

12-4416. Same; provisions of diversion agreement; waiver of certain rights; effect of failure to fulfill or accept agreement; duties of city attorney and division of vehicles. (a) A diversion agreement shall provide that if the defendant fulfills the obligations of the program described therein, as determined by the city attorney, the city attorney shall act to have the criminal charges against the defendant dismissed with prejudice. The diversion agreement shall include specifically the waiver of all rights under the law or the constitution of Kansas or of the United States to counsel, a speedy arraignment, a speedy trial, and the right to trial by jury. The diversion agreement may include, but is not limited to, provisions concerning payment of restitution, including court costs and diversion costs, residence in a specified facility, maintenance of gainful employment, and participation in programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services. The diversion agreement shall state:

- (1) The defendant's full name;
 - (2) the defendant's full name at the time the complaint was filed, if different from the defendant's current name;
 - (3) the defendant's sex, race and date of birth;
 - (4) the crime with which the defendant is charged;
 - (5) the date the complaint was filed; and
 - (6) the municipal court with which the agreement is filed.
- (b) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation of a city ordinance prohibiting the acts prohibited by K.S.A. 2016 Supp. 21-6421, and amendments thereto, the agreement:
- (1) Shall include a requirement that the defendant pay a fine specified by the agreement in an amount equal to an amount authorized by K.S.A. 2016 Supp. 21-6421, and amendments thereto; and
 - (2) may include a requirement that the defendant enter into and complete a suitable educational or treatment program regarding commercial sexual exploitation.
- (c) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging an alcohol related offense, the diversion agreement shall include a stipulation, agreed to by the defendant and the city attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint. In addition, the agreement shall include a requirement that the defendant:
- (1) Pay a fine specified by the agreement in an amount equal to an amount authorized by K.S.A. 8-1567 or K.S.A. 2016 Supp. 8-1025, and amendments thereto, for a first offense or, in lieu of payment of the fine, perform community service specified by the agreement, consonant with K.S.A. 8-1567 or K.S.A. 2016 Supp. 8-1025, and amendments thereto; and
 - (2) participate in an alcohol and drug evaluation conducted by a licensed provider pursuant to K.S.A. 8-1008, and amendments thereto, and follow any recommendation made by the provider after such evaluation.
- (d) If the person entering into a diversion agreement is a nonresident, the city attorney shall transmit a copy of the diversion agreement to the division. The division shall forward a copy of the diversion agreement to the motor vehicle administrator of the person's state of residence.
- (e) If the city attorney elects to offer diversion in lieu of further criminal proceedings on the complaint and the defendant agrees to all of the terms of the proposed agreement, the diversion agreement shall be filed with the municipal court and the municipal court shall stay further proceedings on the complaint. If the defendant declines to accept diversion, the municipal court shall resume the criminal proceedings on the complaint.
- (f) The city attorney shall forward to the division of vehicles of the state department of revenue a copy of the diversion agreement at the time such agreement is filed with the municipal court. The copy of the agreement shall be made available upon request to any county, district or city attorney or court.

History: L. 1982, ch. 144, § 15; L. 1985, ch. 48, § 12; L. 1986, ch. 131, § 1; L. 1988, ch. 48, § 4; L. 1988, ch. 47, § 20; L. 1989, ch. 38, § 44; L. 1990, ch. 77, § 1; L. 2011, ch. 105, § 23; L. 2012, ch. 172, § 25; L. 2014, ch. 28, § 2; July 1.