

CITY OF INDEPENDENCE MUNICIPAL COURT GENERAL DIVERSION POLICY

Pursuant to K.S.A. 12-4414(b), the City Prosecutor has determined that a Diversion Policy is in the interest of justice and benefit to the community. The granting of a diversion is not a right and is at the discretion of the City Prosecutor. There is no guarantee diversion will be granted in any given case. The needs of the offender are less important than those of public safety and the rights of victims. It is not required that a defendant has an attorney for the purpose of diversion. However, the defendant has the right to employ an attorney and have him/her present throughout the diversion process.

The City Prosecutor will consider all relevant factors in considering an application for diversion, including but not limited to the following:

1. The nature of the crime charged and the circumstances surrounding it;
2. any special characteristics or circumstances of the defendant;
3. whether the defendant is a first-time offender of an alcohol related offense and if the defendant has previously participated in diversion, according to the certification of the division of vehicles of the state department of revenue;
4. whether there is a probability that the defendant will cooperate with and benefit from diversion;
5. whether there is a probability that the defendant committed such crime as a result of an injury, including major depressive disorder, polytrauma, post-traumatic stress disorder or traumatic brain injury, connected to service in a combat zone, as defined in section 112 of the federal internal revenue code of 1986, in the armed forces of the United States of America;
6. if subsection (a)(5) applies to the defendant, whether there is a probability that the defendant will cooperate with and benefit from in-patient or outpatient treatment from any treatment facility or program operated by the United States department of defense, the United States department of veterans affairs or the Kansas national guard with the consent of the defendant, as a condition of diversion;
7. whether the available diversion program is appropriate to the needs of the defendant;
8. the impact of the diversion of the defendant upon the community;
9. recommendations, if any, of the involved law enforcement agency;

10. recommendations, if any, of the victim;
11. provisions for restitution; and
12. any mitigating circumstances.

No diversion for DUI offense will be considered if the offender has a prior diversion or conviction for DUI or related offense. NO diversion will be considered for a DUI offense if the incident involves an accident which resulted in injury or death.

In some cases, diversions are prohibited, by statute, for any traffic offenses if the Defendant has a commercial driver's license.

Defendant will be required to submit the attached application in a timely manner. If a Diversion is granted, the Defendant must complete the agreement, upon preparation of the same, and return the signed agreement and required fees by the date set by the City Prosecutor. The offer of a Diversion may be withdrawn at any time prior to filing the completed agreement and fees with the Court.

Once the agreement is approved by the City Prosecutor and the Court, the case will be continued for the term of the diversion. If the Defendant fulfills the terms of the agreement, the City Prosecutor will dismiss the matter with prejudice.

Standard terms of a Diversion may include but are not limited to the following:

1. Payment of applicable fines, court costs, diversion fee (not to exceed \$100), any evaluations, lab fees, and restitution, prior to the entry of the diversion.
2. Obey all federal, state and local laws and immediately report when stopped, questioned, ticketed, arrested or charged by a law enforcement officer or prosecuting authority for any reason the Defendant shall notify in writing the Clerk of the Independence Municipal Court of the matter no later than the next business day of such occurrence on which the Defendant is reasonably physically capable of doing so.
3. Immediately notify the Clerk of the Independence Municipal Court and in writing of any change of address or telephone number during the term of the diversion agreement.
4. The Defendant shall not purchase, possess or consume any alcoholic beverages or illegal controlled substances.

5. The Defendant shall not enter into liquor stores or businesses whose primary source of income is derived from the sale of alcoholic beverages; unless during the course of employment.
6. The Defendant shall submit to a blood, breath or urine test at the Defendant's own expense by providing forthwith a true sample of blood, breath or urine at the request of the Independence City Prosecutor, Independence Municipal Court or their agents, and/ or any law enforcement agent. The Defendant may have such tests done in the Defendant's state of residence at any qualified facility or at a facility designated by the requesting agency.
7. No contact with victim and/or co-defendants. Defendant may be further restrained from being on or around the property of the victim.
8. An agreement or stipulation of facts that are the basis for the charges.
9. Waiver of certain rights, such as speedy trial, jury trial and appeal rights.
10. Any other provisions the City Prosecutor deems appropriate for the circumstances surrounding the charges.

The terms of the diversion agreement will be reduced to writing and, upon approval of the parties involved, filed with the Municipal Court of the City of Independence, Kansas. Upon satisfactory completion of the diversion program, the City Attorney will move to have the charges against the defendant dismissed with prejudice. Participation in the Diversion Program will appear on the defendant's record.

Failure to strictly comply with any provisions of the program may result in the reinstatement of prosecution and the matter proceeding to trial on the agreed facts and/or stipulations.

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