSION

Should you enter into and successfully complete diversion, the City Attorney will dismiss the DUI case against you in one year, and it cannot be refiled. However, if you fail to meet all the requirements, the City Attorney's office will seek revocation of your diversion and prosecute you for the DUI and any other charges.

Entering into and successfully completing a DUI diversion will keep a DUI *conviction* off your driving record. However, your record will indicate that you received a DUI diversion, and the diversion will count as a conviction for any subsequent DUI offenses.