

*Office of the County Attorney*  
*Janelle P. Kendall, Stearns County Attorney*

**Adult Diversion Program Description**

**I. INTRODUCTION**

The following program has been developed by the Stearns County Attorney to comply with Minnesota Statute § 401.065 requiring that the County Attorney of any county participating in the Community Corrections Act develop a pre-trial diversion program to:

- Deliver specific intervention programming to targeted participants to prevent, eliminate, or reduce the rate of recidivism among the programs' participants.
- Provide eligible offenders with an alternative to the traditional court process and a criminal conviction.
- Promote the collection of restitution to the victims(s) of the offender's crime.
- Develop responsible alternatives to the criminal justice system for eligible offenders.
- Reduce the costs and caseload burdens on district courts and the criminal justice system.

Diversion is designed to use the power of persuasion inherent in the incentive of avoiding a criminal conviction to facilitate rehabilitation, changed thinking, responsible behavior, the payment of restitution to the victim(s), and in some cases, treatment.

**II. ELIGIBILITY**

Determining an offender's eligibility for the diversion program is a three-part process. First, the OFFENDER<sup>1</sup> must not have a criminal history that disqualifies the offender from consideration for participation in diversion. Second, the alleged violation of law must be contained within the list of eligible offenses. Third, the offender must abide by the advanced eligibility requirements.

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<sup>1</sup> "OFFENDER" *excludes* a corporation or other entity or organization of one or more persons formed under or recognized by the laws of the State of Minnesota.

**A. Preliminary Eligibility Requirements**

1. Criminal History

To be eligible for the Adult Diversion Program, the offender must have:

- A. No prior diversion (successful or unsuccessful) except no more than a total of one prior juvenile diversion for a tobacco, alcohol, or curfew-related offense.
- B. No felony conviction of any sort in Minnesota or elsewhere.
- C. No FINDING<sup>2</sup>, CONVICTION<sup>3</sup>, adjudication or EXCEPTIONAL DISPOSITION<sup>4</sup> for any offenses or crimes either included in or excluded from the Adult Diversion Program.
- D. No prior finding, conviction, adjudication, or exceptional disposition as a juvenile or as an adult in Minnesota or any other state of any crime against a person, except as provided in Section A.1.G. below (page 3).
- E. No offenses or crimes either included in or excluded from the Adult Diversion Program AWAITING DISPOSITION<sup>5</sup>.
- F. No arrests, citations, or charges for offenses or crimes either included in or excluded from the Adult Diversion Program which are committed prior to entering the program, but not awaiting disposition until after entering the program. (Will result in termination).

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<sup>2</sup> “FINDING” includes prior determinations that the allegations of previous charging documents were proved, including stays of adjudication, continuances for dismissal, and juvenile delinquency convictions/adjudications.

<sup>3</sup> “CONVICTION” includes juvenile and adult convictions or adjudications, stays of adjudication and continuances for dismissal.

<sup>4</sup> “EXCEPTIONAL DISPOSITION” means a gross misdemeanor or misdemeanor conviction arising from a felony charge.

<sup>5</sup> A charge is “AWAITING DISPOSITION” if it has been filed with the court and not yet reached conclusion/disposition.

G. Not more than two TRAFFIC VIOLATIONS<sup>6</sup>, Curfew violations and/or Littering violations, or any combination thereof, either resolved or awaiting disposition, in the last 5 years (*including* offenses committed as a juvenile).

H. No status as an illegal and/or undocumented alien.

2. Eligible Offenses

A. Misdemeanor and Gross Misdemeanor Offenses

Diverted cases must meet the same evidentiary and charging standards as those in which a citation or complaint is filed with the court.

The following offenses are included:

- Criminal Damage to Property, M.S.A. § 609.595
- Theft and Theft-related offenses, M.S.A. § 609.52 (except theft by an employee from his/her employer or by an individual who occupies a similar position of trust or responsibility is *excluded* from diversion)
- Possession/Receiving Stolen Property, M.S.A. § 609.53
- Worthless Check, M.S.A. § 609.535
- Motor Vehicle Tampering, M.S.A. § 609.546

B. Felony Offenses

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<sup>6</sup> “TRAFFIC VIOLATIONS” refers to all motor vehicle/driving-related offenses or crimes, specifically excluding DUI/DWI, Criminal Vehicular Operation, Underage Drinking and Driving, Careless or Reckless Driving, Motor Vehicle-Related Assaults, Fleeing Peace Officer in Motor Vehicle, Leave Scene of Motor Vehicle Accident, and/or other Gross Misdemeanor or Felony level motor vehicle/driving-related court dispositions. For purposes of this provision, non-moving Petty Misdemeanor (NMP) violations designated as such within the current “State Payables List and 7<sup>th</sup> Judicial District Bail Schedule” shall not be considered a “traffic violation” and/or affect offender eligibility for the Adult Diversion Program. (Examples: Vehicle Equipment Violations, Parking tickets, Warning Citations, etc.).

Diverted cases must meet the same evidentiary and charging standards as those in which a citation or complaint is filed with the court.

Felony offenses are eligible for the diversion program only:

- (1) as allowed by state statute,
- (2) within the offense-types listed in Section 2A. (Eligible Misdemeanor and Gross Misdemeanor Offenses), and
- (3) on the recommendation, in writing, of the Chief Law Enforcement Officer (CLEO) in the jurisdiction referring the matter to the County Attorney's Office. Written recommendations shall include an explanation and/or justification upon which the proposal for admission into the diversion program is made.

The final determination of an offender's eligibility for the diversion program is within the sole discretion of the County Attorney and may be based on additional factors not specifically included within these guidelines.

#### C. Excluded Offenses

In addition to any offense(s) or category of offense(s) statutorily excluded from diversion, the offenses listed in the attached Non-Divertable Offenses List are excluded.

#### **B. Advanced Eligibility Requirements**

To be eligible for the diversion program, the offender must:

1. Admit guilt, acknowledge responsibility, and provide a FACTUAL BASIS REGARDING THE OFFENSE<sup>7</sup>.
2. Sign a personalized Diversion Agreement.

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<sup>7</sup> The FACTUAL BASIS REGARDING THE OFFENSE includes, but is not limited to, the full, complete and truthful statement of the involvement of the offender and others in the offense and cooperation in the ongoing investigation of the matter, including but not limited to, complete and truthful information to law enforcement and/or testimony at any and all trials or hearings regarding co-defendants, accomplices, and/or co-conspirators in this or any other jurisdiction.

3. Agree to pay full restitution to any/all victims who have incurred a monetary loss and request restitution.
4. Sign a Privacy Act Statement form.
5. Complete a risk and needs assessment and/or a personal and/or group interview/meeting with the Diversion Programs Specialist and follow any recommendations that flow therefrom.
6. Pay the diversion program fee(s), as set by the Stearns County Board of Commissioners.
7. Pay any/all fees related to individualized diversion programming and/or treatment.
8. Waive his/her right to a speedy trial and/or any similar defense based on the delay brought about by participation in the diversion program.
9. Acknowledge an understanding that the statute of limitations does not run during the period of the offender's participation in the diversion program.<sup>8</sup>
10. Waive any right to the expungement of records relating to the offense being diverted.
11. Maintain contact with the Diversion Programs Specialist as required in the Diversion Agreement and promptly report any change of address, telephone number, or employment.
12. Demonstrate amenability to supervision within the diversion program, including but not limited to an ability to remain law-abiding and of good behavior and not commit any new offense or violation of any law during participation in the diversion program. (See also Termination from the Division Program, section VI.)

### **III. OFFICE PROCEDURES**

To be eligible for diversion, a law enforcement referral for criminal prosecution must be completed and transmitted to the Stearns County Attorney's Office.

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<sup>8</sup> Minn. Stat. § 628.26, subp. 1, states: The limitations periods contained in this section for an offense shall not include any period during which the alleged offender participated under a written agreement in a pretrial diversion program relating to that offense.

The Law Office Supervisor, or her designee, will screen the case for diversion program eligibility and conduct the requisite record checks. If the offender meets the preliminary Program eligibility requirements the Law Office Supervisor will notify the Diversion Programs Specialist by forwarding the referral to the Diversion Programs Specialist. Additional office procedures are set forth in the Law Office Supervisors' office procedures manual.

The Diversion Programs Specialist will conduct the tasks associated with the Advanced Eligibility Criteria for the diversion program.

#### **IV. PROGRAM CONTENT**

At the discretion of the Diversion Programs Specialist, participants may be required to complete general or offense specific programming including but not limited to the following:

##### Program for the Encouragement of Responsible Thinking (PERT) Offender Workshops

PERT Prevention Programs has offered misdemeanor workshops in Minnesota since 1983. These workshops are separately available to both adults and juveniles. The program has been directed by Jeffrey Gottlieb, Ph. D., since its inception in 1980.

Each workshop allows participants to gain a better understanding of their behavior, examine the consequences of their actions, and identify more positive courses of action in the future. The topics of behavior, feelings, goals, choices, consequences for behavior, autonomy, and interdependence provide a common point of reference from which instructors and participants discuss responsible thinking and what went wrong that resulted in their participation in diversion and PERT. Through this process, the ultimate goal can be reached – to reduce the recidivism of the program's participants.

Workshops are geared toward general misdemeanor offenders or are designed more specifically for theft offenses. The program is supported by a \$40.00 registration fee paid by each participant. The PERT program fee is in addition to the fee required for participation in the Stearns County Attorney's Adult Diversion Program.

##### Apologies

As a condition of their diversion agreement, the offender may be required to write a letter of apology or apologize in person to the victim(s) for their harmful and illegal behavior. Offenders submit *handwritten* letters of apology that include their thoughts on their inappropriate behavior and how it affected the victim, what they've learned and why they are sorry for committing the offense. The Diversion Programs Specialist reviews each letter for appropriateness and provides it to the victim after approval. Offenders may also offer personal apologies to their victims, family members, law enforcement officers or others harmed by their behavior as directed by and supervised by the Diversion Programs Specialist. Restorative justice victim/offender conferences may be available.

### Community Service

Divertable offenses like theft, shoplifting, criminal damage to property and worthless checks cause harm not only to individual victims but also to the community as a whole. Community service work offers offenders the opportunity to repair the damage or harm they caused a victim by contributing something positive to the community in general and/or to the offender's neighborhood or hometown. Diverted offenders may be required to perform an assigned number of community service work hours and/or participate in a pre-planned, group community service project. Service work can be the vehicle for offenders to become contributing members of their community.

### Essay

Writing assignments are used to encourage diversion participants to acknowledge their harmful and unlawful behavior and recognize the broad effect this one incident has had on the offender, their family and friends, victim(s) and their community.

The diversion essay requires the diversion participant to write three (3) pages on the following:

- What has been your part in the problem?
- Who has been affected by your actions?
- What will you do to make it right?
- What will you do differently to make sure this doesn't happen again?

## Restitution

One of the primary goals of the diversion program and one of the crucial components of an offender's rehabilitation and responsibility is repairing the harm the offender caused to the victim(s). In cases where property has been damaged, lost or destroyed, the offender may be required to pay monetary restitution to cover these losses. This condition becomes a vital part of the offender's Diversion agreement. The Diversion Programs Specialist monitors payments made to victims and may create a payment schedule when appropriate. Restitution payments are distributed to victims through the Stearns County Auditor's Office.

## Treatment and Counseling

In cases where chemical usage and/or mental health issues are factors in the divertable offense or where chemical usage or mental health issues inhibit success in the diversion program, the offender may be referred to appropriate facilities, agencies, or treatment providers for assessment. If the assessment indicates a chemical dependency and/or mental health issue, the offender may be referred to an appropriate treatment facility/program. The Diversion Programs Specialist will monitor the offender's progress throughout the treatment program and aftercare by reviewing progress reports, treatment notes, counseling updates, and discharge summaries. If the offender does not satisfactorily complete the treatment plan, the offender may be terminated from the diversion program.

Treatment and counseling referrals may include, but are not limited to, the following:

- mental health services
- residential/in-patient treatment
- outpatient services
- individual counseling
- 12-step programs
- support groups
- educational programs

## **V. PAYMENT OF DIVERSION PROGRAM FEES AND RESTITUTION**

Diversion fees are set annually by the Stearns County Board of Commissioners. The diversion fee must be paid in full before an offender can become a participant in the diversion program, thus the diversion fees are due in full at the time the offender signs his/her diversion agreement.

Restitution must be paid in full within the confines of the offender's participation in the diversion program. (Participation in the diversion program is ordinarily limited to three months unless the Diversion Programs Specialist determines that an extension should be granted). A restitution payment schedule may be arranged if the Diversion Programs Specialist determines that the offender's financial circumstances warrant such a schedule. The offender must then agree and comply with a restitution payment schedule. Community work service in lieu of cash payments is not a payment option for either program fees or restitution for a victim's monetary loss.

The Diversion Programs Specialist will consult with the victim(s) to determine that the request for restitution for a monetary loss is reasonable. Once that determination is made, the restitution must be made in that amount. An offender who disputes the victim's reasonable request for restitution will be terminated from diversion to pursue this issue through a court of law.

## **VI. TERMINATION FROM THE DIVERSION PROGRAM**

Termination is the process whereby an offender is removed from the diversion program and referred to the appropriate prosecutorial authority for further action through the criminal justice system.

Termination may occur if an offender:

- A. provides false or misleading information to the Diversion Programs Specialist during the screening process, entrance into the diversion program, or prior to the time that the diversion agreement expires,
- B. fails to complete any condition of the diversion agreement,
- C. commits a new offense during the diversion period, or
- D. otherwise violates any rule or condition of the diversion program.

The Diversion Programs Specialist will then issue a letter of Termination from the diversion program and the matter will be referred to the appropriate prosecutorial authority for charging, or the citation previously issued by law enforcement will be forwarded to the court where a court date will be assigned.

An offender who is terminated from the diversion program will receive a letter from the Diversion Programs Specialist that contains a recitation of the uncompleted or unsatisfactorily completed elements within their personalized diversion agreement.

The Stearns County Attorney's Office will also provide the court, the referring law enforcement agency and the prosecutorial authority a copy of the termination letter that was sent to the offender. This documentation is necessary to impart to the court, law enforcement, and the prosecutorial authority that (1) the county attorney's office recognized the offense as a divertable offense, and (2) the offender was diverted, albeit unsuccessfully.

## **VII. SUCCESSFUL COMPLETION OF THE DIVERSION PROGRAM**

The offender must complete the diversion program no later than three (3) months from the date on which the offender signs the diversion agreement. The Diversion Programs Specialist can grant one (1) three-month extension for good cause shown (e.g., cases in which a large amount of restitution is paid over an extended period of time; cases in which an extended course of programming/treatment is required). An offender may spend no more than six (6) months in the diversion program unless the County Attorney approves an extension, in which case the entire period of diversion may be extended, and individuals monitored, up to a maximum of one year.

To successfully complete diversion, the offender must follow all rules and regulations of the Stearns County Attorney's Office Adult Diversion Program and must successfully complete all program requirements specified in the diversion agreement. An offender will not be considered for successful discharge from diversion until the offender has met **all** of the conditions set forth in the diversion agreement.

Once the offender has fulfilled all of the requirements of his/her personalized diversion agreement to the satisfaction of the Diversion Programs Specialist, the Law Office Supervisor, or her designee, will conduct a records review in the same manner as the preliminary eligibility determination (Section II(A)(1)). Upon a determination that the offender has fulfilled all the program requirements, an offender has successfully completed the diversion program. The Stearns County Attorney's Office will not file a citation or complaint against the offender charging him/her with the diverted offense and completion of the diversion program will not result in a court record<sup>9</sup>.

An offender who successfully completes the diversion program will receive a letter from the Diversion Programs Specialist that contains confirmation that the offender successfully completed the program and signifies that the case is formally resolved without the involvement of the court.

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<sup>9</sup> Upon successful completion of the diversion program, the offender is not entitled to the return of finger and thumbprint data collected by law enforcement agencies, photographs, distinctive physical mark identification data, or other identification data collected by law enforcement agencies, nor is the offender entitled to the return of any arrest or offense reports and duplicates thereof.

**VIII. STATISTICS AND REPORTS**

The Diversion Programs Specialist in cooperation with the Law Office Supervisor shall develop and implement a records retention system that complies with Minn. Stat. § 401.065, subd. 3a and subd. 4. The Diversion Programs Specialist and Law Office Supervisor shall produce and submit in a timely manner any and all reports to the legislature, CJIS, and/or the Bureau of Criminal Apprehension as necessitated by state statute.

**IX. CONCLUSION**

The Stearns County Attorney’s Office Adult Diversion Program offers offenders without a disqualifying criminal record<sup>10</sup> a consistent and appropriate sanction as well as the opportunity to actively participate in a structured environment that focuses on the restoration of community values and respect for others. Through diversion, offenders and their victims can pursue restorative alternatives to the retributive methods ordinarily employed in the criminal justice system and thereby identify and avoid behavior that leads to criminal consequences, learn skills to identify and implement healthy alternatives, and reintegrate into productive community life.

The Adult Diversion Program will be effective for certain offenses that were pending on or after the date that the Stearns County Attorney approved this program.

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Date

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Janelle P. Kendall  
Stearns County Attorney

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<sup>10</sup> Criminal records that will disqualify an offender from the diversion program are described in section II.A.1, entitled Preliminary Eligibility Requirement.

**Stearns County Attorney's Office**  
*Janelle P. Kendall, Stearns County Attorney*

**Adult Diversion Program**  
**Non-Divertable Offenses List**

1. Alcohol crimes (a/k/a unlawful acts involving liquor under Chapters 169A, 171, 340A, 624)
2. Boat and/or water vehicle crimes
3. Crimes which are, or should be, part of the same prosecution if one such crime is not divertable
4. Crimes ranked at Severity Level III or above on the Minnesota Sentencing Guidelines
5. Crimes unranked by the Minnesota Sentencing Guidelines
6. Crimes under the jurisdiction of a city prosecuting attorney, committed in a city/municipality unless there is a signed Memorandum of Understanding between the Stearns County Attorney and that city
7. Crimes committed in the Benton County portion of the City of Sartell
8. Crimes committed in the Benton or Sherburne County portions of the City of St. Cloud
9. Crimes committed in the Pope County portion of the City of Brooten
10. Cruelty to animals, including but not limited to M.S.A. Chapter 343
11. Dangerous weapons crimes or crimes involving firearms of any kind, including any violation of M.S.A. Chapter 624
12. Drug crimes, including any violation of M.S.A. Chapter 152
13. Election law and/or campaign crimes
14. Environmental protection laws, M.S.A. Chapters 114C, 115, 116 and § 609.671
15. Gambling crimes
16. Game and fish crimes (a/k/a D.N.R. violations)
17. Identity theft in any form
18. Off-road vehicle/ATV crimes
19. Ordinance violations. A prior Curfew violation, though not a divertable offense, shall not affect program eligibility based upon criminal history, except as provided in Section A.1.G. above (page 3).
20. Person crimes, including but not limited to all assaults, criminal vehicular operation, depravation of parental rights, harassment restraining order violation, harassment/stalking order for protection violation, robbery, sexual assaults, or terroristic threats
21. Snowmobile crimes

22. Theft by an employee from his/her employer or by an individual who occupies a similar position of trust or responsibility
23. Traffic crimes, including any violation of M.S.A. Chapters 168, 169, 169A, or 171 and 609 (including any form of DUI/DWI and Fleeing a Peace Officer in a Motor Vehicle)
24. Littering. A prior Littering violation, though not a divisible offense, shall not affect program eligibility based upon criminal history, except as provided in Section A.1.G. above.
25. Water law, M.S.A. Chapters 103A, 103B, 103C, 103D, 103E, 103F and 103G
26. Welfare fraud, wrongfully obtaining assistance, and wrongfully obtaining food stamps, M.S.A. §§ 256.98, 256.984, 393.07, and 609.821
27. M.S.A. §§ 21.80 to 21.92, Seed law violations
28. M.S.A. § 97B.045, Transportation of firearms
29. M.S.A. § 171.22, Unlawful acts relating to driver's license
30. M.S.A. § 243.166, Registration of predatory offenders
31. M.S.A. § 256.984, Perjury – welfare benefits
32. M.S.A. § 260B.425, Contributing to status as a juvenile petty offender, or delinquency
33. M.S.A. § 260C.425, Contributing to need for protection or services
34. M.S.A. § 299C.37, Police scanner in motor vehicle
35. M.S.A. § 588.20, Criminal contempt
36. M.S.A. § 609.229, Committing a crime for the benefit of a gang
37. M.S.A. § 609.294, Bestiality
38. M.S.A. § 609.324, Prostitution and solicitation of prostitution
39. M.S.A. § 609.43, Misconduct of public officer or employee
40. M.S.A. § 609.485, Escape from custody – any level
41. M.S.A. § 609.494, Solicitation of a Juvenile to Commit a Crime
42. M.S.A. § 609.495, Aiding an offender
43. M.S.A. § 609.50, Obstructing legal process
44. M.S.A. § 609.505, Falsely reporting crime
45. M.S.A. § 609.506, False information to a police officer (misd. and GM)
46. M.S.A. § 609.521, Possession of shoplifting gear
47. Theft of public funds of any amount 609.52, subds. 1, 2 and 3(d)(iv)
48. M.S.A. § 609.59, Possession of burglary or theft tools
49. M.S.A. § 609.561, M.S.A. § 609.562, M.S.A. § 609.563, M.S.A. § 609.5631, M.S.A. § 609.5632, and M.S.A. § 609.5641, *et. seq.*, Arson
50. M.S.A. § 609.5633, Use of ignition devices

51. M.S.A. § 609.576, Tobacco violations and smoking
52. M.S.A. § 609.576, Dangerous smoking
53. M.S.A. § 609.576, Negligent fires
54. M.S.A. § 609.582, Burglary
55. M.S.A. § 609.605, Trespass
56. M.S.A. § 609.625, Aggravated forgery of any amount
57. M.S.A. § 609.63 – all sections, Forgery
58. M.S.A. § 609.685 Sale of or furnishing tobacco to children
59. M.S.A. § 609.686, False fire alarm
60. M.S.A. § 609.78, [Interference with] Emergency telephone calls and communications
61. M.S.A. § 609.821, Financial transaction card fraud
62. M.S.A. § 624.25, Fireworks
63. M.S.A. § 624.7131, subd. 11, Making a false statement to obtain a gun transferee permit