

# **CITY OF ARKANSAS CITY MUNICIPAL COURT STANDARD DIVERSION PROGRAM**

The following guidelines have been adopted by the Arkansas City City Prosecutor's office for the diversion program in Arkansas City Municipal Court. These guidelines supersede prior policies or guidelines, whether oral or in writing, and are effective for any offense committed on or after August 1, 2016.

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. While a Diversion Agreement costs the defendant the amount of the fine plus a \$100.00 diversion fee, \$20 fingerprint fee, and sometimes other additional costs, a diversion allows the defendant to escape the otherwise mandated punishment of the offense charged. It is not required that a defendant has 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 application process.

## **I. Eligibility; Factors Considered**

In determining whether or not diversion is appropriate, the City Prosecutor will consider a number of factors, most importantly, whether the law allows a diversion in that case. Some additional factors include:

1. The nature of the crime and the circumstances surrounding it.
2. Any special characteristics and circumstances of the defendant.
3. Whether the defendant is a first-time offender and if the defendant has previously participated in diversion.
4. Whether the diversion program is appropriate to the needs of the defendant.
5. The impact of diversion on the community.
6. The recommendations of the involved law enforcement community.
7. The recommendations, if any, of the victim.
8. The amount of restitution, if applicable, owed by the defendant.
9. Any mitigating or aggravating circumstances surrounding the crime.
10. Whether there is a probability that the defendant will cooperate with and benefit from diversion.

## **II. Exclusions**

A defendant is not eligible for diversion if the defendant (1) has previously participated in diversion of an alcohol related offense; (2) has previously been convicted of or pled no contest to driving under the influence of alcohol or refusing to submit to a test to determine the presence of alcohol or drugs; or (3) during the time of the alleged alcohol related offense was involved in a motor vehicle accident or collision resulting in personal injury or death. It is presumed by the above eligibility guidelines that diversion is not appropriate in cases where the defendant has a prior criminal record which includes arrests, convictions, prior diversions, or unrelated pending criminal matters. Whether or not to offer diversion to any defendant is solely within the discretion of the City Prosecutor.

## **III. Procedures**

1. The Defendant must indicate to the Prosecutor that he or she is interested in a diversion. The prosecutor will then investigate and evaluate whether the Defendant is eligible. The prosecutor will notify the Defendant if he or she is eligible for diversion.

2. If charged with **driving under the influence of alcohol and/or drugs or minor in possession/consumption of alcohol** the defendant must make arrangements with the Clerk of the Municipal Court to participate in a drug and alcohol evaluation. Such evaluations are required of all DUI defendants, if the defendant intends to participate in this diversion program, pleads guilty, or is found guilty. The defendant must pay the **\$150.00** cost of the evaluation to the evaluator, on the date of the evaluation.
3. The defendant may be given up to four (4) weeks to obtain the diversion funds by the Prosecutor; and the Municipal Court Judge may grant the Defendant additional time to raise the funds for diversion. **A DEFENDANT MUST PAY THE COST OF DIVERSION IN FULL, AT THE TIME OF EXECUTING THE DIVERSION AGREEMENT.** The defendant then must comply with all the terms of the diversion agreement within the six-month diversion period.

#### **IV. The Diversion Agreement**

If the City Prosecutor approves a request for diversion, the terms and conditions will be reduced to writing for approval and signature by both parties. At the time, the Defendant must pay the cost of the diversion in full; and provide fingerprints at the Arkansas City Police Department (if not previously given in the matter). The executed diversion agreement will be filed with the Municipal Court and criminal proceedings will be suspended as long as the applicant fulfills the terms and conditions of the diversion agreement. Upon successful completion of the agreement the City Prosecutor will move to dismiss the charge(s) with prejudice.

If at any time during the diversionary period or three (3) months after its termination the City Prosecutor finds that the applicant failed to fulfill the terms of the agreement and/or violated any requirement imposed by the diversion agreement, the City Prosecutor will file a Motion to Revoke the agreement and resume criminal proceedings of the offense(s) subject to the diversion agreement, pursuant to the terms of the diversion agreement. All funds paid to the Court pursuant to that diversion agreement will be forfeited.

#### **V. STANDARD DIVERSION AGREEMENT**

**Length: 6 months**

As stated above, a defendant is required to pay the entire amount owed under the diversion agreement at the time of signing the diversion agreement. Examples of Standard Amounts Owed Pursuant to Diversion (subject to exceptions):

Driving Under the Influence of Alcohol	\$1,421
Minor in Possession of Alcohol	\$416

If you have questions or are unsure as to the amount you would be required to pay pursuant to a diversion agreement, the City Prosecutor is available to discuss these matters at 12:30 p.m. every Tuesday in the Municipal Court courtroom.