

Winona County

Misdemeanor Diversion

Program Guidelines

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INTRODUCTION. The Winona County Attorney’s Office, in conjunction with the Misdemeanor Diversion Workgroup of the Winona County Criminal Justice Coordinating Council and representatives of Winona State University, has developed the following Misdemeanor Diversion Program. Other prosecuting authorities within the county may not elect to participate in this program—this information can be obtained from the Diversion Coordinator or the individual prosecuting authority. Participation in the program is not a right of the defendant, but rather an alternative to prosecution for those defendants:

- (1) Who acknowledge that the conduct giving rise to possible prosecution was a violation of law;
- (2) Who are remorseful; and
- (3) Who have the ability to make appropriate restitution to the victim and/or reparation to the community in a timely manner.

Defendants who are accepted into and successfully complete the Misdemeanor Diversion Program will have the charges pending against them dismissed.

I. ELIGIBILITY. Admission into the Misdemeanor Diversion Program rests within the discretion of the prosecutor. A criminal defendant may be eligible for the Misdemeanor Diversion Program if the defendant:

A. ELIGIBLE OFFENSES. Defendant can only be charged with one or more of the following petty misdemeanor, misdemeanor, or gross misdemeanor offenses (offenses marked with an * require panel review to determine eligibility):

Alcohol & Related Offenses

Furnishing Alcohol to a Minor*
Minor Consume/Possess Alcohol
Social Host*
Open Bottle (Passenger only)

Theft & Related Offenses

Theft/Shoplifting
Criminal Damage to Property
Financial Transaction Card Fraud*
Receiving Stolen Property
Check Forgery/Offering Forged Check*
Issuing a Dishonored Check
Computer Theft
Possession of Stolen/Counterfeit Checks
Identity Theft*
Bringing Stolen Goods into the State

Traffic Offenses

Driving After Cancellation, Revocation or Suspension (Misdemeanor only)

Drugs & Related Offenses

Possession of Drug Paraphernalia
Possession of a Small Amount of Marijuana
Possession of Marijuana in a Motor Vehicle

Obstruction Offenses

Obstruction of Justice*
Fleeing a Peace Officer (Foot)*
False Information to Peace Officer*
Possession of Fake ID*

Other Offenses

Disorderly Conduct (except brawling/fighting)
Trespass
Public Urination
Barking Dog/Dog at Large
Loud Party
Noise Ordinance Violations
DNR Violations (prosecutor’s discretion)

- B. NO SIGNIFICANT PRIOR HISTORY.** Has no prior conviction(s)/adjudication(s) of delinquency for, or any pending, felony, gross misdemeanor, or targeted-misdemeanor (as defined in Minn. Stat. § 299C.10, subd. 1(e)) case(s); and,
- C. MINIMAL CRIMINAL JUSTICE SYSTEM CONTACT.** Has minimal misdemeanor or petty misdemeanor level contact with the criminal justice system, as determined by a review panel where appropriate.

II. PROGRAM PROCEDURES.

A. APPLICATION. The defendant is responsible for applying for the Misdemeanor Diversion Program. Every effort will be made to ensure that defendants are made aware of the program, but it is the defendant's responsibility to submit the application in a timely manner. Absent extenuating circumstances, lack of notice of the program will not be grounds for withdrawal of a plea in a case that could have been diverted or for approval of withdrawal in any future case which is not eligible due to an offense that could have been diverted but was not. Applications will be accepted for consideration at any point in the case process up to the conclusion of the pretrial hearing. Applications will be available at traffic court, at court administration, from the prosecutor, and on the Winona County Attorney's Office Diversion Program website. Applications may be completed online, or turned in to the prosecutor for forwarding or directly to the Winona County Attorney's Office. Court Administration will be notified and court proceedings will be suspended.

B. ELIGIBILITY REVIEW

1. Initial Review. The Diversion Coordinator will review all applications initially. If the defendant has no prior history of any kind and there is no other reason to deny the application, the defendant will be deemed eligible and referred to the Department of Corrections for entry into the program. If the defendant has any prior felony, gross misdemeanor, or targeted-misdemeanor conviction or adjudication of delinquency, or any such case pending, the defendant will be deemed not eligible and the case will be returned to court. All other circumstances will be referred to a panel for review of eligibility.

a. Driver's License Return Program. Applications for offenders seeking to enter the Driver's License Return Program will be reviewed for eligibility based upon their driving record, past participation in similar programs, and whether they will be able to obtain their license within the program time period.

2. Panel Review. A panel comprised of a prosecutor, a law enforcement officer, a probation agent, a Department of Human Services representative, a Restorative Justice representative, and/or a higher education representative will review the reports and other relevant information, including, but not limited to, the defendant's prior history, nature and circumstances of the offense, law enforcement

input, and any other mitigating or aggravating circumstances. The panel members will then make their recommendation as to whether the defendant is eligible and provide the reasons that would support their recommendation. Panel members must have a signed Confidentiality Agreement on file with the Diversion Coordinator prior to participation.

- 3. Determination.** The Diversion Coordinator has the final decision and has the discretion to override the panel where circumstances warrant, though great weight will be given to the panel's recommendation. If the defendant is deemed ineligible, the Diversion Coordinator will notify the defendant, prosecutor, and defense attorney, where appropriate, of the ineligibility and future court date. If the defendant is deemed eligible, the matter will be referred to the appropriate diversion track for participation in the Misdemeanor Diversion Program.
- 4. Appeal.** A defendant may request that a determination of ineligibility be reconsidered. Such request must be made in writing and must provide any and all reasons why the decision should be reversed. The Diversion Coordinator will provide the Defendant's request and the diversion file to the Winona County Attorney for a decision on the appeal.

C. DIVERSION PROGRAM.

- 1. Referral.** A defendant eligible for diversion will be referred to the Department of Corrections for supervision. The Diversion Coordinator will work with the defendant and Department of Corrections to schedule a date and time for the defendant to meet with an assigned probation agent. At that meeting the defendant will sign an Agreement containing the terms of his or her diversion.
- 2. Agreement.** Each defendant will be required to sign an Agreement containing the following:
 - a. A waiver of applicable rights;
 - b. An admission to the facts which make the defendant guilty of the charged offense(s); and
 - c. An agreement to the terms of the defendant's participation in the Misdemeanor Diversion Program.

The defendant's signed admission may be offered in court at trial as evidence of the defendant's guilt, if the defendant is unsuccessfully discharged from the Misdemeanor Diversion Program.

- 3. Terms.** Terms of the Misdemeanor Diversion Program may include payment of a \$150 program fee, remaining law-abiding, paying reasonable restitution, completing community service hours, paying a fine, completing an alcohol assessment or

chemical dependency evaluation and following the recommendations, participating in educational programming, or any other terms considered appropriate by the Council or supervising agent.

- 4. Restitution.** During the review process the Diversion Coordinator will send a letter and Affidavit for Restitution to any business or individual who may have suffered financial loss as a result of the defendant's offense. The Diversion Coordinator will include a deadline for receipt of the completed Affidavit. The Diversion Coordinator will forward a copy of the Affidavit and any supporting documentation to the Department of Corrections upon receipt.
 - a. Restitution Amount Unknown at Time of Agreement.** If a Restitution Affidavit is anticipated, but has not been received by the time the defendant signs an Agreement, restitution may be left open; with the Diversion Coordinator to notify all parties of the requested amount and the right to dispute the request. If there is no objection submitted to the Diversion Coordinator in writing within 30 days of the notification, the restitution amount will be considered an addendum to the Agreement.
 - b. Disputed Restitution Amount.** The defendant is entitled to challenge a restitution amount if he or she believes the amount is unreasonable, unsupportable, or not attributable to the defendant's conduct. Challenging the requested restitution shall not be grounds for being returned from the Misdemeanor Diversion Program.
 - c. Procedure for Dispute.** If a defendant disputes the amount of restitution requested by a victim, he or she must notify the Diversion Coordinator of the specific issue regarding the requested amount. The Diversion Coordinator shall attempt to resolve the issue of restitution with the victim and defendant. If the Diversion Coordinator is unable to resolve the issue, the Diversion Coordinator will request a court hearing to obtain a judicial determination of a reasonable amount of restitution.
- 5. Time Period.** The Agreement will contain the length of the diversion period. Generally the diversion period will be for six (6) months from the date of signature on the Agreement, but may be one (1) year. The Department of Corrections can extend this time period for good cause shown, with notice provided to the Diversion Coordinator and the Court.

II. DISCHARGE

- A. RETURNED.** If the defendant fails to attend the meeting with the supervising agent, denies the charges, commits a new offense prior to meeting with the agent, or fails to sign the Agreement the offender will no longer be eligible for the Misdemeanor Diversion Program and the case will be returned to the Diversion Coordinator, who will

get a court date from Court Administration and notify the defendant, prosecutor, and defense attorney, where appropriate.

- B. SUCCESSFUL DISCHARGE.** If the defendant completes the terms of the agreement within the time period, they will be successfully discharged from the Misdemeanor Diversion Program. The Department of Corrections will send the completed Misdemeanor Tracking Form to the Diversion Coordinator who will file a Dismissal of Charges and notify the defendant, prosecutor and defense attorney, where appropriate.
- C. UNSUCCESSFUL DISCHARGE.** If the defendant fails to complete any one or more terms of the agreement within the time period, the defendant will be unsuccessfully discharged from the Misdemeanor Diversion Program and the case will be returned to District Court for prosecution. The Department of Corrections will send the completed Misdemeanor Diversion Form to the Diversion Coordinator, who will get a court date from Court Administration and notify the defendant, prosecutor, and defense attorney, where appropriate.

III. DATA COLLECTION & DISSEMINATION

- A. COLLECTION.** The Diversion Coordinator will keep records of the number and characteristics of persons and offenses applying for and entering into the Misdemeanor Diversion Program and whether they are returned, successfully discharged, or unsuccessfully discharged.
- B. DISSEMINATION.** The Diversion Coordinator will provide collected information on an annual basis by January 31st of each year to the Winona County Criminal Justice Coordinating Council, Courts Committee, Board of Commissioners, and all City Councils.

IV. EFFECTIVE DATE. The Winona County Misdemeanor Diversion program Guidelines are effective March 1, 2011, and will apply to any charges pending at or after that time.

- A. REVISIONS.** The Winona County Misdemeanor Program Guidelines were revised on the following dates: October 12, 2011; July 20, 2012; September 12, 2014; December 31, 2014; January 18, 2020. Any previous Guidelines are superseded by later revisions.