

28 and upon approval of the court, divert a defendant to a non-criminal diversion program.

29 (2) A defendant shall be represented by counsel during negotiations for diversion and
30 at the time of execution of any diversion agreement unless ~~[he shall have]~~ the defendant has
31 knowingly and intelligently waived ~~[his]~~ the defendant's right to counsel.

32 (3) The defendant has the right to be represented by counsel at any court hearing
33 relating to a diversion program.

34 (4) ~~[Any]~~ (a) A diversion agreement entered into between the prosecution and the
35 defense and approved by a magistrate shall contain a full, detailed statement of the
36 requirements agreed to by the defendant and the reasons for diversion.

37 (b) A decision by a prosecuting attorney not to divert a defendant is not subject to
38 judicial review.

39 ~~[(5) Diversion programs longer than two years shall not be permitted.]~~

40 (5) A diversion agreement entered into between the prosecution and the defense and
41 approved by a magistrate may contain an order that the defendant pay a nonrefundable
42 diversion fee that:

43 (a) shall be allocated in the same manner as if paid as a fine for a criminal conviction
44 under Section 78A-5-110 or Section 78A-7-120; and

45 (b) may not exceed the suggested fine listed in the Uniform Fine

45a ~~H→~~ **[and Bail Forfeiture]** ~~←H~~

46 Schedule adopted by the Judicial Council.

47 (6) A diversion agreement ~~[shall]~~ may not be approved unless the defendant~~[, before a~~
48 ~~magistrate and in the agreement,]~~ knowingly and intelligently waives ~~[his]~~ the defendant's
49 constitutional right to a speedy trial before a magistrate and in the diversion agreement.

50 (7) (a) The court shall, on the defendant's request, consider the defendant's ability to
51 pay a diversion fee before ordering the defendant to pay a diversion fee.

52 (b) The court may:

53 (i) consider any relevant evidence in determining the defendant's ability to pay a
54 diversion fee; and

55 (ii) lower or waive the diversion fee based on that evidence.

56 (8) A diversion program longer than two years is not permitted.