Olmsted County Attorney's Office Pre-Trial Diversion Program

July 10, 2026

I. INTRODUCTION

Minnesota Statutes section 401.065 makes it the duty of the county attorney to establish an adult pretrial diversion program with the goals:

1. to provide eligible offenders with an alternative to confinement and a criminal conviction;
2. to reduce the costs and caseload burdens on district courts in the criminal justice system;
3. to minimize recidivism among diverted offenders;
4. to promote the collection of restitution to the victim of the offender's crime; and
5. to develop responsible alternatives to the criminal justice system for eligible offenders.

For a diversion program to be beneficial both for the defendant and for the prosecution, certain safeguards must exist for each party. Defendants have the following rights:

1. the right at any point to insist on criminal prosecution;
2. the presence of a reviewing judge to determine if there is probable cause for a charge;
3. the presence of a reviewing judge to ensure that the defendant's decision to accept diversion is fully voluntary; and
4. the assistance of counsel.

To protect the rights of the State, the following safeguards are appropriate:

1. waiver of speedy trial requirements;
2. 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;

3. waiver of applicable statute of limitations; and

4. the ability to resume prosecution if the defense attains a diversion agreement though misrepresentation or if the defendant materially violates the diversion agreement.

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:

1. the nature and severity of the offense;

2. any special characteristics or difficulties of the defendant;

3. whether the defendant is a first-time offender;

4. whether there is a probability that the defendant will cooperate with and benefit from the diversion program;

5. whether an available program is appropriate to the needs of the defendant;

6. the impact of diversion upon the community;

7. recommendations of the involved law-enforcement agency;

8. whether the defendant is likely to recidivate;

9. the wishes of the victim;

10. provisions for restitution; and

11. any mitigating circumstances.

Program components

The diversion program may:

1. provide screening services to the court and the prosecuting authorities to help identify likely candidates for pretrial diversion;

2. establish goals for diverted defendants and monitor performance of these

goals;

3. require chemical dependency assessments of diverted defendants, make appropriate referrals for treatment, and monitor treatment and aftercare;

4. require individual, group, and family counseling services;

5. oversee the payment of victim restitution by diverted defendants;

6. assist diverted defendants in identifying and contacting appropriate community resources;

7. identify educational services to diverted defendants where appropriate; and

8. provide accurate information on how diverted defendants perform in the program to the court, prosecutors, defense attorneys, and probation officers.

Participation in the Pre-Trial Diversion Program is not a right of the participant, rather it is an exercise in prosecutorial discretion. It is designed for those adults who acknowledge unlawful wrongdoing, but who have demonstrated remorse and a willingness to make reparation and restitution to the victim and the community.

II. Eligibility for Participation

An application for diversion will be considered as follows:

1. Only felony offenses may be considered for diversion.

2. A criminal complaint shall be fully executed and filed.

3. The defendant and the defendant's attorney, if any, shall submit a Diversion Application to the assigned prosecutor prior to the omnibus hearing/settlement conference.

4. The following defendants are not eligible for diversion:

   a) Defendants with previous felony convictions or additional felony offenses pending.
   b) Defendants who have extensive misdemeanor 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 three years preceding the offense being considered for diversion.
   d) Defendants who are, or if convicted of their pending offense would be, required to register as a predatory offender pursuant to Minn. Stat. § 243.166.

e) Defendants who have previously received diversion or a stay of adjudication for a felony-level offense.
f) Defendants who refuse to adhere to the rules of the diversion program, including those rules related to the application process.
g) Defendants who refuse to cooperate in the prosecution of others, if applicable.
h) Defendants who refuse to pay full restitution to any victims who have incurred monetary loss and request restitution.
i) Defendants with more than $8,000 of restitution owed.
j) Defendants charged with a property crime with more than $12,000 of loss, even if the restitution is less.
k) Defendants who are charged with a violent crime as defined in Minnesota Statutes 609.1095.
l) Defendants who were in possession of a dangerous weapon while committing the charged offense.

5. The following offenses are not eligible for diversion:

a) Any offenses statutorily excluded from diversion.
b) Controlled substance cases under Minn. Stat. Chapter 152;
c) Impaired driving cases under Minn. Stat. Chapter 169A;
d) Criminal vehicular operation cases;
e) Driver's License violations pursuant to Minn. Stat. Chapter 171;
f) Introducing contraband into correctional facility pursuant to Minn. Stat. § 243.55;
g) Predatory offender registration violations pursuant to Minn. Stat. § 243.166;
h) Furnishing alcohol to persons under 21 resulting in death in violation of Minn. Stat. § 340A.703, Subd. 1(4);
i) Domestic Abuse offenses as defined by Minn. Stat. § 518B.01, Subd. 2(a);
j) Order for Protection or No Contact violation cases;
k) Crimes Against the person including § 609.221 to § 609.2691;
l) Crimes committed for the benefit of a gang pursuant to Minn. Stat. § 609.229;
m) Criminal sexual conduct of any sort;
n) Child sexual abuse material offenses of any sort;
o) Prostitution offenses of any sort;
p) Any other sexual offense;
q) Malicious Punishment violations pursuant to Minn. Stat. § 609.377;
r) Crimes Against the Administration of Justice including § 609.48 to § 609.515;
s) Theft of public funds or firearms, or theft from a person;
t) Burglary in the first- or second- degree in violation of Minn. Stat. § 609.582, Subd. 2;

u) Weapons of mass destruction violations pursuant to Minn. Stat. § 609.712;
v) Terroristic Threats pursuant to Minn. Stat. § 609.713;
w) Election and/or campaign crimes;
x) Any other offense that, in the discretion of the prosecuting attorney, is so serious or presents such a threat to public safety that diversion would be unjust.

6. The prosecutor may vary these considerations in the interests of justice after input from the victim and with the approval of the Olmsted County Attorney, Chief Deputy, or Managing Attorney.

7. 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.

8. The prosecutor must concur in the request to be considered for diversion. The prosecutor will not concur until the victim-witness coordinator has complied with all victim notification statutes and policies.

9. Olmsted County Community Corrections or designee will screen the case for diversion eligibility. That department will then notify the parties whether the defendant meets the program eligibility requirements and whether Community Corrections approves diversion for the defendant.

10. If the prosecutor and Community Corrections approve the defendant for diversion, the defendant will sign a written affidavit making a full confession to the offense. The prosecutor shall have complete discretion to approve or disapprove the verbiage in the affidavit. The parties will acknowledge that the affidavit is freely given and may be offered in evidence against the defendant at a future trial should the defendant be terminated from the diversion program. Additionally, the prosecutor will have complete discretion whether to require that the defense stipulate to the admissibility of exhibits in the event the case should be tried. The originals of the affidavit and stipulation will be kept in the custody of the Olmsted County Attorney's Office.

11. 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 length of diversion, which will not exceed two years without approval of a managing

attorney. Failure to pay restitution according to the schedule agreed upon in the Diversion Agreement will be considered a material violation of the program.

12. 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.

13. Termination from Diversion Program.

    a) A defendant may be terminated from the diversion program for the following reasons:[1]
        i. the defendant or defense counsel misrepresents material facts affecting the diversion agreement;
        ii. the defendant commits a material violation of the agreement;
        iii. the defendant commits a new crime or petty misdemeanor offense during the diversion period; or
        iv. the defendant asks to be terminated from the diversion program.
    b) Upon termination from the diversion program Community Corrections will notify the parties of the termination.
    c) Upon notification of the termination, the prosecutor will ask the Court to schedule a hearing to resume prosecution.

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. If the recommended programs and conditions cannot be satisfactorily addressed within two years or if Community Corrections and the defendant are unable to agree on the terms of diversion, the matter shall be referred to the prosecutor for re-evaluation.

4. Reporting on the progress of diversion participants.

5. Notifying the prosecutor when the program has been satisfactorily completed.

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

[1] *Cf.* MINN. R. CRIM. P. 27.05, subd. 4.

IV. Application Process

The application process is as follows:

1. A diversion application shall be submitted at or before the omnibus hearing/settlement conference.

2. At the hearing, the parties will request that the omnibus hearing/settlement conference be continued to a date approximately 60 days in the future.

3. The application will be reviewed by the prosecutor. If the prosecutor is agreeable to diversion, the application 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 of acceptance or rejection into the diversion program.

5. If an application is rejected by Community Corrections, the next court date will remain on the calendar, and prosecution will resume.

6. If a defendant is accepted into the diversion program, the parties will execute an affidavit admitting to the offense. If the parties are unable to agree to the language in the affidavit, the diversion application will be withdrawn, and prosecution will resume.

7. At or before the next hearing, the Court will decide whether to consent to or reject diversion pursuant to Rule 27.05, subd. 1(1)(c).

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, ______________________________, state that I am the attorney for the defendant in the above entitled criminal action; that I personally explained the contents of the above policy to the defendant; and that I personally observed the defendant's signature.

Dated:____________ ______________________________
Attorney for Defendant