

DUI Diversion Procedure

The defendant should retain representation of counsel.

The defendant must complete a diversion application and submit to the Rossville/Willard Municipal Court. The defendant must also complete an alcohol and drug evaluation. (Fees for the evaluation must be paid at the time of the evaluation and paid by the defendant.)

If the diversion application is approved the defendant should sign the agreement and pay all of the fees.

The defendant must comply with all terms of the diversion and report to the court as ordered.

Please note that the City Prosecutor may not enter into a diversion agreement with a person charged with DUI if: the defendant has previously participated in a diversion of DUI, the defendant has a previous conviction of or pleaded noto contendere to DUI in this state or another state or political subdivision or the defendant was involved in a traffic accident resulting in personal injury or death.

TRAFFIC DIVERSION PROCEDURE

The defendant should complete the diversion application and pay the application fee of \$25.00.

If the application is approved the defendant may sign the agreement a pay the fine as indicated on the agreement to the court before the next court date. The defendant may also appear in court on the scheduled date to sign the agreement and pay the fine/fee.

The defendant must comply with all terms of the diversion.



**For more information
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Diversion Agreements



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THE CONCEPT

Once a municipal court case proceeds to trial, the judge has only two options. The defendant must be found guilty or not guilty. That determination must be based solely on the evidence presented. Many prosecutors realize cases are not all cut and dried and that often some middle ground is needed between the extremes of dismissal and conviction. It is this need for a middle ground that gave rise to the concept of diversion.

Generally, diversion is an agreement between the City Prosecutor and the defendant whereby the defendant agrees to do certain things (such as completing alcohol treatment) and the prosecutor agrees to dismiss the charge or charges if the defendant performs as agreed. Ideally, this allows the defendant to get the help needed for rehabilitation without the stigma of a conviction.

Since the diversion is a contract between the defendant and the prosecution, the judge should not be involved in determining whether a defendant is “placed on diversion” or the terms of the diversion. However, like other contracts, there may be disputes about whether there has been performance of all of the terms. In that case, the court may be called upon to decide whether the criminal proceeding should resume or if the complaint should be dismissed.

Requirements For ALL Diversions

The following must be contained in diversion agreements for all offenses:

1. A statement that if the defendant fulfills the obligation of the program described in the agreement, as determined by the City Prosecutor, the charges shall be dismissed with prejudice. The term “with prejudice” means the charges cannot be refiled.
2. A waiver of the constitutional rights to “counsel”, a speedy arraignment, preliminary examinations and hearings, and a speedy trial.
3. Personal information about the defendant.
4. A stipulation of facts upon which the charge is based.
5. A provision that if the defendant fails to fulfill the terms of the specific diversion agreements and the criminal proceedings are resumed, the proceedings shall be conducted on the record of the stipulation of the facts.

Additional Requirements for DUI Diversions

1. That the defendant pay a fine of not less than \$750.
2. That the defendant enroll in a successfully complete an alcohol and drug safety action program or a treatment program or both and pay the fee for the program.
3. The defendant may be required to pay fees for a court appointed attorney.

In addition, a defendant must submit to and complete an alcohol and drug evaluation before the execution of a diversion agreement when charged with DUI.

Right to Counsel

Prior to entering into a diversion agreement, individuals charged with DUI must either be represented by counsel or sign a written waiver of such representation.

Revocation of Diversion

If the defendant fails to comply with the terms of diversion, the City Prosecutor may move for revocation of diversion. The matter will be set for hearing. If the court finds that the terms of the diversion agreement have not been complied with, the diversion must be set aside and the criminal proceedings must be resumed as if there had been no diversion.

Dismissal After Diversion is Complete

If the defendant complies with the terms of the diversion, the city must dismiss the case with prejudice, which means the complaint may not be refiled.

