



## **CITY OF OLATHE PROSECUTOR'S OFFICE DUI, DRUG AND/OR ALCOHOL OFFENSES DIVERSION PROGRAM GUIDELINES**

The Municipal Prosecutor for the City of Olathe, Johnson County, Kansas, has established a pretrial diversion program for offenders charged with Driving Under the Influence of Alcohol/Drugs or any other drug or alcohol offenses.

The diversion program is intended to give a "second chance" to first offenders who commit criminal offenses involving alcohol or drugs. Successful completion of the terms and conditions of the Diversion Agreement will result in dismissal of the diverted charges.

Diversion is a privilege and not a right. There is no presumption in favor of diversion in any case. The needs of the offender are considered subordinate to the priorities of the public safety and the rights of victims. Diversion will be granted only if the Prosecutor believes the defendant will not be involved again in unlawful activity and can benefit from substance abuse education or treatment.

It is not required that an offender retain an attorney; however, a defendant has the right to employ legal counsel and thereafter must have that attorney present throughout the diversion process until the Diversion Agreement is approved by the Prosecutor and filed with the Court.

### **A. DIVERSION PROCEDURES:**

1. At your court appearance when you schedule your diversion appointment, you will be provided with this diversion packet by the Prosecutor's Office. This packet will include a description of the diversion program, a list of certified alcohol and drug education and treatment agencies and a diversion application.

2. The Court Clerk will set an appointment for your diversion conference with a Prosecutor. The diversion date is a **mandatory** court date. Failure to appear on a diversion date is the same as failing to appear in court, and may result in a warrant or driver's license suspension. Additional fees will be assessed.

3. You should immediately contact a licensed provider to schedule an evaluation. Most agencies book evaluations 2-3 weeks ahead and require 7-10 days after the evaluation to prepare and submit reports to the Prosecutor. Your evaluation must be completed and submitted to the Prosecutor prior to or at your diversion appointment.

4. You must submit your completed diversion application to the Prosecutor's Office prior to or at your diversion appointment. Please have the diversion application completed prior to arriving for your diversion appointment.

5. The total cost for diversion is outlined as follows: The total DUI diversion fee is \$1,245.00. You will be fingerprinted after signing the DUI Diversion Agreement. The fingerprint fee of \$30.00 is included in the total DUI diversion fee. The total cost for a DUI diversion includes the State of Kansas mandatory minimum fine, mandatory court costs and Olathe Court Services monitoring fee. The total controlled/simulated controlled substance diversion fee is \$715.00. The total paraphernalia diversion fee is \$665.00. The total fee for diversion of both a controlled substance and a paraphernalia charge is \$765.00. The total diversion cost includes the diversion fee, mandatory court costs and Olathe Court Services monitoring fee. The total alcohol diversion fee is \$385.00. The total cost for an alcohol diversion includes the minimum fine, mandatory court costs and Olathe Court Services monitoring fee. A cash bond which has been posted in the case may be used to pay your diversion fees if the party whose signature appears on the bond is present to sign a release. Any late appearance fees, warrant fees or assessment for court-appointed counsel will be in addition to the total diversion fee. Pursuant to K.S.A.

28-176 a separate court cost of \$400.00 for each offense must be paid through the court to the Kansas Bureau of Investigation if any forensic science or laboratory services were rendered or administered.

6. Once the Diversion Agreement is completed and the required diversion fee is paid, your Agreement is filed with the Olathe Municipal Court. Your diversion term begins on that filing date and extends for one year. During your diversion appointment, a diversion orientation will be scheduled with your assigned monitor. It is your responsibility to schedule your monthly appointments with your monitor.

### **B. ELIGIBILITY CRITERIA:**

The following criteria serve as guidelines for the Prosecutor in determining whether an offender is appropriate for diversion.

1. The nature of the crime charged and the circumstances surrounding it.
2. Recommendations, if any, of the victim.
3. Recommendations, if any, of the involved law enforcement agency.
4. The impact of diverting the defendant upon the community.
5. Whether the available diversion program is appropriate to the needs of the defendant.
6. Whether there is a probability that the defendant will cooperate with and benefit from the diversion.
7. Any special characteristics or circumstances of the defendant.
8. Whether the defendant is a first-time offender of a drug or alcohol-related offense.
9. Whether the defendant has previously participated in a diversion or suspended imposition of sentence program.
10. Provisions for restitution.
11. Whether the defendant demonstrates a genuine sense of remorse, acknowledges the act(s) charged, and expresses a willingness to be accountable for the consequences of those acts.

**In general, the Prosecutor will not approve a diversion if the offender has:**

1. A DUI charge involving an accident resulting in injury to another person.
2. Charges pending in other municipal, state or federal jurisdictions.
3. Previously been diverted, convicted or plead nolo contendere to a drug, DUI or other alcohol offense even if imposition of the sentence was suspended or the charge was subsequently dismissed.
4. Been convicted of, plead guilty or nolo contendere to a reduced charge from an original charge of DUI.
5. Prior adult felony convictions.

If you do not qualify for diversion or choose not to complete the diversion process, you should obtain an attorney to represent you. If you cannot afford an attorney, the Municipal Court may appoint a public defender to represent you.

If you do qualify for this program, the Municipal Prosecutor cannot advise you on your decision to enter into a diversion, the effect on your future criminal history, driving and insurance records or the merits of your case.

Regardless of your decision regarding the Olathe Diversion Program, you are strongly advised to seek the advice of an attorney on any legal question you may have such as your guilt or innocence, court procedures, the laws violated, penalties involved, or the impact on your criminal history driving and insurance records.

### **C. DIVERSION REQUIREMENTS:**

If the Municipal Prosecutor agrees to diversion, the defendant will be required to waive any and all rights arising under the laws and/or Constitution of Kansas or the United States to a speedy trial and all proceedings incidental thereto. The Diversion Agreement will contain a Stipulation of Facts, which includes, but is not limited to, the arrest report, alcohol influence report, blood alcohol and any other test results. The Diversion Agreement may include, but is not limited to, provisions for:

1. If you are entering diversion for a DUI and/or drug offense at least one half of the total diversion cost must be paid at the diversion appointment. If you are entering diversion for any other alcohol offense the total diversion cost must be paid in FULL at the diversion appointment.
2. Strict compliance with all federal, state or local laws.
3. Abstinence from the possession or consumption of beer/alcoholic beverages and controlled substances.
4. Successful completion of an approved alcohol/drug education or treatment program.
5. Satisfactory participation in designated medical, vocational, social or psychological counseling programs or public service.
6. Payment of all fees and charges from the certified alcohol and drug agencies which provide your evaluation, education lecture series, your alcohol and drug treatment and any additional treatment or aftercare and all fees and charges from any agency providing an additional evaluation or additional counseling, if required.
7. Restitution for the victim or the community.
8. No contact with specified victims or witnesses.
9. Maintenance of gainful employment or good standing in an approved education program.

The terms of the Diversion Agreement will be reduced to writing and, upon approval of the parties involved, filed with the Municipal Court. Following satisfactory completion of the diversion program, the Municipal Prosecutor will move to have the charges against the defendant dismissed with prejudice.

Failure to strictly comply with any of the provisions of the Diversion Agreement will result in the filing of a Motion to Revoke Diversion and re-commencement of prosecution on the stipulated facts.



**CITY OF OLATHE PROSECUTOR’S OFFICE APPLICATION FOR DIVERSION**

This application is to be filled out completely and returned to the Prosecutor’s Office on or before the scheduled diversion appointment.

1) **DEFENDANT INFORMATION:**

Name \_\_\_\_\_ DOB \_\_\_\_\_ SSN \_\_\_\_\_  
Email Address \_\_\_\_\_ Phone # \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Driver’s License # \_\_\_\_\_ State \_\_\_\_\_ Is this a CDL? \_\_\_\_\_  
Do you currently possess a CDL in any state? \_\_\_\_\_ Have you ever possessed a CDL in any state? \_\_\_\_\_  
Highest Level of Education \_\_\_\_\_

2) **EMPLOYMENT INFORMATION:**

Present Job \_\_\_\_\_ Address \_\_\_\_\_  
Job Title \_\_\_\_\_ How Long? \_\_\_\_\_  
Salary \_\_\_\_\_ Per \_\_\_\_\_

3) **MENTAL HEALTH HISTORY:** List any current or previous psychiatric and/or psychological treatment received. Please state when and where. If none, state none.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4) **PREVIOUS CRIMINAL RECORD:** (Attach additional page, if necessary). If none, state none. Please state all offenses arrested for, state whether diverted or convicted, or if juvenile offenses, how adjudicated. List all alcohol-related traffic offenses. Include any offenses expunged, plea bargained or dismissed. Failure to divulge prior criminal history on this application may result in denial of your diversion application or revocation of your diversion.

| <u>Offense</u> | <u>When</u> | <u>Where</u> | <u>Disposition</u> |
|----------------|-------------|--------------|--------------------|
| _____          | _____       | _____        | _____              |
| _____          | _____       | _____        | _____              |
| _____          | _____       | _____        | _____              |

5) **EXPLAIN WHY YOU FEEL YOU COULD SUCCESSFULLY COMPLETE THE DIVERSION PROGRAM.** (To be completed by the defendant in the defendant's own words)

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6) **STATE IN DETAIL THE FACTS WHICH CAUSED CHARGES TO BE FILED.** (To be completed by the defendant in the defendant's own words)

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

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Date

***RELEASE OF INFORMATION***

I intend to apply to the **City of Olathe City Prosecutor's Office** for diversion in a criminal case in which I am the defendant.

I hereby authorize the City Prosecutor's Office to release any information in the City Prosecutor's file pertaining to the offense for which I am charged to the Department of Social and Rehabilitation Services, the investigating law enforcement agencies, or any other such person or agencies for use in determining whether I am a suitable candidate for diversion. I further authorize any persons, agency or organization to release and provide, upon request, any information to the office of the City Prosecutor in consideration of my application for diversion.

I further authorize any person, agency or organization that is conducting an evaluation, education, counseling, or treatment as a part of the diversion application or the Diversion Agreement to release information to any other person, agency or organization as needed or requested for the evaluation, education, counseling or treatment process or for monitoring my compliance.

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Date