

OFFICE OF THE CITY ATTORNEY
CITY OF CARBONDALE, KANSAS

DIVERSION AND AMENDMENT OF
TRAFFIC CITATIONS
POLICIES AND GUIDELINES

PREAMBLE

Pursuant to K.S.A. 12-4413 et seq., the City of Carbondale, Osage County, Kansas, is mandated to establish a pretrial diversion program in certain criminal proceedings; to set forth written policies and guidelines to implement said statute; to provide for notification to all defendants of said program and to provide for a diversion conference for all defendants who are eligible to request said conference. The City is also able to amend fines and penalties for certain traffic violations.

A copy of this diversion and amendment of traffic citations program's policies and guidelines may be obtained from Ashley Madden, Court Clerk, City of Carbondale, Kansas, and the City Attorney's office, 2887 SW MacVicar Avenue, Topeka, Kansas 66611.

**ELIGIBILITY TO APPLY FOR
ENTRY INTO THE DIVERSION PROGRAM**

(A) All Defendants charged with an alcohol or drug-related offense are eligible to apply for diversion, if they have no prior criminal convictions, except that in cases where the defendant is charged with multiple counts, the defendant may be refused diversion.

(B) No defendant who has previously been on diversion in this jurisdiction or is presently on diversion in any jurisdiction is eligible.

(C) The charge for which the defendant wishes to apply for diversion may not have involved an accident.

(D) The following traffic offenses are not eligible for diversion under K.S.A. 12-4413 et seq.: All offenses for which the Court has adopted a schedule fine. A list of such offenses may be obtained from the City Clerk's office. The charge of these offenses may be amended if the defendant:

- (1) does not presently have more than two (2) moving violations on his/her driving record;
- (2) is not applying for amendment of a charge which resulted in an accident;
- (3) is not applying for amendment of a speeding violation where the defendant was traveling more than fourteen (14) miles per hour over the posted speed limit;
- (4) is not applying for amendment of a speeding violation where the defendant was traveling over the posted speed limit in a school zone;
- (5) has not applied for and received an amendment or diversion of a citation in this jurisdiction within twelve (12) months;
- (6) is not applying for an amendment of a charge of reckless driving or fleeing and eluding.

Each defendant, or his/her attorney, if they have one, may apply to the City Attorney's Office at 2887 SW MacVicar Avenue, Topeka, Kansas 66611, for diversion or amendment, if eligible.

The following factors shall be considered in determining whether diversion of the defendant is in the best interest of justice and of benefit to the defendant and the community:

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 and if the defendant has previously participated in diversion;
4. Whether there is a probability that the defendant will cooperate with and benefit from diversion;
5. Whether the available diversion program is appropriate to the needs of the defendant;
6. The impact of the diversion of the defendant upon the community;
7. Recommendations, if any, of the involved law enforcement agency;
8. Recommendations, if any, of the victim;
9. Provisions for restitution; and
10. Any mitigating circumstances.

Upon receipt of all the above information, a diversion conference may be held at which time the defendant shall be present and shall have the right to be represented by counsel. At that time, the City Attorney's Office shall state whether or not the defendant is an acceptable candidate for the diversion program.

Upon determination that the defendant is an acceptable candidate for entering the diversion program, a written diversionary agreement shall be entered into by the parties with the approval of the Court.

The said written agreement shall contain:

1. A waiver of all rights to a speedy trial;
2. A waiver of all rights to counsel, if applicable;
3. A waiver of all rights to a jury trial;

4. A specified term of diversion not to exceed two (2) years;
5. An agreement that the defendant shall refrain from violating any of the laws of the United States, of any state, or the ordinance of the City of CARBONDALE, Kansas;
6. An agreement that the defendant shall report to the City Attorney's Office or any other person at any time he/she may agree upon in the diversion agreement;
7. That the defendant shall conduct himself/herself at all times as a law-abiding citizen;
8. Reduced to payment of all Court costs;
9. A diversion maintenance fee for all offenses equaling twice the scheduled fine, except driving under the influence for which the diversion maintenance fee shall be \$750.00;
10. Any special conditions agreed to by the parties which may include any of the following:
 - a. Full restitution to the victim;
 - b. Residence in a specified facility;
 - c. Maintenance of gainful employment;
 - d. Participation in any recommended program;
 - e. Counseling and/or classes.

Upon the defendant entering into a diversion agreement, the criminal proceedings shall be suspended; and only upon the defendant successfully fulfilling all the terms and conditions of his/her diversion agreement, the City Attorney shall move to have the criminal charges dismissed with prejudice against the defendant.

If during or at the end of the said diversionary period, and prior to dismissal of the case, it is determined that the defendant has failed to fulfill any of the terms and conditions of his/her

diversionary agreement, the City Attorney shall file a motion to revoke the diversion and upon the Court finding that the defendant has failed to fulfill all the terms and conditions of the diversionary agreement at a hearing thereon may revoke the diversionary agreement and order the criminal proceedings resumed on the original complaint.

The same factors considered for diversion will be considered in a possible amendment of a traffic citation. If a citation can be amended, it shall result in a fine equaling twice the scheduled fine and payment of all court costs. If citations are amended, they may be amended to:

- 1) a lesser offense of the same nature
- or
- 2) a non-moving violation.

These amendments shall be at the sole discretion of the City Attorney.

Effective Date: June 24, 2024.