

Rule 5. Diversion Program.

Rule 5.1. Purpose; Eligibility; Definition.

- (a) **Purpose.** The Diversion Program provides a community-based alternative to the formal court process for eligible child offenders.
- (b) **Eligibility.** First time offenders between the ages of 10 to 17 years who are cited into Children's Court for committing an offense designated as an offense appropriate for diversion may be eligible to participate in the diversion program.
- (c) **Probation Officer Definition.** As used in this Rule, "probation officer" also includes diversion officers.

Rule 5.2. Referral; Continuance.

- (a) **Referral.** At ~~arraignment any time after the filing of a child offender petition, and before the entry of judgment~~, upon ~~Motion request~~ of the Nation or ~~counsel for the child, a probation officer~~, the Children's Court may ~~suspend the proceedings and order that~~ a child offender ~~to~~ participate in the diversion program. ~~This order is a "Consent Decree." upon a finding that~~ The following requirements ~~must be~~ met:
 - (1) the child is a first time offender who is accused of committing an offense in ~~Rule 5.5 violation of the Nation's Criminal Code~~;
 - (2) ~~the child has knowingly and voluntarily waived his or her rights and entered a plea of responsible to the child offender petition(s)~~;
 - (3) the child has knowingly and voluntarily chosen to enter into the diversion program;
 - (4) the child's parent(s)/legal guardian(s) has/have knowingly and voluntarily chosen to permit the child to participate in the diversion program and agree(s) to participate as required with the child; and
 - (5) the Nation has conferred with ~~any the~~ victim, ~~if any~~, regarding placement of the child in the diversion program.
- (b) **Continuance.** Upon motion by the Nation, the child's counsel, the child, or his or her parent or legal guardian, or upon the Court's own motion, the arraignment may be rescheduled for up to two weeks to permit:
 - (1) a referral to the diversion program for a review of the child's eligibility to participate in the program, and/or
 - (2) more time for the Nation to confer with the victim.

Rule 5.3. Stay of Disposition; Time Periods; Review Hearings.

- (a) **Stay of Disposition.** A child offender who participates in the diversion program will have his or her disposition stayed.
- (b) **Time Period.** The Court will order the disposition stayed for six months. The Court may shorten or lengthen the stay upon a finding of good cause, upon request by the parties or the probation officer. Good cause includes, but is not limited to:

- (1) a request to end the child's participation in diversion and set for disposition because the child has violated his or her conditions of diversion and/or committed new offenses;
- (2) a request for more time for the child to complete diversion; or
- (3) a request for early discharge because the child has excelled in the program.

(c) **Review Hearings.** The Court will set a review hearing every three months to check on the child's progress.

Rule 5.4. Additional Conditions and Terms.

The Children's Court may impose additional conditions and terms for the child and child's parent or legal guardian to participate in the diversion program. Additional conditions and terms may include:

- (a) community service;
- (b) restitution in cases where property loss or damage is compensable in a monetary value. Work projects can be substituted for actual dollar payments, but must have the victim's consent;
- (c) letter of apology; or
- (d) counseling, education, and/or other informational or holistic classes or services.

Rule 5.5. Eligible Offenses. (Reserved)

- ~~(a) Public Nuisance (T.O.Crim.Code § 3.1);~~
- ~~(b) Disturbing the Peace (T.O.Crim.Code § 3.5);~~
- ~~(c) Disorderly Conduct (T.O.Crim.Code § 3.6);~~
- ~~(d) Loitering Around a School (T.O.Crim.Code § 3.12);~~
- ~~(e) Criminal Damage to Private/Personal Property (T.O.Crim.Code § 5.2);~~
- ~~(f) Malicious Mischief (T.O.Crim.Code § 5.10);~~
- ~~(g) Shoplifting (T.O.Crim.Code § 10.5);~~
- ~~(h) Public Intoxication (T.O.Crim.Code § 12.2);~~
- ~~(i) Underage Possession of Liquor (T.O.Crim.Code § 12.3);~~
- ~~(j) Unlawful Possession of Marijuana (T.O.Crim.Code § 13.1);~~
- ~~(k) Inhaling Toxic Vapors (T.O.Crim.Code § 13.8);~~
- ~~(l) Furnishing Tobacco to a Minor (T.O.Crim.Code § 13.10).~~