

**RC §2951.041 Judicial Diversion**

- (A) A defendant charged with a misdemeanor substance abuse offense or a fourth or fifth degree felony offense that is not a sexually oriented offense as defined under RC§ 2950.01(A), an offense of violence as defined under RC§ 2901.01(9), a violation of RC§ 4511.19(A), a violation of RC §2903.06, a violation of RC §2903.08, or an offense for which a sentencing court is required to impose a mandatory period of incarceration, may file a Motion for Judicial Diversion with an attached memorandum in support consistent with Crim. R. 12. Once filed, the time within which defendant must be brought to trial is stayed pursuant to RC §2945.72(G) with all delay attributed to defendant.
- (B) Within 30- days of the filing of the Motion, the court shall docket and conduct a hearing to consider the merits of the Motion. The time to conduct the hearing may be extended for good cause demonstrated. The victim notification provisions of [RC § 2930.06](#)
- (C) apply in relation to any hearing. The court shall rule upon the Motion within 15-days after the hearing.
- (C) It is presumed the Motion shall be granted, **and the court may only grant the Motion without approval of the prosecuting attorney**, if defendant demonstrates the following criteria are met at hearing:
- a. Defendant provides the court an assessment from a community treatment provider reflecting defendant has a substance use disorder and / or a mental health disorder which was a factor leading to the criminal offense for which defendant stands charged; and that treatment for such substance use and / or mental health disorder will decrease the likelihood that the accused will commit criminal offenses in the future.
  - b. Defendant has never successfully completed a judicial diversion program under this section or never successfully completed a felony intervention in lieu of conviction program under prior law.
  - c. Alternatively, if defendant has previously successfully completed a judicial diversion program under this section or successfully completed a felony intervention in lieu of conviction program under prior law, the prosecuting attorney has no objection to the pending Motion being granted.

- (D) If defendant satisfies the presumptive criteria described under paragraph (C), the court shall grant the Motion unless the court finds the presumption is overcome for reasons set forth on the record. If the Motion is denied, the court shall set forth findings in support of its written decision denying the Motion and the criminal proceedings shall proceed as if the defendant's Motion had not been made.
- (E) If the Motion is granted, defendant shall present a plea of guilty to all charges then before the court. Upon finding all tendered pleas of guilty are knowingly, voluntarily, and intelligently entered, the court shall stay all further criminal proceedings and order defendant to comply with all terms and conditions imposed by the court pursuant to this section. The court shall establish a judicial diversion plan requiring defendant, for at least one year and no more than five years, to abstain from the use of illegal drugs, alcoholic beverage, and intoxicating liquor, to remain of good behavior, to participate in treatment and recovery support services as well as any other programs deemed necessary, and to submit to regular random testing for drug and alcohol usage. The court may include any other treatment terms and conditions similar to community control sanctions, including community service, restitution, payment of court costs, and payment of supervision fees and drug testing fees as part of the plan.
- (F) To monitor the judicial diversion plan, defendant shall be placed under the general control and supervision of the county probation department, the adult parole authority, or another appropriate local probation or court services agency, if one exists, as if defendant was subject to a community control sanction imposed under [section 2929.15](#), [2929.18](#), or [2929.25 of the Revised Code](#).
- (G) If the court finds that defendant has successfully completed the judicial diversion plan, the court shall dismiss the proceedings against defendant. Successful completion of the judicial diversion program under this section shall be without adjudication of guilt and is not a criminal conviction for purposes of any disqualification or disability imposed by law and upon conviction of a crime. The court may order the sealing of records related to the offense in question in the manner provided in [sections 2953.31 to 2953.36 of the Revised Code](#) simultaneously with the Entry dismissing the case.
- (H) If defendant fails to comply with any material term or condition imposed as part of the judicial diversion plan, the supervising authority monitoring defendant shall promptly

advise the court and the prosecuting attorney of this failure. Upon the filing of a notice or motion from the prosecuting attorney advising the court of the alleged failure to comply or upon the court's own initiative, the court shall hold a hearing to determine whether defendant failed to comply with a material term or condition imposed as part of the plan.

- (I) If the court determines that defendant has failed to comply with a material term of condition of the plan as alleged, it may enter a finding of guilty and impose an appropriate sanction under Chapter 2929 of the Revised Code for all offenses for which defendant has pled guilty.
  
- (J) In lieu of entering a finding of guilty, the court may modify the judicial diversion plan to provide defendant another opportunity to achieve full compliance with the plan as modified. Only one such modification of a judicial diversion plan is authorized for demonstrated violations unless otherwise approved by the prosecuting attorney.
  
- (K) "Community treatment provider" means a provider that operates a program that provides substance use and / or mental health disorder assessment and treatment for persons and that satisfies all of the following:
  - (a) The purpose of the program shall be to provide substance use disorder and / or mental health assessments, develop an individual treatment plan and provide treatment to help improve public safety and reduce substance use relapses and recidivism while in the community.
  - (b) Each community treatment provider shall be certified by the department of mental health and addiction services under RC §5119.36 to provide substance use disorder assessments, development of individual treatment plans and provide such treatment.
  - (c) It is not in any prison but may be in a community-based correctional facility; provided that OMHAS or the community treatment provider may contract for residential services with a county or municipality in a jail facility or with a facility licensed under RC 2967.14(C) for residential detoxification and treatment.
  - (d) It provides an assessment and treatment for qualified accused persons placed into diversion under this section in a residential or non-residential program that is approved by OMHAS.