

## CITY OF MCLOUTH, KANSAS

### DRIVING UNDER THE INFLUENCE OF ALCOHOL DIVERSION PROGRAM

As an alternative disposition of a pending prosecution The City of McLouth has established a Diversion Program for offenders charged with Driving Under the Influence of Alcohol (DUI). Diversion is a privilege and not a right. There is no presumption in favor of Diversion in any case. The burden of persuasion falls upon the offender to establish that a DUI Diversion Program will serve the ends of justice, protect the public, and serve the interests of the community.

The DUI Diversion Program is a referral of an offender charged with DUI to a Supervised Performance Program before and in lieu of conviction or acquittal. In simple terms, diversion allows an individual to resolve an offense without a conviction, although in certain cases, a diversion will be considered a conviction should a second offense occur. If you successfully complete the Diversion Program, the City Prosecutor shall request that the Municipal Court Judge dismiss the charges with prejudice. This means that the charges cannot be refilled.

If you violate any of the terms and conditions of the Diversion Program, then the agreement may be terminated, and the original charge or charges reinstated for full and complete prosecution.

Even if an individual participates in diversion, the State of Kansas, Department of Revenue, Division of Vehicles may revoke, suspend, or restrict driving privileges.

**PURPOSE:** The City of McLouth is committed to public safety. By providing this rehabilitative legal opportunity for handling carefully selected DUI cases, the offender has the opportunity to become a better citizen without sacrificing public safety or the general well-being of the community while making the most efficient use of limited judicial resources.

### **ACCEPTANCE IN THE DUI DIVERSION PROGRAM IS A PRIVILEGE NOT A RIGHT.**

**ELIGIBILITY:** The City Prosecutor has the discretion to grant or deny participation in the DUI Diversion Program. The City Prosecutor will place a higher priority on the need to ensure public safety rather than the desires of the individual offender. No presumption in favor of diversion exists in any case

Offenders charged with DUI may be eligible for the Diversion Program, **except:**

1. An offender who has been convicted of or entered a plea of no contest to a DUI (or driving while intoxicated), even if the conviction has been expunged.

2. An offender who has previously participated in a DUI diversion program in any city or state.
3. Where the charged offense includes personal injury or death of another.
4. When the current Complaint was issued as a result of a motor vehicle accident.
5. When the offender's driver's license has been revoked, suspended, or restricted at the time of the DUI offense.
6. When the DUI was charged while the offender was driving with a Commercial Driver's License.
7. When an offender is on probation or parole for any other offense(s).
8. When the offender does not possess a valid driver's license or is an illegal alien.

**CONSIDERATIONS:** The City Prosecutor may consider the following factors in determining whether diversion is in the best interests of justice and will be of benefit to the offender and the community. The City Prosecutor will place a higher priority on the need to ensure public safety rather than the desires of the individual offender.

1. Level of blood or breath alcohol concentration
2. Circumstances surrounding the offense(s)
3. Whether the offender had liability insurance in force at the time of the offense
4. The offender's prior record (if any) and any special characteristics or circumstances unique to the offender
5. Recommendations made by the assessment counselor
6. Any mitigating or aggravating circumstances

**FEE, FINES, AND COSTS:**

1. **Application Fee:** \$50.00 non-refundable DUI Diversion Application Fee, paid by money order or cashier's check ***made payable to Holbrook & Osborn, PA.***
2. **Diversion Fee:** \$500.00 non-refundable DUI Diversion Fee.
3. **Performance Supervision Fee:** \$200.00 non-refundable DUI Diversion Performance Supervision Fee.
4. **DUI Offense Fine:** \$500.00 (statutory minimum) non-refundable fine.

5. **Court Costs:** of \$65.00.
6. Costs associated with criminal and driving records requests.
7. Fees, fines, and costs must be paid by electronic funds transfer, cash, check, or money order. All fines/fees/costs, except the application fee, are to be **made payable to the City of McLouth.**
8. Payment arrangements may be made with the City Prosecutor, **HOWEVER, ALL** fees, fines, and costs must be made within 90 days after the beginning of the DUI Diversion Program.
9. **NO PERSONAL CHECKS WILL BE ACCEPTED.**

**ALL CORRESPONDENCE REGARDING THE DUI DIVERSION PROGRAM MUST BE SENT TO City Clerk, Assistant City Prosecutor at:**

**110 N. Union Street  
McLouth, KS 66054**

**Other contact may be made as follows:**

**Phone: 913-796-6411**

**Fax: 913-796-6131**

[mclcityclerk@embarqmail.com](mailto:mclcityclerk@embarqmail.com)

**APPLICATION FEE:** Make checks payable to:  
Holbrook & Osborn, P.A.

And mail to:  
City Clerk  
110 N. Union Street  
McLouth, KS 66054

**ALL OTHER FINES, FEES, and COURT COSTS:** Make checks payable to:  
The City of McLouth

And mail to:  
Clerk of the Municipal Court  
110 N. Union Street  
McLouth, KS 66054

**CITY OF MCLOUTH, KANSAS  
DUI DIVERSION APPLICATION**

***The non-refundable DUI Diversion Application fee is \$50.00. Payment must be made to Holbrook & Osborn, P.A. by check or money order. PLEASE PRINT and PROVIDE COMPLETE INFORMATION. If the Application is incomplete, it will be denied.***

Ticket Number \_\_\_\_\_ Date Received \_\_\_\_\_ Court Date \_\_\_\_\_

Last Name \_\_\_\_\_ First Name \_\_\_\_\_ Middle Initial \_\_\_\_\_

List Aliases/ Maiden Names \_\_\_\_\_

Current Street Address \_\_\_\_\_ City \_\_\_\_\_

State \_\_\_\_\_ Zip Code \_\_\_\_\_ Email \_\_\_\_\_

How long have you lived at this address? \_\_\_\_\_

Phone (home) \_\_\_\_\_ (work) \_\_\_\_\_ (cell) \_\_\_\_\_

Who do you live with? \_\_\_\_\_

If married, list Spouse's Full Name and Date of Birth \_\_\_\_\_

\_\_\_\_\_

Spouse's employment \_\_\_\_\_

Number of minor dependents \_\_\_\_\_

List prior addresses for the past three years, if different from above:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Social Security Number \_\_\_\_\_ Date of Birth \_\_\_\_\_ Sex \_\_\_\_\_ Race \_\_\_\_\_

Driver's License Number \_\_\_\_\_ State \_\_\_\_\_

Insurance Company Name \_\_\_\_\_

Policy Number \_\_\_\_\_ Expiration Date \_\_\_\_\_

Current Employer \_\_\_\_\_ Employer Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_ Phone \_\_\_\_\_

Job Title \_\_\_\_\_ Work Hours \_\_\_\_\_ Wage/Salary \_\_\_\_\_

**Education/Vocational Training:** list highest grade completed and education after high school:

SCHOOL	LOCATION	DATES ATTENDED	GRADE/DEGREE

**Military Service** \_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ Branch \_\_\_\_\_

Type of Discharge \_\_\_\_\_ Date of Discharge \_\_\_\_\_

**Name of contact person NOT in your household** \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

Relationship to you \_\_\_\_\_

**PRIOR RECORD (Criminal, Traffic, Juvenile):**

List ALL prior or pending offenses, including criminal, traffic and juvenile. Include ALL arrests and convictions, even if expunged. Also, list any other diversion programs you have previously participated in. (ATTACH ADDITIONAL PAGES IF NECESSARY.)

Date	Offense	Location	Disposition	Parole/Probation Officer

**Prior or Current Diversions:** Are you currently subject to a diversion agreement from another city or county? Yes: \_\_\_\_\_ No: \_\_\_\_\_

If "Yes," please explain where and for what offense:

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Have you ever received a drug or alcohol assessment? Yes \_\_\_\_\_ No \_\_\_\_\_

If "yes," where \_\_\_\_\_ and when \_\_\_\_\_

Have you ever attended counseling for alcohol or drug related issues? Yes \_\_\_ No \_\_\_

Have you ever been in drug or alcohol treatment Yes \_\_\_ No \_\_\_

If "yes," where \_\_\_\_\_ and when \_\_\_\_\_

Have you ever participated in a 12-step program? Yes \_\_\_ No \_\_\_

If "yes," where \_\_\_\_\_ and when \_\_\_\_\_

**Address Change:** I understand that it is my responsibility to keep the City Prosecutor and Municipal Court Clerk informed of my current address, telephone numbers, and employment. By submitting this DUI Diversion Program application, I agree to accept service of Municipal Court Notices, other Court documents, and correspondence from the City Prosecutor by U S mail at my last known address.

❖ **I agree** that if I fail to provide the information requested in this Application for DUI Diversion or if I give false or incorrect information my application may be denied and/or my Diversion may be terminated. I declare under penalty of perjury that the information in this Application for DUI Diversion is true and correct.

❖ **I understand** that if my Application for DUI Diversion is accepted, I waive 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. I understand that I have the right to consult with an attorney and that the City Prosecutor, Municipal Court Judge, and Municipal Court Clerk cannot give me legal advice.

❖ **I further understand** that by signing this Application for DUI Diversion I am admitting that I committed the offense(s) alleged in the Uniform Notice to Appear and Complaint. I understand that if I fail to complete the DUI Diversion, that I have admitted to the offense and the trial/disposition of my case will be based upon the facts as admitted.

**I BELIEVE THAT I SHOULD BE GRANTED THIS DUI DIVERSION BECAUSE:**

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**WHY DO YOU BELIEVE YOU WILL BE ABLE TO SUCCESSFULLY COMPLETE THE DUI DIVERSION PROGRAM?**

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❖ *I request that my Application for the DUI Diversion Program be approved. I have paid the \$50.00 nonrefundable application fee.*

Signature of Applicant \_\_\_\_\_ Date \_\_\_\_\_

**NOTICE:** If you have not received formal notice from the City Prosecutor that your Application for the DUI Diversion Program has been approved, you must appear at Municipal Court in McLouth, Kansas at the date and time stated on your Uniform Notice to Appear and Complaint. If you fail to appear, the Municipal Court Judge may order the **suspension of your license** and/or that a **bench warrant be issued for your arrest**.

*Application for DUI Diversion is Approved \_\_\_\_\_ Denied \_\_\_\_\_ by the City Prosecutor.*

\_\_\_\_\_  
*Trevin Wray, Assistant City Prosecutor* *Date*