

Winona County, Minnesota Adult Misdemeanor Diversion Program

Guidelines

Revised 2.23.11

Effective 3/1/2011

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WINONA COUNTY ADULT MISDEMEANOR DIVERSION PROGRAM GUIDELINES

I. **INTRODUCTION:** The Winona County Attorney’s Office and Winona City Attorney’s Office, in conjunction with the Misdemeanor Diversion Workgroup of the Winona County Criminal Justice Coordinating Council, has developed the following Diversion Program. Other prosecuting authorities may not support this program and may not approve applications—this information can be obtained from the individual prosecuting authority. Participation in the program is not a right of the defendant, but rather an alternative to prosecution for those adults (1) who acknowledge that the conduct giving rise to possible prosecution was a violation of law, (2) who have demonstrated the ability to follow the program components in a timely way, (3) who are remorseful, and (4) who have the ability to make appropriate restitution to the victim and reparation to the community in a timely manner.

II. **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. Is charged with any of the following petty misdemeanor, misdemeanor or gross misdemeanor offenses, or any other offense deemed appropriate for diversion by the prosecutor:

Theft & Related Offenses

- Theft (including 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

Alcohol & Related Offenses

- Furnishing Alcohol to a Minor*
- Minor Consumption of Alcohol
- Minor Possession of Alcohol
- Social Host*
- Loud Party*
- Open Bottle (Passenger only)

Drugs & Related Offense

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

Other Offense

- Disorderly Conduct
(not brawling or fighting)
- Trespass
- Public Urination
- Barking Dog/Dog at Large

*all eligible cases must be reviewed & approved by the panel

B. Has no prior conviction(s)/adjudication(s) of delinquency for, or any pending, felony, gross misdemeanor, or targeted-misdemeanor case(s) as defined in Minn. Stat. § 299C.10, subd. 1(e).; and

- C. Has minimal misdemeanor-level contact with the criminal justice system, as determined by a review panel where appropriate.

III. **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 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/or on the Winona County website and must be submitted to the Winona County Attorney's Office. Court administration shall forward all applications received to the County Attorney's Office and will change the status of the case to "diversion." Prosecutors, upon receiving any application directly from a defendant, shall notify court administration, which will then change the status of the case to "diversion."
- B. **Initial Review:** The prosecutor 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.
- C. **Panel Review:** A panel comprised of a prosecutor, a law enforcement officer, a probation agent, a Department of Human Services representative, and a Restorative Justice 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, and any other mitigating or aggravating circumstances. The panel will then make a recommendation as to whether the defendant is eligible. The prosecutor for the jurisdiction 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 not eligible, the matter will be returned to the prosecutor, who will notify the defendant and court administration and schedule the appropriate next hearing. If the defendant is deemed eligible, the matter will be referred to the Department of Corrections for participation in the Misdemeanor Diversion Program.
- D. **Diversion Program:** Upon referral to the Misdemeanor Diversion Program the Department of Corrections will notify the defendant by letter and the defendant

will schedule a time to meet with a probation agent. If the Defendant fails to respond by the date indicated in the letter or fails to attend the meeting without prior good excuse, the case will be returned as unsuccessful to the prosecutor, who will notify court administration and schedule the appropriate next hearing. At that meeting the defendant will be required to sign an Admission and Agreement containing the following:

- i. A waiver of applicable rights;
- ii. An admission to the facts which make the defendant guilty of the charged offense(s); and
- iii. An agreement to the terms of the defendant's participation in the Diversion Program.

Failure to do any of the above-listed things will result in the defendant being deemed not eligible for the program and the case will be returned as unsuccessful to the prosecutor, who will notify the defendant and court administration and schedule the appropriate next hearing.

IV. **DISCHARGE**

- A. **Successful Discharge:** If the defendant completes the terms of the agreement within six (6) months, the defendant will be successfully discharged from the Misdemeanor Diversion Program. The Department of Corrections will send the completed Misdemeanor Diversion Form to the assigned prosecutor who will notify the defendant and court administration so that files may be closed.
- B. **Unsuccessful Discharge:** If the defendant fails to complete any one or more terms of the program or agreement within six (6) months, the defendant will be unsuccessfully discharged from the Misdemeanor Diversion Program. The Department of Corrections will send a copy of the completed Misdemeanor Diversion Form, Admission, and Agreement to the assigned prosecutor, who will notify the defendant and court administration and schedule the appropriate next hearing.

V. **DATA COLLECTION AND DISSEMINATION**

- A. **Collection:** Prosecutors will keep records of the number and characteristics of persons and offenses applying for and entering the program and whether they are successfully or unsuccessfully terminated.
- B. **Dissemination:** Prosecutors will provide collected information on an annual basis by January 31st of each year to the Winona County Criminal Justice Coordinating Council, the County Board of Commissioners, and all City Councils.

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

WINONA COUNTY MISDEMEANOR DIVERSION PROGRAM

APPLICATION AND TRACKING FORM

Part I – Application

Full Name: _____ Mailing Address: _____
 Date of Birth: _____
 Social Security Number: _____ Phone Number: _____
 Known by any other names? _____ E-Mail: _____

By my signature below I authorize the Winona County Misdemeanor Diversion Program to obtain and review my criminal history to determine whether I am eligible to participate in the program.

 Signature Date

Part II – Initial Review

Reviewing Attorney: _____
 Date Reviewed: _____

- | | | |
|--------------|-----|---|
| ELIGIBLE | ___ | No criminal history |
| NOT ELIGIBLE | ___ | Ineligible offense |
| | ___ | Prior felony, gross misdemeanor, or targeted-misdemeanor conviction(s) |
| | ___ | Prior felony, gross misdemeanor, or targeted-misdemeanor adjudication(s) of delinquency |
| | ___ | Pending felony, gross misdemeanor, or targeted-misdemeanor case(s) |
| PANEL REVIEW | ___ | Specified panel review offense |
| | ___ | Prior misdemeanor conviction(s) or adjudication(s) of delinquency |
| | ___ | Prior diversion, continuance for dismissal, or stay of adjudication |
| | ___ | At least 2 years since last petty misdemeanor offense |
| | ___ | Prior or pending petty misdemeanor or juvenile petty offense(s) |
| | ___ | Prior or pending traffic offense(s) |

Part III – Panel Review

Panel Review Date: _____
 Reviewers: _____

Discussion Notes:

Panel Decision: ELIGIBLE
 NOT ELIGIBLE

Part IV – Diversion Program

- | | | | |
|-----|--|-----|---|
| ___ | Letter sent on _____ | ___ | Conditions Violated – Refer to Court
(specify violations): |
| ___ | Met with agent on _____ | | |
| ___ | Agreement and Admission Signed on _____ | | |
| ___ | Conditions Met – Successful Discharge on _____ | | |

Agent: _____

___ **SUCCESSFUL DISCHARGE FROM DIVERSION**
 ___ **RETURNED TO COURT FOR PROSECUTION**

WINONA COUNTY MISDEMEANOR DIVERSION PROGRAM

PROGRAM GUIDELINES

The Winona County Attorney's Office and Winona City Attorney's Office, in conjunction with the Misdemeanor Diversion Workgroup of the Winona County Criminal Justice Coordinating Council, has developed the following Diversion Program. Other prosecuting authorities may not support this program and may not approve applications—this information can be obtained from the individual prosecuting authority. Participation in the program is not a right of the defendant, but rather an alternative to prosecution for those adults (1) who acknowledge that the conduct giving rise to possible prosecution was a violation of law, (2) who have demonstrated the ability to follow the program components in a timely way, (3) who are remorseful, and (4) who have the ability to make appropriate restitution to the victim and reparation to the community in a timely manner.

- 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:
- Is charged with any of the following petty misdemeanor, misdemeanor or gross misdemeanor offenses, or any other offense deemed appropriate for diversion by the prosecutor:

<u>Theft & Related Offenses</u>	<u>Alcohol & Related Offenses</u>	<u>Drugs & Related Offenses</u>
Theft (including Shoplifting)	Furnishing Alcohol to a Minor*	Possession of Drug Paraphernalia
Criminal Damage to Property	Minor Consumption of Alcohol	Possession of a Small Amount of Marijuana
Financial Transaction Card Fraud	Minor Possession of Alcohol	Possession of Marijuana in a Motor Vehicle
Receiving Stolen Property	Social Host*	
Check Forgery/Offering Forged Check*	Loud Party*	<u>Other Offenses</u>
Issuing a Dishonored Check	Open Bottle (Passenger only)	Disorderly Conduct (not brawling/fighting)
Computer Theft		Trespass
Possession of Stolen/Counterfeit Checks	* All eligible cases must be reviewed and approved by the panel.	Public Urination
Identity Theft*		Barking Dog/Dog at Large
Bringing Stolen Goods into the State		
 - 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
 - Has minimal misdemeanor-level contact with the criminal justice system, as determined by a review panel where appropriate.
- II. Procedures**
- 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 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/or on the Winona County website and must be submitted to the Winona County Attorney's Office. Court administration shall forward all diversion applications received to the County Attorney's Office and will change the status of the case to "diversion." Prosecutors, upon receiving any application directly from a defendant, shall notify court administration, which will then change the status of the case to "diversion."
 - Initial Review.** A prosecutor 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.
 - Panel Review.** A panel comprised of a prosecutor, a law enforcement officer, a probation agent, a Department of Human Services representative, and a Restorative Justice 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, and any other mitigating or aggravating circumstances. The panel will then make a recommendation as to whether the defendant is eligible for the Diversion Program. The prosecutor for the jurisdiction 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 not eligible, the matter will be returned to the prosecutor, who will notify the defendant and court administration and schedule the appropriate next hearing. If the defendant is deemed eligible, the matter will be referred to the Department of Corrections for participation in the Misdemeanor Diversion Program.
 - Diversion Program.** Upon referral to the Misdemeanor Diversion Program the Department of Corrections will notify the defendant by letter and the defendant will schedule a time to meet with a probation agent. If the Defendant fails to respond by the date indicated in the letter or fails to attend the meeting without prior good excuse, the case will be returned as unsuccessful to the prosecutor, who will notify court administration and schedule the appropriate next hearing. At that meeting the defendant will be required to sign an Admission and Agreement containing the following:
 - A waiver of applicable rights;
 - An admission to the facts which make the defendant guilty of the charged offense(s); and
 - An agreement to the terms of the defendant's participation in the Diversion Program. Terms of the program may include the completion of an alcohol assessment or chemical dependency evaluation, writing an apology letter or offender impact statement, completing community work service, paying a \$100 program fee, County law library fee, and reasonable restitution, and any other terms deemed appropriate by the probation agent.Failure to do any of the above-listed things will result in the defendant being deemed not eligible for the program and the case will be returned as unsuccessful to the prosecutor, who will notify the defendant and court administration and schedule the appropriate next hearing.
- III. Discharge**
- Successful.** If the defendant completes the terms of the agreement within six (6) months, the defendant will be successfully discharged from the Misdemeanor Diversion Program. The Department of Corrections will send the completed Misdemeanor Diversion Form to the prosecutor, who will notify the defendant and court administration so that files may be closed.
 - Unsuccessful.** If the defendant fails to complete any one or more terms of the program or agreement within six (6) months, the defendant will be unsuccessfully discharged from the Misdemeanor Diversion Program. The Department of Corrections will send the completed Misdemeanor Diversion Form, Admission, and Agreement to the assigned prosecutor, who will notify the defendant and court administration and schedule the appropriate next hearing.
- IV. Data Collection and Dissemination**
- Collection.** Prosecutors will keep records of the number and characteristics of persons who apply for and enter the program and whether they are successfully or unsuccessfully terminated.
 - Dissemination.** Prosecutors will provide collected information on an annual basis by January 31st of each year to the Winona County Criminal Justice Coordinating Council, the County Board of Commissioners, and all City Councils.
- V. Effective Date.** The Winona County Misdemeanor Diversion Program Guidelines are effective March 1, 2011, and will only apply to any charges pending at or after that time.

WINONA COUNTY MISDEMEANOR DIVERSION PROGRAM
ADMISSION AND AGREEMENT

I, _____, have been charged with the offense(s) of: _____.

I understand that:

1. I have the right to remain silent.
2. I have the right to have the charges against me fully explained.
3. I have the right to plead guilty or not guilty to the charge(s) at a formal hearing.
4. I have the right to a lawyer, and if I am unable to financially afford a lawyer, I can ask the court to appoint one to represent me at government expense.
5. I understand that I am presumed innocent and the State must prove my guilt beyond a reasonable doubt for me to be found guilty.
6. I have the right to a speedy trial.

I understand that in order to participate in the Winona County Misdemeanor Diversion Program I must waive the above rights and any defense in the nature of laches, admit to the offense(s), and agree to comply with the conditions outlined below. By signature below, I waive the above rights and:

___ I have discussed this program with my attorney, _____; or
___ I am waiving my right to be represented by an attorney.

I admit that the following facts would support a finding that I am guilty beyond a reasonable doubt of the offense(s) charged. I understand that this admission may be offered as substantive evidence against me in court if I fail to successfully complete this program. I admit that on or about _____, in Winona County, Minnesota, I: (please print legibly)

I agree to the following as terms and conditions of my acceptance into the Winona County Misdemeanor Diversion Program:

- Sign any releases requested by the Department of Corrections.
- Pay a County Law Library fee.
- Pay a \$100 program fee to the Department of Corrections.
- Remain law abiding

In addition, I will:

___ Pay restitution in the amount of \$_____ in favor of _____.
___ Complete ___ hours of verifiable Community Service or pay a \$_____ fine.
___ Write an ___ Apology Letter / ___ Offender Impact Statement by _____.
___ Complete an ___ Alcohol Assessment / ___ Chemical Dependency Evaluation by _____.
___ Follow any and all recommendations of any evaluation taken as part of this Agreement.
___ Other:

I understand that it is my responsibility to verify that I have completed what is required of me by this Agreement and to contact the Department of Corrections if I am unable to complete any term of this Agreement within six months. I understand that failure to comply with any one or more of the above terms within that time frame may result in unsuccessful discharge from the program and reinstatement of criminal charges against me.

Corrections Agent's Signature

Date

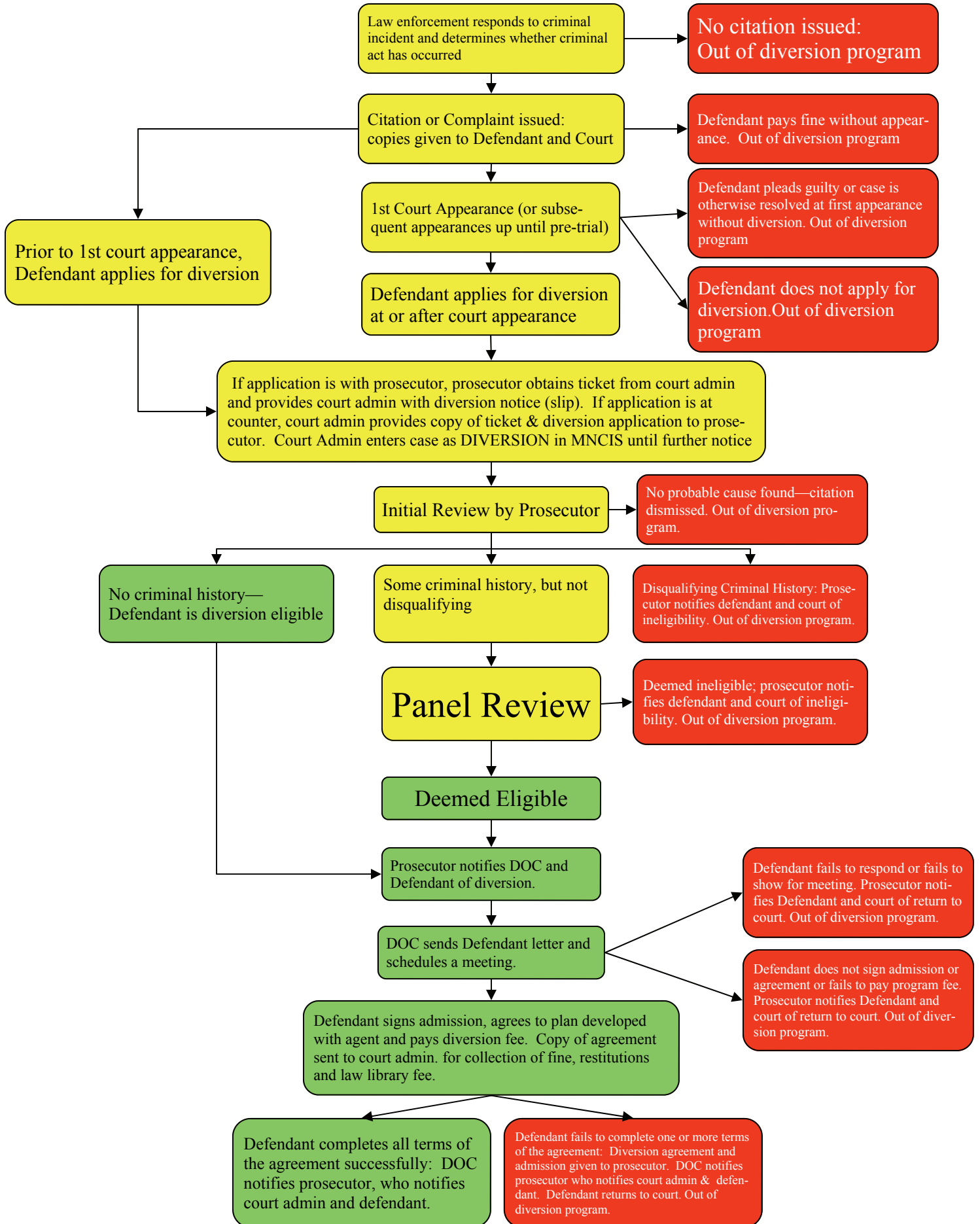
Defendant's Signature

Corrections Agent's Printed Name

Defendant's Printed Name

WINONA COUNTY/CITY MISDEMEANOR DIVERSION PROGRAM

Revised 2.23.11 kme



What is the Misdemeanor Diversion Program?

The Winona County Adult Misdemeanor Diversion Program is an alternative to traditional court prosecution for those adults :

- Who acknowledge that the conduct giving rise to possible prosecution was a violation of law;
- Who demonstrate the ability to follow the program components in a timely way;
- Who are remorseful; and
- Who have the ability to make appropriate restitution to the victim and reparation to the community in a timely manner.

Offenders who are accepted into and successfully complete the Diversion Program will have the criminal charges against them dismissed.

Costs

Program Fees: All participants must pay a \$100 diversion program fee to the Department of Corrections.

Law Library Fee: All participants must pay a fee to Winona County as a law library fee.

Restitution: Depending upon the nature of the offense, a participant may be required to pay restitution to any victim(s) of the offense who incurred a loss.

Other Costs: Depending upon the terms considered appropriate by the probation agent, there may be additional costs for services such as an alcohol assessment or chemical dependency evaluation or similar items.



**THIS BROCHURE PROVIDED COURTESY OF:
WINONA COUNTY
CRIMINAL JUSTICE COORDINATING COUNCIL
WWW.WINONACOUNTYCJCC.ORG
(507) 453-3646
REV. 2/23/11**

Winona County Adult Misdemeanor Diversion Program



For more information, please contact
Diversion Coordinator
Winona County Attorney's Office
Winona County Courthouse
171 West Third Street
Winona, MN 55987
(507) 457-6490

www.co.winona.mn.us/winonacounty/diversion/

Eligibility

A criminal defendant may be eligible for the Misdemeanor Diversion Program if the defendant is

A. Charged with any of the following:

Theft & Related Offenses

Theft (including shoplifting)
Criminal Damage to Property
Financial Transaction Card Fraud
Receiving Stolen Property
Check Forgery*
Issuing Dishonored Checks
Computer Theft
Possession of Stolen/Counterfeit Checks
Identity Theft*
Bringing Stolen Goods into State

Drug Offenses

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

Alcohol & Related Offenses

Furnishing Alcohol to a Minor*
Minor Consumption of Alcohol
Minor Possession of Alcohol
Social Host*
Loud Party*
Open Bottle (Passenger Only)

Other Offenses

Disorderly Conduct (not brawling/fighting)
Trespass
Public Urination

*requires panel review for eligibility

B. Has no prior convictions; and

C. Has minimal misdemeanor-level contact with the criminal justice system.

Procedure

- A. **Application:** It is the responsibility of the defendant to submit the application for the Misdemeanor Diversion program before the conclusion of the pretrial hearing. Applications are available at traffic court, court administration, from the prosecutor, and/or the Winona County website and must be submitted to the Winona County Attorney's Office.
- B. **Initial Review:** The prosecutor will review all applications. If there is no criminal history the defendant will be deemed eligible and referred to the Department of Corrections. If there is disqualifying criminal history, the defendant will be deemed ineligible and the case will return to court. All other cases will be reviewed by a panel for eligibility.
- C. **Panel Review:** The panel will review relevant information and make a recommendation as to whether the defendant is eligible. The prosecutor has the final decision. If deemed eligible, the matter is referred to the Department of Corrections for participation in the Misdemeanor Diversion program. If deemed ineligible, the matter is sent back to the prosecutor for continued prosecution.
- D. **Diversion Program:** Once accepted for diversion, the defendant must meet with a probation agent at the Department of Corrections, sign a program participation agreement, admit to the facts of the offense and comply with all other program requirements, including payment of fees and restitution and other terms as deemed appropriate by the probation agent.

Program Outcomes

- A. **Successful:** If the defendant completes the terms of the agreement within six months, the defendant will be successfully discharged from the Misdemeanor Diversion Program. The Department of Corrections will send the completed Misdemeanor Diversion Form to the assigned prosecutor so that the file may be closed.
- B. **Unsuccessful:** If the defendant fails to complete any one or more terms of the agreement within six months, the defendant will be unsuccessfully discharged from the Misdemeanor Diversion Program. The Department of Corrections will send the completed Misdemeanor Diversion Form to the assigned prosecutor and a court hearing will be scheduled to determine what the next step in the proceeding will be. The case will continue from the stage in the proceeding at which the defendant entered the Misdemeanor Diversion Program.