

Diversion

Diversion can be one of two types: Judicial Diversion or Pretrial Diversion. They each have separate statutes with distinct requirements and disqualifications.

Pretrial Diversion is governed by TCA 40-15-105 and is also referred to as a suspended prosecution. It is important to note that the individual has not pled guilty or been found guilty yet. A person may be granted Pretrial Diversion if the requirements as stated in the statute are met. A Memorandum of Understanding (MOU) is entered into by the District Attorney and the Defendant. The Defendant must meet the terms of the MOU. If the terms are not met, the prosecution is no longer suspended and the Defendant is allowed to proceed with the case. If the Defendant chooses to, there can be a trial. When the diversion period is successfully completed, the Defendant asks the court to submit an Order of Expungement to TBI marked Suspension of Prosecution TCA 40-15-105. Page 3

Judicial Diversion is governed by TCA 40-35-313 and is very different from Pretrial Diversion. If the Defendant has ever had a conviction for a Class A misdemeanor or higher, the Defendant is disqualified. The Defendant pleads guilty, is found guilty, or pleads nolo contendere to the offense in which he seeks Judicial Diversion. However, the offense sentence is not imposed if the Defendant can successfully complete the probationary period. If the Defendant does not successfully complete the probationary period, the sentence goes into effect and the Defendant will not have the offense expunged. This is a “tougher” diversion to receive.

With a Judicial or Pretrial Diversion, TBI must analyze an application for eligibility for Pretrial Diversion or Judicial Diversion. Please make sure that the diversion type requested is checked on the application. If the diversion type on the application is unchecked, the application will be returned unprocessed to the submitting attorney or agency.

Expungement can be granted for any of the following reasons: successful completion of Judicial Diversion, successful completion of Pretrial Diversion, an acquittal, no true bill, nolle prosequi (prosecution dropped the case---no prosecution), conviction reversed on appeal, or charges are dismissed.