



## **CITY OF SALINA DIVERSION GUIDELINES**

The following guidelines have been adopted by the City of Salina Prosecutor's Office for the diversion program in the City of Salina Municipal Court. These guidelines supersede prior policies or guidelines, whether oral or in writing, and are effective for any offense committed on or after July 27, 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.

It is not required that a defendant have 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 process.

## **PROCEDURES**

**ALL COURT APPEARANCES MUST BE ATTENDED DURING THE APPLICATION PROCESS.** You may turn in this application to the City of Salina Prosecutor's Office after your first appearance. The City of Salina Prosecutor's Office will review requests for diversion and may require a diversion conference with the applicant. Please review the following steps carefully:

1. The diversion application must be completed on the form provided by the City of Salina Prosecutor's Office. You must pay the applicable non-refundable diversion fee and court costs at the time you submit your application to Clerk of the Court. Your application will not be accepted without this payment.
2. You or your attorney will be notified if the diversion application has been approved. If the application is denied, you or your attorney will be notified of the reason(s) for denial.
3. If you are charged with Driving under the Influence and have been approved for diversion, you must obtain a drug and alcohol evaluation prior to the diversion agreement being accepted and filed. You must sign all necessary releases with the evaluating agency in order for your evaluation to be released to the Prosecutor's Office.
4. You may sign the diversion agreement at your next scheduled court date or you may

contact the Prosecutor's Office to make arrangements to sign the agreement prior to your court date.

5. If you are charged with a domestic battery or domestic related offense, you may be required to attend an anger management course.
6. If you are charged with an alcohol offense, you may be required to attend the Alcohol and Drug Information School.

If the City of Salina Prosecutor's Office approves a diversion agreement, the terms and conditions will be reduced to writing for approval and signature by both parties. The executed diversion agreement will be filed with the Municipal Court and criminal proceedings will be suspended as long as the defendant fulfills the terms and conditions of the diversion agreement. If you fail to comply with the terms of the diversion, you will be prosecuted for the underlying crime.

If you participate in this diversion program, you will be required to:

1. Waive all rights under the law or constitution to a speedy arraignment, speedy trial, and the right to a jury trial;
2. Enter into a stipulation with the City of Salina Prosecutor's Office of the facts upon which the charge is based; and,
3. Agree that if you fail to fulfill the terms of the diversion agreement and the proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted exclusively on the record of the stipulation of the facts relating to the complaint.

Upon successful completion of the diversion agreement, the City of Salina Prosecutor's Office will move to dismiss the charge(s) with prejudice. If at any time during the diversionary period, the City Prosecutor finds that the defendant is no longer fulfilling the terms of the agreement, the City Prosecutor will file a Motion to Revoke the agreement and resume criminal proceedings.

Diversion will be considered for the following offenses: Driving under the Influence of Alcohol/Drugs, Domestic Battery, Theft, Juvenile Driving in Violation of Restrictions, Possession or Consumption of Alcoholic Beverage by Minor, and Miscellaneous Criminal Offenses (Battery, Assault, Criminal Damage to Property, and Unlawful Deprivation of Property).

**The criteria and factors to be considered in granting or denying diversion are as follows:**

- 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 5 applies to the defendant, whether there is a probability that the defendant will cooperate with and benefit from inpatient 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 Salina Police Department;
- 10) Recommendations, if any of the victim;
- 11) Provisions for restitution; and
- 12) Any mitigating circumstances.

(Revised July, 2016)