City of Topeka DUI Diversion Program

CITY OF TOPEKA –
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DUI DIVERSION PROGRAM

The City of Topeka has a DUI 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 DUI case if you comply with certain conditions.

Revised: July 1, 2012

DEFINITIONS

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

Alcohol – Related Offense: a violation of any ordinance, resolution or statute which prohibits the acts prohibited by KSA 8-1567, and amendments thereto, and includes entering into a diversion agreement in lieu of further criminal proceedings.

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 ARE NOT ELIGIBLE FOR DIVERSION IF:

- You have previously participated during your lifetime in a diversion for an alcohol related offense;
- You have previously been convicted of or pled nolo contendere to an alcohol related offense in this state or have previously been convicted of or pled 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 have previously participated in a diversion within the past five years in any jurisdiction for any misdemeanor or felony offense;
- You have other pending misdemeanor or felony charges in this or any other jurisdiction;
- You were involved in a motor vehicle accident or collision resulting in personal injury or death, even if you were the only person injured;
- At the time of the offense you were the holder of a commercial driver's license in this or any other state;
- You have three or more prior misdemeanor convictions or a prior felony conviction during your lifetime;
- 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 three 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 costs are a $1,000 diversion fee, $150 evaluation fee, $125 fee for Alcohol Information School, $50 administrative fee and $139 in court costs. The total cost for most DUI diversions will be $1,464.

   If your case required forensic testing, a $400 laboratory analysis fee will also be assessed. Note: The total cost may be higher if your case includes other misdemeanor offenses in addition to DUI.

2. 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.***
- ***Refusing a breath, blood or urine test requested by a law enforcement officer.***
- ***Failure to remain law abiding.***

EFFECT OF DIVERSION

Should you enter into and successfully complete the diversion, the Legal Department's Prosecution Section will dismiss the DUI case against you after one year and it cannot be refiled. 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 DUI diversion will keep you from having to serve time in jail and will keep a DUI *conviction* off your driving record. Your record will indicate however that you received a DUI diversion, and the diversion may be counted as a prior conviction for any subsequent DUI offenses.