

**Effective 5/1/2024**

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

- (1) At any time after the commencement of prosecution and before 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 prosecuting attorney and the defendant and approved by a court, shall contain a full, detailed statement of the requirements agreed to by the defendant and the reasons for diversion.
  - (b) The diversion agreement described in Subsection (4)(a) shall include an agreement, by the parties, for a specific amount of restitution that the defendant will pay, unless the prosecuting attorney certifies that:
    - (i) the prosecuting attorney has consulted with all victims, including the Utah Office for Victims of Crime; and
    - (ii) the defendant does not owe any restitution.
- (5)
  - (a) If the court approves a diversion agreement that includes an agreement by the parties for the amount of restitution that the defendant will pay, the court shall order the defendant to pay restitution in accordance with the terms of the diversion agreement.
  - (b) The court shall collect, receive, process, and distribute payments for restitution to the victim, unless otherwise provided by law or by the diversion agreement.
- (6) A decision by a prosecuting attorney not to divert a defendant is not subject to judicial review.
- (7) 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.
- (8) 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.
- (9)
  - (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.
- (10) A diversion program longer than two years is not permitted.
- (11) The court may not rely solely on an algorithm or a risk assessment tool score in determining whether the court should approve the defendant's diversion to a non-criminal diversion program.

Amended by Chapter 187, 2024 General Session