

What is required before my next court date?

The individual is responsible for providing evidence, three days before the next court date, that the Diversion Agreement conditions have been completed. If the Diversion Officer is satisfied of this, they will:

- Notify the court that the defendant has successfully completed diversion, at which time the court must dismiss the charge.
- Make an application to have the individual excused from appearing in court (the individual must make a separate application for name suppression)

If the Diversion Officer is not satisfied, they may decide that diversion is no longer appropriate. The process then ends and the case returns to court at the next scheduled appearance to resume prosecution.

What if I'm late in completing conditions?

If the Diversion Officer considers that more time is reasonably required to complete the conditions of the Diversion Agreement, they may request a further adjournment from the court to provide that extra time.

However, this is at the Diversion Officer's discretion, should not be assumed, and relies on evidence that the individual has genuinely engaged with the process.

Can I withdraw from diversion?

Yes, diversion is voluntary and participants can withdraw at any stage of the process. In such situations, the case returns to court at the next scheduled appearance to resume prosecution.

Can I ask for decisions to be reviewed?

Yes, an individual participating in diversion can request a review of the:

- Eligibility decision
- Diversion offer and conditions
- Decisions about whether diversion conditions have been met

Review requests are made, in the first instance, to the District Prosecution Manager of the PPS office servicing the court where the case is being heard.

Section 106 discharge without conviction

Individuals who are not eligible, refuse the diversion conditions offered by Police, or withdraw from diversion, may still seek a discharge without conviction under section 106 of the Sentencing Act 2002 without needing to complete diversion conditions. However, in granting such an application, the court may itself impose conditions, such as the payment of costs or reparation.

Can I get name suppression?

Many aspects of court process are public. Accordingly, if you receive diversion, your name may still be published by a court (or certain government agencies, such as the Ministry of Justice), unless you successfully apply for name suppression. If you want to apply for your name to be suppressed, you should notify the court registrar or judge. This should be done at your first appearance and any subsequent appearances. You will need to tell the registrar or judge why you seek name suppression. The registrar or judge will consider your application and advise you whether it is granted.

Can diversion information be disclosed?

Successfully diverted charges are not entered on your criminal record. However, Police retain the information and may release it in certain circumstances (e.g. for vetting purposes, or if you request it). For more information, see the guidelines and policy documents.

Where can I find more information?

More information about the Police Adult Diversion Scheme can be downloaded from the Police website at: <https://www.police.govt.nz/about-us/programmes-and-initiatives/adult-diversion-scheme>

POLICE ADULT DIVERSION SCHEME

www.police.govt.nz

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E tū ki te kei o te waka,
kia pakia koe e ngā ngaru o te wā



What is the Police Adult Diversion Scheme?

‘Diversion’ is a scheme, managed by the Police Prosecution Service (PPS), that provides an alternative to full prosecution. For eligible adults who are typically on the lower end of the post-charge spectrum, meet certain criteria, and accept and complete diversion, Police can seek to have their charges dismissed by the court. The purposes of diversion are to:

- Hold offenders accountable
- Provide opportunities to make amends
- Address underlying drivers of offending through access to support services
- Provide a post-charge pathway to avoiding a criminal conviction

Who may be eligible for diversion?

Individuals who do not acknowledge responsibility, and those who make a special plea, are not eligible for diversion. Certain types of offence are also excluded, including:

- Careless driving, causing death or injury
- Offences requiring a mandatory minimum disqualification on conviction
- Infringement-only traffic offences
- Commercial Vehicle Safety offending
- Breaching of court orders

For all other types of offending, eligibility depends on an assessment of the public interest and the details associated with the offence/s and offender. Types of offending that are less likely to be eligible include:

- Category 4 offences
- Dishonesty offences
- Violent offending
- Sexual offences and offences with sexual overtones
- Serious Class A and B drug offences

Who makes diversion decisions?

Consideration of diversion by Police is automatic and no application for it is necessary. The officer dealing with the case provides the view of the victim and their own recommendation on diversion to PPS. Then, a prosecutor (referred to here as a Diversion Officer) assesses the circumstances of the case and decides whether diversion may be further explored.

A Diversion Officer will always consider the views of the OC case and victim/s, but they are not bound by these views. As such, there are situations where diversion may be advanced despite the contrary views of an OC case or victim/s, and vice versa.

What happens in court if I'm eligible?

Where an individual is deemed ineligible for diversion, the case proceeds as normal. Where an individual is deemed eligible, the Diversion Officer notifies the court and seeks an adjournment of the case. Ideally, this happens at the individual's first appearance, however it may also occur at a later court appearance.

Where the individual wishes to be considered for diversion, their case is then adjourned to provide time for a Diversion Interview to take place and (ideally) to complete agreed diversion conditions.

What happens at the Diversion Interview?

The Diversion Interview is a face-to-face meeting between the individual and Diversion Officer. For diversion to proceed:

- The individual must take responsibility for the offence
- The Diversion Officer must be satisfied diversion is the most appropriate resolution option
- The Diversion Officer and individual must agree to an appropriate, proportionate, and achievable set of diversion conditions

If there is agreement, a formal Diversion Agreement is drafted by the Diversion Officer and signed by both parties. If agreement cannot be reached, diversion will not be offered and the case returns to court at the next scheduled appearance to resume prosecution.

What does diversion involve?

Diversion conditions typically fall into one of two categories:

- Reparative conditions that make amends
- Rehabilitative conditions that help the individual address underlying causes of offending

Typical diversion conditions include one or more of the following :

- Writing a letter of apology to the victim
- Making reasonable reparation to the victim
- Undertaking community work
- A referral to restorative justice (see below)
- A referral to counselling, education programmes, addiction treatment, or other programmes

When considering diversion conditions, the Diversion Officer will be guided by their:

1. Appropriateness: conditions must relate to the offending
2. Proportionality: conditions must be commensurate and not more onerous than a court sentence
3. Achievability: conditions must be achievable in the agreed time period

Can diversion involve meeting the victim?

Yes, in some cases, and with the agreement of both the victim and the individual, the Diversion Officer may make a referral to a facilitated restorative justice (RJ) meeting between the victim (or a representative), the individual, and a facilitator or community panel.

RJ meetings enable the victim to share the impact of offending, learn more about the reasons for it, and be involved in the discussion about what reparation might be appropriate (focusing on the benefits for both the victim and the individual). A meeting may still be possible if the victim is unwilling to attend (e.g. with a community panel or a representative of the victim).