

OFFICE OF THE CITY PROSECUTOR

MUNICIPAL COURT — PRETRIAL DIVERSION POLICY

1. Purpose & Policy Statement

The Pretrial Diversion Program is a conditional alternative to formal criminal prosecution within the Marysville Municipal Court. The primary goals of this program are to:

- **Promote rehabilitation:** Address underlying behavioral issues through targeted intervention.
- **Secure rapid restitution:** Prioritize whole financial recovery for victims of property crime or traffic accidents.
- **Conserve municipal resources:** Reduce administrative burdens and mitigate traffic recidivism.

Diversion is a privilege, not a right. The final determination to grant or deny diversion rests solely within the absolute and unreviewable discretion of the City Prosecutor.

2. General Eligibility Criteria

To be considered for the general diversion program, an applicant must satisfy the following baseline requirements:

- **Nature of Offense:** Limited to first-time municipal ordinance violations and non-violent traffic offenses.
- **Criminal History:** No prior criminal convictions, diversions, or deferred judgments within the past 5 years.
- **Acceptance of Responsibility:** The defendant must demonstrate a genuine willingness to acknowledge and take accountability for their actions.
- **Victim Consultation:** The City Prosecutor will consult with any victims regarding restitution status and input prior to approval.

3. General Exclusions & Exceptional Circumstances

A defendant shall be excluded from diversion consideration under the following circumstances, subject to the narrow exception defined below:

- **Violent Offenses:** Any ordinance violation involving a firearm, domestic battery, or physical violence is strictly excluded, absent a showing of exceptional circumstances.
- **Commercial Drivers (CDL):** Pursuant to federal anti-masking laws and Kansas regulations, any defendant holding a Commercial Driver's License (CDL) at the time of the offense is strictly barred from diversion for any traffic violation, including DUI. No exceptions apply.
- **Prior Violations:** A previous conviction or diversion for the same or a similar municipal ordinance within 5 years.

Definition of Exceptional Circumstances

For the purpose of bypassing a general exclusion, "Exceptional Circumstances" is defined as an extraordinary, rare, and compelling combination of factors that clearly demonstrates that formal prosecution would result in manifest injustice.

- **Burden of Proof:** The burden rests entirely on the defendant to present clear and convincing written evidence of such circumstances.
- **Qualifying Factors:** The City Prosecutor may consider, but is not limited to:
 - Extreme, non-induced mitigating factors surrounding the commission of the offense.
 - Explicit, written support for diversion from the victim or victim's family.
 - Severe, unique medical or cognitive vulnerabilities that directly contributed to the behavior and are actively being treated.
 - Evidentiary weaknesses that significantly impair the City's ability to secure a conviction at trial, where diversion still serves the interest of public safety.
- **Limitation:** Economic hardship, standard professional disruption, or general remorse do *not* constitute exceptional circumstances.

4. Special Provisions for Kansas DUI Diversions

DUI charges are subject to strict statutory restrictions under Kansas law (K.S.A. 12-4415). A defendant charged with a municipal DUI is strictly ineligible for diversion if:

- **Prior DUI History:** They have a prior conviction or diversion for a DUI violation in Kansas, or a substantially similar offense in another state, at any time in their life.
- **Serious Injury:** The DUI involved an accident causing physical injury or death to another person.
- **Child Passenger:** A child under the age of 14 was a passenger in the vehicle at the time of the offense.
- **Licensing:** The defendant held a CDL at the time of the violation.

5. Application Process

Defendants seeking diversion must strictly adhere to the following procedural steps:

- 1. Submission:** Submit a formal, written application to the City Prosecutor's Office within 30 days of their first court appearance.
- 2. Application Fee:** Pay a non-refundable application fee to the Marysville Municipal Court Clerk to cover background checks and processing.
- 3. DUI Evaluation:** If applying for a DUI diversion, the defendant must undergo a mandatory alcohol and drug evaluation by a licensed substance abuse counselor prior to approval, at their own expense.

6. Standard Diversion Agreement Terms

If approved, the defendant must execute a formal Diversion Agreement. Prosecution will be stayed for a standard period of up to 12 months (unless exceptional circumstances require a longer or shorter period), conditioned upon:

- **Law-Abiding Behavior:** Committing no federal, state, or municipal law violations during the diversion period.
- **Financial Obligations:** Paying all court costs, mandatory statutory DUI fees, and full victim restitution according to a court-approved schedule.
- **Stipulation to Facts:** Signing a detailed, binding stipulation of facts admitting to all elements of the crime, including breath/blood test results or chemical test refusal facts.
- **Mandatory DUI Conditions:** Pursuant to Kansas statute, a DUI diversion agreement must require the defendant to:
 - **Complete a certified alcohol and drug safety action program.**

- **Pay a mandatory statutory fee of \$150.00 (distributed to the community alcoholism and intoxication fund).**
- **Comply with all ignition interlock restrictions ordered by the Kansas Department of Revenue.**

7. Breach and Revocation

Failure to comply with any term of the Diversion Agreement will trigger immediate enforcement actions:

- **Notice of Violation: The City will file a Motion to Revoke Diversion and serve formal notice to the defendant.**
- **Hearing: A revocation hearing will be held before the Marysville Municipal Court Judge to determine if a breach occurred.**
- **Consequence of Breach: If the court finds a violation by a preponderance of the evidence, the diversion agreement is terminated. The case will immediately proceed to a bench trial solely on the signed Stipulation to Facts, ensuring a swift conviction.**

8. Successful Completion

Upon successful completion of the diversion timeline and fulfillment of all financial, legal, and rehabilitative conditions, the City Prosecutor will file a Motion to Dismiss with Prejudice. The charges will be permanently dismissed.