



Pre-Trial Diversion Programs for DUIs

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A number of states offer first-time DUI offenders an alternative to prosecution—pre-trial diversion. The goal of these programs is rehabilitation. They encourage offenders to make a fresh start, and help them do this by disposing of the charges (and in some states, by giving them a clean record) after completion of the program.¹ Eligibility for these programs vary, but common criteria are that the individual is a first-time DUI offender, that no one was injured in the course of the present offense, and that the driver has a BAC below a certain threshold. Acceptance into a pre-trial program and conditions of the program are most often determined by the state's attorney, though in some locations a judicial diversion program operates in place of a pre-trial diversion

¹ <http://www.pacode.com/secure/data/234/chapter3/chap3toc.html>



program. If an individual meets the criteria for eligibility and the state’s attorney grants diversion, the offender enters into a court-mandated program in exchange for suspension of their charges. Length and conditions of the program vary, but often include court supervision, substance abuse evaluation and counseling, alcohol education, community service, random urine tests, and various fees. Upon successful completion of the program, the charges will be dropped and the offender may be able to have the DUI charge expunged from his or her record. (In some states, there will be no record of anything—charges, dismissal, or completion of the diversion program, while in other states, the record will reflect the charge and successful completion of the diversion program, but no conviction will appear on the record.) However, if the individual fails to meet any of the conditions/complete the program, the case will be reopened and resolved in court.

As mentioned previously, these programs lack uniformity across the states. In some states, pre-trial diversion for DUIs is available throughout the state; in other states, it is only available in specific counties. States that offer pre-trial diversions throughout or in parts include Florida, Georgia, Indiana, Kansas, Louisiana, Oregon, Pennsylvania, and Texas. Other states, though they may offer pre-trial diversion programs for other offenses, will not permit DUI offenders to participate in a diversion program. Those states include Kentucky, Ohio and Tennessee.

Because these programs are state or county specific, to better understand how these programs are operating throughout the country, it is helpful to look at a side-by-side comparison of how a few states handle pre-trial diversion for DUIs. For statutory

information regarding pre-trial diversion programs in general (including in some cases, but not specific to, DUIs), see <http://www.ncsl.org/research/civil-and-criminal-justice/pre-trial-diversion.aspx>.

	PENNSYLVANIA	KANSAS	FLORIDA	OREGON
Statutory Provision or State Rules	234 Pa. Code Rule 300-320	Kansas §12-4414; §22-2907 and §22-2908 (pre-trial diversion in general; not specific to DUIs)	Florida §397.334; §948.08; §948.16 (pre-trial diversion in general; not specific to DUIs)	§ 813.200-§ 813.270
Statewide/By County	Statewide Accelerated Rehabilitative Disposition (ARD) program, though requirements may vary by county	Statewide, though requirements may vary by county	By County—DUI Diversion Program offered in Orange and Osceola counties	Statewide
Criteria/Eligibility	<ul style="list-style-type: none"> No prior DUI convictions Have not been placed in ARD program within the past 10 years Current accident must not have caused serious bodily injury to anyone else There must have been no children under the age of 14 in the vehicle during the offense² 	<ul style="list-style-type: none"> First offense May be denied if: <ul style="list-style-type: none"> * have previous conviction or diversion for any offense *were in an accident where anyone (self included) was injured *high BAC tests *belligerent or untruthful with police *have a commercial driver's license³ 	<ul style="list-style-type: none"> No prior alcohol-related driving history No more than two prior misdemeanor convictions Have completed no more than one diversion program Must not have been involved in a crash in the instant case Facts of the case must suggest that the defendant is a good candidate for the DUI diversion⁴ 	Generally one qualifies for diversion if: <ol style="list-style-type: none"> No DUUI within the past fifteen years The presently charged DUUI did not involve an accident in which anyone but the person accused was injured; and The person did not have a commercial driver's license (regardless of whether they were operating a commercial motor vehicle at the time).⁵

² <http://www.attorneys.com/dui-dwi/pennsylvania/accelerated-rehabilitative-disposition-program/>

³ <http://www.kansas-dui-lawyer.com/KansasDUILaws.html>

⁴ <http://www.coreycohen.com/DUI-Defense/DUI-Pre-Trial-Diversion.shtml>

⁵ <http://www.defendingoregon.com/oregon-duii-explained/>



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Who Decides	Generally the county or district attorney is responsible for determining which cases will be recommended for entry into the ARD program ⁶ and for deciding the terms of the program.	The county or district attorney has discretion as to whether to offer diversion.	The State (Office of the State Attorney) decides whether to approve or deny admission to the diversion program. ⁷	The Court
Required to Admit Guilt?	No	Yes		When petitioning for a diversion agreement, must plead guilty or no contest.
How it Works	Offender agrees to follow a court-mandated probationary program (including supervision) in exchange for suspension of the charges. ⁸	Offender must admit guilt, agree to a year of supervision, and fulfill a number of conditions. If this is done, the DUI charge will be dismissed. ⁹		Offender must plead guilty or no contest. If the person then pays for and completes an alcohol or drug treatment program and stays out of similar trouble for one year, the court then dismisses the criminal case.
Conditions	Common conditions include alcohol/drug evaluation and then assessment, complete prescribed treatment program, complete Alcohol Highway Safety School, community service and payment of required fees.	*"The usual terms of a diversion contract require you to accept responsibility for the crime, obtain an alcohol evaluation from an alcohol counselor, not violate the law for a year, not drink alcohol for a year or go to establishments that serve alcohol, and to take random urine tests. You will pay a diversion fee, generally in the range of \$800.00 to \$1,250.00. You will	There are two tiers of DUI diversion based on BAC or if there was a refusal to take the breath test. The tier determines how long the diversion program will last and the conditions. ¹¹ <ul style="list-style-type: none"> • Tier 1 (BAC <.15%) is a 12 month program¹² • Tier 2 (BAC >.15% or a refusal) is a 15 month program, and includes a 6 	Typically the offender must pay any required fees, complete an alcohol and drug abuse assessment, complete the recommended treatment program, attend a victim impact panel, not use alcohol or another intoxicant during the term of the diversion agreement, and install an ignition interlock device in their vehicle for the duration

⁶ <http://www.pacode.com/secure/data/234/chapter3/chap3toc.html>

⁷ <http://www.coreycohen.com/DUI-Defense/DUI-Pre-Trial-Diversion.shtml>

⁸ <http://www.totaldui.com/news/articles/legislation/pennsylvania-dui-program.aspx>

⁹ <http://kansasdui.pro/>

¹¹ <http://www.coreycohen.com/DUI-Defense/DUI-Pre-Trial-Diversion.shtml>

¹² <http://www.orangecountyfl.net/Portals/0/resource%20library/jail/Pre-trial%20Diversion%20Information.pdf>



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		<p>be required to meet with a diversion monitor at least monthly to assess your compliance. You must also attend an alcohol education class, attend a DUI Victim Impact Panel, and do anything else required by the diversion coordinator. Some people will be required to complete outpatient or inpatient alcohol treatment.”¹⁰</p>	<p>month mandatory ignition interlock and higher costs.¹³</p> <p>Generally, pre-trial diversion consists of supervision, substance abuse evaluation and recommended treatment, and community service hours.¹⁴ The offender also must attend DUI school, pay all court costs and program expenses, submit to urine screens, make a mandatory contribution to MADD, and attend a victim impact class.</p>	<p>of the one year diversion period.¹⁵</p>
Length	<p>Maximum period for ARD supervision is two years.</p>	<p>Depends on the facts of the case.</p>	<p>For tier 1 offenders (BAC <.15%), it is typically a 12 month program.¹⁶ For tier 2 offenders (BAC >.15% or refusal), it is typically a 15 month program.¹⁷</p>	<p>One year, though it may be extended six months on rare occasion.</p>
Benefits	<ul style="list-style-type: none"> Penalties like license suspension may be mitigated Upon successful completion of the program, the charges will be dropped and the offender can apply to have the record of the DUI complaint expunged 	<ul style="list-style-type: none"> “Because a diversion is not a conviction, it does not result in a criminal suspension of driving privileges. (However, you can still have your driving privileges suspended in the administrative 	<ul style="list-style-type: none"> Successful completion of the program will allow for dismissal of the DUI charge, and the individual will likely be eligible to have their record expunged. 	<ul style="list-style-type: none"> Dismissal of the charges upon successful completion of the program. No criminal conviction No conviction based license suspension No probation, jail or community service

¹⁰ <http://www.kansas-dui-lawyer.com/KansasDUILaws.html>

¹³ <http://www.orangecountyfl.net/Portals/0/resource%20library/jail/Pre-trial%20Diversion%20Information.pdf>

¹⁴ <http://www.floridadefenselaw.com/criminal-defense/drunk-driving/dui-pre-trial-division>

¹⁵ <http://courts.oregon.gov/Jackson/Pages/DUIDivisions.aspx>;

http://courts.oregon.gov/Washington/Services/Programs/pages/dui_diversion.aspx

¹⁶ <http://www.orangecountyfl.net/Portals/0/resource%20library/jail/Pre-trial%20Diversion%20Information.pdf>

¹⁷ <http://www.orangecountyfl.net/Portals/0/resource%20library/jail/Pre-trial%20Diversion%20Information.pdf>



	<ul style="list-style-type: none"> As long as the offender is not arrested again within a certain amount of time, his record is essentially clean.¹⁸ 	(civil proceeding.)” ¹⁹		<ul style="list-style-type: none"> Less fines and fees²⁰
Special Information	<p>“One should be aware that by accepting entry into the ARD program alone is sufficient to trigger that event as being considered a first time DUI, even if the program is not successfully completed and the offender is eventually found not guilty of the DUI. The mere acceptance of the offender into the program will trigger any subsequent DUI to be considered a second offense, thereby causing the offender to suffer the enhanced penalties for a subsequent DUI.”²¹ (See Commonwealth v. Bowers, 2011 Pa. Super 135; Commonwealth v. Becker, 530 A.2d 888)</p>	<p>“If you successfully complete the diversion program, no conviction will appear on your criminal record, although the [DUI charge and completed] diversion will still appear on your driving record. . . . If you complete the DUI diversion program and are later charged with another DUI, the diversion will be treated as a prior conviction, so the new DUI charge would be considered your second offense.”²²</p> <p>If the individual has been off of diversion for at least 10 years, upon petition to the court, he may be able to have his record of the diversion expunged.²³</p>		<p>A diversion will go on the individual’s driver’s license (as a diversion, not a conviction). In Oregon, DUI diversions and convictions cannot be expunged from one’s record.</p>

¹⁸ <http://www.totaldui.com/news/articles/legislation/pennsylvania-dui-program.aspx>

¹⁹ <http://www.kansas-dui-lawyer.com/KansasDUILaws.html>

²⁰ http://www.oregondui.com/oregon_dui_diversion_guide.html

²¹ <http://www.philadelphiacriminaldefenselawyers.com/Criminal-Defense-Blog/2011/July/Update-Pennsylvanias-Pre-trial-Diversion-Program-.aspx>

²² <http://kansasdui.pro/>

²³ <http://www.kansas-dui-lawyer.com/KansasDUILaws.html>



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