

## MISDEMEANOR DIVERSION PROGRAM

The City of Abilene has a misdemeanor diversion program for *first time offenders* on a case-by-case basis. A diversion is an agreement not to prosecute you on your present case if you comply with certain conditions.

### DEFINITIONS

The following words and phrases as used in this policy shall mean:

**Conviction:** a judgment of guilt, whether resulting from a plea of guilty, no contest, or by trial, on any charges constituting a traffic infraction, misdemeanor, or felony offense in this jurisdiction or any other jurisdiction. This term shall include juvenile adjudications and cases that have been expunged from a defendant's criminal record.

**Diversion or Deferred Prosecution:** a referral of a defendant to a supervised performance program prior to adjudication.

**Diversion Agreement:** the specification of formal terms and conditions which a defendant must fulfill in order to have the charge(s) against him or her dismissed.

### ELIGIBILITY

#### ***You Are Not Eligible for a Diversion If:***

\*You have previously participated during your lifetime in a diversion for the same or similar type of offense.

\*You have previously participated in a diversion within the past five years in any jurisdiction for any misdemeanor or felony offense.

\*You have other pending misdemeanor or felony charges in this or any other jurisdiction.

\*Your case involves traffic offenses and at the time of the offense you were the holder of a commercial driver's license in this or any other state.

\*You have 3 or more prior misdemeanor convictions or 1 or more prior felony convictions in this or any other jurisdiction during your lifetime.

\*You owe money to the Abilene Municipal Court.

\*It appears to the prosecutor after reviewing all the facts and circumstances that a diversion is not in the interests of justice and of benefit to the defendant and the community.

\*Repeat violations of the same or similar offense will result in disqualification for diversion.

### FACTORS CONSIDERED

The decision whether to offer a diversion is discretionary with the prosecutor. The overriding consideration is whether a diversion is in the interests of justice, and of benefit to the defendant and the community.

### PROCEDURE

To be granted a diversion, you must do each of the three following steps:

1) You must pay or have paid the diversion fee and all other costs, fines, and fees on the date you wish to enter into a diversion. If your case required forensic testing, a \$400.00 laboratory analysis fee will also be assessed.

2) If you are charged with an alcohol related offense, you may be required to arrange for and complete a drug and alcohol evaluation. The prosecutor may include recommendations from the evaluation into the terms and conditions of your diversion.

***Failure to pay all fees or complete an evaluation by the deadline may result in disqualification from the diversion program.***

3) You will be required to sign a written diversion agreement waiving all rights under the law to a speedy arraignment, speedy trial, and to a trial. If you choose to proceed without an attorney, you will also be required to waive your right to counsel. You must also stipulate or agree that the facts of the case are those contained in the official police report for the incident and that any trial or subsequent appeal will be based solely on those stipulated facts.

#### **ANY OF THE FOLLOWING EVENTS MAY RESULT IN INELIGIBILITY OR REVOCATION OF YOUR DIVERSION AGREEMENT:**

\* **Failure to appear in court.**

\* **Failure to pay costs and fees by the deadline.**

\* **Failure to complete an evaluation by the deadline.**

\* **Having a warrant issued for your arrest.**

\* **Failure to comply with agreed recommendations for treatment.**

\* **Refusing a breath, blood, or urine test required by a law enforcement officer or probation officer.**

\* **Failure to remain law abiding.**

### EFFECT OF DIVERSION

Should you enter into and successfully complete the diversion, the City Prosecutor will dismiss the case against you after one year from the date you entered into the diversion agreement and it cannot be refiled. However, if you fail to meet all the requirements, a motion to revoke your diversion may be filed with the Municipal Court seeking to resume prosecution of your case on the original charge(s).

Entering into and completing a diversion will keep you from having a *conviction* on your record. Your record will still indicate that you received a diversion, and that diversion may be considered in any future criminal prosecutions.