

## **CITY OF WELLINGTON MUNICIPAL COURT 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.

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.

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 and required application fee(\$25) in a timely manner. If a Diversion is granted, the Defendant must complete the agreement, attend Diversion Conference and return the signed Diversion Agreement and required fees in a timely fashion as well. 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 Wellington City Prosecutor's Office 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 Wellington Municipal Court and Wellington City Prosecutor's Office 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 Wellington City Prosecutor, Wellington Municipal Court Probation Officer, Wellington 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.

Failure to follow the terms of the diversion will result in a revocation of the diversion and the matter proceeding to trial on the agreed facts and/or stipulations.

The attached application and fee can be returned to the Clerk of the Municipal Court, 317 S. Washington Ave, Wellington, Kansas 67152.



10. DEFENSE ATTORNEY: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_ PH# \_\_\_\_\_

11. PRESENT PLACE OF EMPLOYMENT: \_\_\_\_\_  
DATE EMPLOYED: \_\_\_\_\_ OCCUPATION: \_\_\_\_\_

12. LIST PRIOR TRAFFIC CONVICTIONS OCCURRING WITHIN THE PAST 3 YEARS:

13. LIST PRIOR CRIMINAL OFFENSE CONVICTIONS AND ALL PRIOR DUI CONVICTIONS & DIVERSIONS (LIFETIME):

14. YOUR AUTOMOBILE INSURANCE COMPANY: \_\_\_\_\_  
LOCAL AGENT: \_\_\_\_\_ PH# \_\_\_\_\_  
POLICY NUMBER: \_\_\_\_\_

WAS THIS INSURANCE IN EFFECT AT THE TIME OF YOUR ARREST OR TICKET? YES \_\_\_\_ NO \_\_\_\_

15. AT THE TIME OF YOUR ARREST OR TICKET WAS YOUR DRIVER'S LICENSE SUSPENDED OR REVOKED FOR ANY REASON? YES \_\_\_\_ NO \_\_\_\_

16. HAVE YOU EVER ATTENDED ALCOHOL TREATMENT OR COUNSELING? YES \_\_\_\_ NO \_\_\_\_

IF YES, STATE WHEN, WHEN AND THE REASON FOR ATTENDANCE.

I hereby apply for status as a participant in the diversion program and request the City Prosecutor temporarily delay trial against me in order to permit consideration of this application. I understand that the final decision to commence criminal proceedings or to defer prosecution in my case rests entirely with the City Prosecutor. I authorize the City Prosecutor to conduct an investigation to determine suitability for this program. I understand that any information by me or authorized by me to furnish the City Prosecutor in connection with this investigation will be kept confidential. A false answer to any question in this application may be grounds for recommendation against placement in this program or removal after placement in this program, in which case the City Prosecutor will resume prosecution on the original charges.

I authorize the City Prosecutor's office to conduct a background check for criminal history and driving record. I further authorize the City Prosecutor's office to contact my liability insurance carrier and authorize them to release information.

I understand that if I am granted Diversion, I will be required to pay all fines and costs prior to being placed on diversion. I understand that a Diversion Fee of up to \$100 per charge may be requested as a part of the diversion agreement. I understand that I will not be approved for diversion on a DUI case if I have previously had a diversion or conviction for DUI; if I had no vehicle insurance at the time of my arrest; if my driver's license was suspended at the time of my arrest; or if my DUI arrest involved personal injury or death.

I understand that upon this application being preliminarily reviewed by the City Prosecutor resulting in tentative approval for diversion, if it is an alcohol or drug related offense, or drugs or alcohol may have been involved in the incident, I will be referred for an alcohol and drug evaluation with a certified evaluator. In order to remain eligible for diversion consideration I must keep all evaluation appointments. In case of emergency I may reschedule one appointment provided I contact the evaluator in advance. I understand that my evaluation generally may require me keeping 2 appointments. If treatment recommendations are made by my evaluator these recommendations will be included as requirements of my diversion.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Applicant's Signature