



Steele County Pre-Trial Diversion Program Effective July 1, 2017

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.

Accordingly, effective July 1, 2017, it is the policy of the Steele County Attorney and Steele County Community Corrections to establish and operate a fair and just diversion program that promotes equal access of participation in the Pre-Trial Diversion Program.

Purpose: Minnesota Statute §401.065, Subd. 2

The purposes of a diversion program include:

1. To provide eligible defendants 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 defendants;
4. To promote the collection or restitution to the victim of the defendant's crime; and
5. 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 defendant's 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 traditional prosecution;

- b) Judicial review to determine if there is a sufficient factual basis for a charge to be diverted;
- c) Judicial review to determine whether any pressure put on the defendant to accept noncriminal disposition constituted overwhelming inducement to surrender any trial right;
- d) The presence and assistance of counsel.

To protect the interested public, the following safeguards may be considered:

- a) The right to the prosecutor at any point prior to execution of a Diversion Agreement 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 in applicable cases, an agreement by the defendant to cooperate with law enforcement;
- d) Waiver of applicable statutes 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: Minnesota Statute §401.065, Subd. 3

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/or 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.

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 that the conduct giving rise to possible prosecution was a violation of the law, but who have also demonstrated the capacity 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. All adult criminal offenses may be considered for diversion, including misdemeanor-level offenses defined as “qualified domestic violence-related offenses” under Minn. Stat. §609.02, subd. 16.
2. A criminal complaint or citation shall be fully executed and filed.
3. Booking shall have been completed.
4. The defendant, or the defendant’s attorney, shall submit a Diversion Application to the assigned prosecutor within 30 days following the Rule 8 hearing. No diversion requests will be considered following a contested omnibus hearing.
5. All offenders will be considered for diversion **except** the following:
 - a. Defendants with previous felony or gross misdemeanor convictions in this state or another state.
 - b. Defendants who have extensive misdemeanor and/or traffic history demonstrating that success in the Diversion Program would be futile.
 - c. Defendants age 25 or younger who, as juveniles, have entered a plea of guilty or have been found guilty or delinquent by a court trial for felony or gross misdemeanor offenses under EJJ or Adult Certification.

- d. Defendants who have been previously diverted as adults or who have been placed on probation under Minnesota Statute 152.18.
 - e. Defendants who refuse to admit guilt or pay costs of participation in the program.
 - f. Defendants who refuse to cooperate in the prosecution of others, if applicable.
 - g. Defendants who have failed to appear in a case involving the charge to be diverted for any scheduled hearing without good cause.
 - h. Defendants who refuse to agree to pay full restitution to any/all victims who have incurred monetary loss and request restitution.
 - i. Defendants who are charged with a violent crime, as defined in Minnesota Statute 609.1095, Subd. 1(d).
 - j. Defendants who are charged in possession of a dangerous weapon while committing the charged offense.
 - k. Persons deemed “high risk” according to a validated risk assessment tool.
6. The following offenses are not eligible for diversion:
- a. Any offenses statutorily excluded from diversion;
 - b. Offenses charged in a case in which one or more other charges are ineligible for diversion. (Example: Criminal damage to property not subject to diversion if a second degree assault is charged as part of the same course of conduct)
 - c. Offenses charged pursuant to Minnesota Statute 169A;
 - d. Introducing contraband into correctional facility pursuant to Minnesota Statute 243.55;
 - e. Predatory offender registration violations pursuant to Minnesota Statute 243.166;
 - f. Furnishing alcohol to persons under 21 resulting in death in violation of Minnesota Statute 340A.703, Subd. 1(4);
 - g. Felony or Gross Misdemeanor Domestic Abuse offenses as defined by Minnesota Statute 518B.01, Subd. 2(a);
 - h. Felony or Gross Misdemeanor Order for Protection or No Contact violation pursuant to Minnesota Statute § 518B.01, Subd. 14 and Subd. 22 and Minn. Stat. §629.75;
 - i. “Violent crimes,” as defined in Minn Stat 609.1095, in which another person is harmed or threatened with harm.;
 - j. Crimes committed for the benefit of a gang pursuant to Minnesota Statute 609.229;
 - k. Sex Offenses as defined by 609.3457, Subd. 4 and offenses charged pursuant to Minnesota Statute 617.241-617.247;
 - l. Malicious Punishment violations pursuant to Minnesota Statute 609.377;
 - m. Crimes Against the Administration of Justice including 609.48 to 609.515;
 - n. Theft crimes under Minnesota Statute 609.52 involving theft of public funds, firearms or theft from person;
 - o. Weapons of mass destruction violations pursuant to Minnesota Statute 609.172;
 - p. Threats of violence pursuant to Minnesota Statute 609.713;

- q. Election and/or campaign crimes.
7. The prosecutor may vary these considerations “in the interests of justice” with the approval of the Steele County Attorney or Chief Deputy.
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 agree to the request for diversion consideration. The prosecutor will not agree unless the Victim Witness Coordinator of the Steele County Attorney’s Office has secured the input of any identified victims to be considered by the prosecutor.
10. The defendant must agree to participate in the Steele County Adult Diversion Program and pay the fee associated with the program that is a one-time fee payable to Steele County Community Corrections of \$200. The fee must be satisfied 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 Community Corrections will result in termination from the diversion program.
12. After prosecutorial review, Steele County Community Corrections or designee will screen the case for diversion eligibility, including administration of a validated risk assessment tool. 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 to *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160 (1970) or *State of 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.

14. As part of the diversion program, the defendant will be required to sign a Diversion Agreement with the Steele 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 thereon 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. Upon motion of the prosecutor, the defendant will be returned to Court for acceptance of the earlier plea of guilty and sentencing.

III. Diversion Coordination

Steele County Community Corrections shall:

1. Gather information on the status of the diverted person.
2. Obtain relevant evaluations, including but not limited to validated risk assessments, and chemical screens.

3. Set 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. Report on the progress of each individual program, if requested by the prosecutor in writing.
6. Notify the prosecutor when the program has been satisfactorily completed.
7. Notify 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 by the defendant, or defendant's counsel, within 30 days of the Rule 8 hearing.
2. 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.
3. Community Corrections will notify the parties and the court of acceptance or rejection into the diversion program.
4. 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.
5. At the plea hearing, the offender will enter a guilty plea to the offense to be diverted and submit the signed Diversion Agreement.
6. If an application is rejected by the prosecutor or Community Corrections, the next court date will remain an omnibus or settlement conference hearing and prosecution will resume.

I acknowledge receipt of the Steele County Attorney Pre-Trial Diversion Program document and fully understand its contents. I have had a full and complete opportunity to review the Steele County Attorney Pre-Trial Diversion Program with my attorney or I have knowingly and voluntarily waived my right to be represented by legal counsel in this matter.

Dated: _____
_____ Defendant

I, _____ (Defense Attorney), 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 Defendant