

Olmsted County Attorney Office
Pre-Trial Diversion Program
July 20, 2009

I. INTRODUCTION

The decision to divert cases from the criminal justice system is the responsibility of the prosecutor. The prosecutor will, within the exercise of his or her discretion, determine whether diversion of an offender to a treatment alternative best serves the interests of justice. The determination of the prosecutor whether or not to divert a particular defendant is not subject to judicial review.

Accordingly, effective July 20, 2009, it is the policy of the Olmsted County Attorney to establish and operate a fair and just diversion program that promotes equal access to the alternative of participation in the Pre-Trial Diversion Program.

Purpose

The purposes of a diversion program include:

- a) to provide eligible defendants with an alternative to confinement and a criminal conviction;
- b) to reduce the costs and caseload burdens on district courts in the criminal justice system;
- c) to minimize recidivism among diverted defendants;
- d) to promote the collection of restitution to the victim of the defendants crime; and
- e) to develop responsible alternatives to the criminal justice system for eligible defendants.

The prosecutor makes the decision to introduce an offender into alternative treatment and is ultimately responsible for determining the success of that alternative treatment. The authority of the prosecutor to institute diversion proceedings is an incident of the prosecutor's discretionary authority in screening and charging.

In order for a diversion program to be beneficial both for the defendant and for the prosecution, certain safeguards must exist for each party. To adequately provide for the protection of defendants rights, the following safeguards may be considered by prosecutors in addition to those specified below.

- a) the right to the defendant, at any point, to insist on criminal prosecution;
- b) the presence of a reviewing judge to determine if there is a sufficient factual basis for a charge;
- c) the presence of a reviewing judge to determine whether any pressure put on the defendant to accept noncriminal disposition constituted overwhelming inducement to surrender the right to trial;
- d) the presence of counsel.

To protect the rights of the prosecutor, the following safeguards may be considered:

- a) the right to the prosecutor at any point to insist upon criminal prosecution;
- b) waiver of speedy trial requirements;
- c) the inclusion in the diversion agreement of admissions by the defendant, stipulation of facts or depositions of witnesses, and an agreement by the defendant to cooperate with law enforcement;
- d) waiver of applicable statute of limitations.

The right to the prosecutor to terminate an offender's participation in the diversion program is

essential. Only by retaining this option can the prosecutor guarantee continued protection of the rights of the community.

The final determination of a defendant's eligibility for the Diversion Program is within the sole discretion of the Office of the County Attorney and may be based on additional factors not specifically included within these guidelines.

Factors to consider

Some of the factors which may be considered in the decision for diversion include:

- a) the nature and severity of the offense;
- b) any special characteristics or difficulties of the defendants;
- c) whether the defendant is a first-time offender;
- d) whether there is a probability that the defendant will cooperate with and benefit from the diversion program;
- e) whether an available program is appropriate to the needs of the offender;
- f) the impact of diversion upon the community;
- g) recommendations of the involved law-enforcement agency;
- h) whether the defendant is likely to recidivate;
- i) consideration for the opinion of the victim;
- j) provisions for restitution; and
- k) any mitigating circumstances.

Program components

The diversion program may:

- a) provide screening services to the court and the prosecuting authorities to help identify likely candidates for pretrial diversion;
- b) establish goals for diverted defendants and monitor performance of these goals;
- c) require chemical dependency assessments of diverted defendants where indicated, make appropriate referrals for treatment, and monitor treatment and aftercare;
- d) require individual, group, and family counseling services;
- e) oversee the payment of victim restitution by diverted defendants;
- f) assist diverted defendants in identifying and contacting appropriate community resources;
- g) identify educational services to diverted defendants to enable them to earn a high school diploma or GED; and
- h) provide accurate information on how diverted defendants perform in the program to the court, prosecutors, defense attorneys, and probation officers.

It is acknowledged that participation in the Pre-Trial Diversion Program is not a right of the defendant/participant, rather it is an alternative to prosecution for those adults who acknowledge the conduct giving rise to possible prosecution was a violation of the law, but who similarly have demonstrated the ability to follow the program components in a timely way, are remorseful and have the ability to make appropriate restitution to the victim and reparation to the community.

II. Eligibility for Participation

In order for a case to be considered for the diversion program:

1. Only felony offenses may be considered for diversion.

2. A criminal complaint shall be fully executed and filed.
3. Booking shall have been completed.
4. The defendant and the defendant's attorney, if any, shall submit a Diversion Application to the assigned Assistant Olmsted County Attorney (prosecutor) within 15 days following the Rule 8 hearing. No diversion requests will be considered following a contested omnibus hearing.
5. All defendants will be considered for diversion **except** the following:
 - a) Defendants with previous felony or gross misdemeanor convictions in this state or another state or additional felony or gross misdemeanor offenses pending in Olmsted County District Court or another District Court in Minnesota or similar criminal court in another state.
 - b) Defendants who have extensive misdemeanor and/or traffic history demonstrating that success in the Diversion Program would be questionable.
 - c) Defendants who as juveniles have entered a plea of guilty or have been found guilty or delinquent by a court after trial for felony or gross misdemeanor offenses within five years of the date of the offense being considered for diversion. However, the five-year period does not apply to offenses that require a defendant to register as a predatory defendant under Minn. Stat. § 243.166.
 - d) Defendants who have been previously diverted as adults or who have been placed on probation under Minnesota Statute §152.18.
 - e) Defendants who are illegal aliens.
 - f) Defendants who refuse to admit guilt or pay costs of participation in the program.
 - g) Defendants who refuse to cooperate in the prosecution of others, if applicable.
 - h) Defendants who have failed to appear for any scheduled hearing without good cause.
 - i) Defendants who refuse to agree to pay full restitution to any/all victims who have incurred monetary loss and request restitution.
 - j) Defendants with more than \$5,000 of restitution owed on the current offense as established by probable cause or verified affidavit of restitution.
 - k) Defendants charged with a property crime with more than \$5,000 of loss as established by probable cause even if restitution is less.
 - l) Defendants who are charged with a violent crime as defined in Minnesota Statutes 609.1095.
 - m) Defendants who are in possession of a dangerous weapon while committing the charged offense.
6. The following offenses are not eligible for diversion:
 - a) Any offenses statutorily excluded from diversion.
 - b) Defendants charged with multiple felonies that may not be aggregated by law such as thefts, check forgery and financial transaction card fraud,
 - c) Crimes which are, or should be, part of the same prosecution if one such crime is not divertible.
 - d) Offenses charged pursuant to Minn. Stat. Chapter 152;
 - e) Offenses charged pursuant to Minn. Stat. Chapter 169A;
 - f) Driver's License violations pursuant to Minn. Stat. Chapter §171;
 - g) Introducing contraband into correctional facility pursuant to Minn. Stat. § 243.55;
 - h) Predatory defendant registration violations pursuant to Minn. Stat. § 243.166;
 - i) Furnishing alcohol to persons under 21 resulting in death in violation of Minn. Stat. §

340A.703, Subd. 1(4);

- j) Domestic Abuse offenses as defined by Minn. Stat. §518B.01, Subd. 2(a);
 - k) Order for Protection or No Contact violation pursuant to Minn. Stat. §518B.01, Subd. 14 and §518B.01, Subd. 22;
 - l) Crimes Against the person including §609.221 to §609.265;
 - m) Crimes committed for the benefit of a gang pursuant to Minn. Stat. §609.229;
 - n) Sex Offenses as defined by §609.3457, Subd. 4 and offenses charged pursuant to Minn. Stat. §617.241-§617.247;
 - o) Malicious Punishment violations pursuant to Minn. Stat. §609.377;
 - p) Crimes Against the Administration of Justice including §609.48 to §609.515;
 - q) Theft crimes under Minn. Stat. §609.52 involving theft of public funds, firearms or theft from person;
 - r) Burglary in the second degree in violation of Minn. Stat. §609.582, Subd. 2;
 - s) Weapons of mass destruction violations pursuant to Minn. Stat. §609.712;
 - t) Terroristic Threats pursuant to Minn. Stat. §609.713;
 - u) Election and/or campaign crimes.
7. The prosecutor may vary these considerations “in the interests of justice” with the approval of the Olmsted County Attorney, Chief Deputy or Criminal Division Head.
8. Restitution owed a victim will be determined in the following priority:
- a) Amounts identified in restitution affidavits submitted and documented by victims showing reasonable restitution.
 - b) Amounts determined by probable cause.
 - c) Amounts admitted to by the defendant through testimony or police reports.
9. The prosecutor must concur in the request for diversion consideration. The prosecutor will not concur unless the Victim Witness Division of the Olmsted County Attorney's Office has completed the section of the Diversion Application relating to Victim/Law Enforcement Input.
10. The defendant must agree to participate in the Olmsted County Adult Diversion Program and pay the fee associated with the program that is a one-time fee payable to Olmsted County Community Corrections of \$150. The fee is due before dismissal of the complaint pursuant to Rule 30.01 of the Minnesota Rules of Criminal Procedure.
11. Failure to pay restitution pursuant to the schedule determined by the Diversion Program of Community Corrections will result in termination from the diversion program.
12. Olmsted County Community Corrections or designee will screen the case for diversion eligibility. That department will then notify the prosecutor, Court, defendant and defendant's attorney, if any, whether the defendant meets the program eligibility requirements and whether Community Corrections approves diversion for the defendant.
13. If the prosecutor and Community Corrections approve the defendant for diversion, the defendant will offer a plea of guilty on the court record and in a written document according to Minnesota Rule of Criminal Procedure 15. The defendant must admit the elements of the offense. A plea pursuant *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160 (1970) or *State v. Norgaard*, 261 Minn. 106, 110 N.W.2d 867 (1961) will not be accepted. The Court will not accept the plea of guilty, but will order the defendant into the diversion program, defer acceptance of the guilty plea, and continue the criminal prosecution pending successful completion of the program. The written plea petition will be kept in the court file pending

final disposition of the matter.

14. As part of the diversion program, the defendant will be required to sign a Diversion Agreement with Olmsted County Community Corrections specifying the terms and conditions that must be followed during the period of diversion. Community Corrections will specify the time period of diversion, which will not exceed two years without written approval of the County Attorney or designee.
15. Community Corrections will notify the prosecutor in writing of successful completion of the diversion program. Upon such notification, the prosecutor will file a dismissal pursuant to Minnesota Rule of Criminal Procedure 30.01 citing successful completion of the program.
16. Upon successful completion of the diversion program and dismissal of the charge(s) against the defendant, the defendant shall not be entitled to a return of finger and thumb print data collected by law enforcement agencies, nor to photographs, distinctive physical mark identification data, or other identification data collected by law enforcement agencies, nor shall the defendant be entitled to the return of any arrest or offense reports and duplicates thereof in the possession of law enforcement or prosecutors.
17. Termination from Diversion Program.
 - a) A defendant may be terminated for the diversion program for the following reasons:
 - i. Providing materially false or misleading information to the Court or Community Corrections during the screening process or entrance into the diversion program;
 - ii. Failing to complete any condition of the Diversion agreement;
 - iii. Failing to pay timely restitution pursuant to the restitution plan;
 - iv. Committing a new felony, gross misdemeanor or misdemeanor offense during the diversion period;
 - b) Upon termination from the diversion program Community Corrections will notify the defendant, defendant's attorney, prosecutor and Court of the termination. The defendant will be returned to Court for acceptance of the earlier plea of guilty and sentencing.
 - c) Upon notification of the termination, the prosecutor shall schedule and notice a sentencing hearing.

III. Diversion Coordination

The Olmsted County Diversion Coordinator shall be responsible for:

1. Gathering information on the status of the diverted person.
2. Obtaining relevant evaluations.
3. Setting the terms and conditions of diversion including the findings of the prosecutor and the recommendations of all evaluators.
4. If the recommended programs cannot be satisfactorily addressed within the time set by the prosecutor or if the individual program is not proceeding in a satisfactory manner for any reason, the matter shall be referred to the prosecutor for re-evaluation.
5. Reporting on the progress of each individual program, if requested by the prosecutor in writing.
6. Notifying the prosecutor when the program has been satisfactorily completed.

7. Notifying the prosecutor of the termination of the defendant and the grounds for the termination.

IV. Application Process

The application process is as follows:

1. A diversion application shall be submitted at or before the omnibus hearing.
2. At the omnibus hearing, the parties will request that the omnibus hearing be continued to a date approximately 60 days in the future.
3. The application will be reviewed by the prosecutor and, if eligible, will be referred to Community Corrections for a final determination of eligibility and conditions of diversion if accepted into the diversion program.
4. Community Corrections will notify the parties and the court of acceptance or rejection into the diversion program.
5. If an application is rejected by Community Corrections, the next court date will remain an omnibus hearing and prosecution will resume.
6. If a defendant is accepted into the diversion program, the next court date will serve as a plea hearing pursuant to Rule 15. The defendant will also be advised of his/her conditions of diversion by the court and the case will be continued without acceptance of the plea pending completion of the diversion program.

I acknowledge receipt of the above Olmsted County Attorney Pre-Trial Diversion Program and fully understand its contents. I have had a full and complete opportunity to review the Olmsted County Attorney Pre-Trial Diversion Program with my attorney.

Dated: _____

Defendant

I, _____ <<Defense Atty- Name>>, state that I am the attorney for the defendant in the above entitled criminal action; that I personally explained the contents of the above petition to the defendant; and that I personally observed the defendant date and sign the above petition.

Dated: _____

Attorney for Defendant
Witness to signature