

Effective 5/5/2021

Superseded 7/1/2021

77-2-5 Diversion agreement -- Negotiation -- Contents.

- (1) At any time after the filing of an information or indictment and prior to conviction, the prosecuting attorney may, by written agreement with the defendant, filed with the court, and upon approval of the court, divert a defendant to a non-criminal diversion program.
- (2) A defendant shall be represented by counsel during negotiations for diversion and at the time of execution of any diversion agreement unless the defendant has knowingly and intelligently waived the defendant's right to counsel.
- (3) The defendant has the right to be represented by counsel at any court hearing relating to a diversion program.
- (4)
 - (a) A diversion agreement entered into between the prosecution and the defense and approved by a magistrate shall contain a full, detailed statement of the requirements agreed to by the defendant and the reasons for diversion.
 - (b) A decision by a prosecuting attorney not to divert a defendant is not subject to judicial review.
- (5) A diversion agreement entered into between the prosecution and the defense and approved by a magistrate may contain an order that the defendant pay a nonrefundable diversion fee that:
 - (a) shall be allocated in the same manner as if paid as a fine for a criminal conviction under Section 78A-5-110 or Section 78A-7-120; and
 - (b) may not exceed the suggested fine listed in the Uniform Fine Schedule adopted by the Judicial Council.
- (6) A diversion agreement may not be approved unless the defendant knowingly and intelligently waives the defendant's constitutional right to a speedy trial before a magistrate and in the diversion agreement.
- (7)
 - (a) The court shall, on the defendant's request, consider the defendant's ability to pay a diversion fee before ordering the defendant to pay a diversion fee.
 - (b) The court may:
 - (i) consider any relevant evidence in determining the defendant's ability to pay a diversion fee; and
 - (ii) lower or waive the diversion fee based on that evidence.
- (8) A diversion program longer than two years is not permitted.