



## Sherburne County Attorney's Office and Victim Witness Services

*Kathleen A. Heaney, Sherburne County Attorney*

December 14, 2017

Minnesota State Court Administrator  
ATTN: Janet Marshall  
130 MN Judicial Center  
25 Rev. Dr. MLK Jr. Blvd  
St. Paul, MN 55155

Minnesota State Legislature  
ATTN: Reed Polakowski  
Legislative Reference Library  
645 State Officer Building  
100 Rev. Dr. MLK Jr. Blvd  
St. Paul, MN 55155

RE: 2016-2017 Biennial Report on Sherburne County Diversion Program  
County Attorney File Number 187699

Dear Ms. Marshall and Mr. Polakowski,

Attached please find the biennial report on the Sherburne County Diversion Program which was started in 2014. The Protocol of the diversion program is attached for your review. The Sherburne County Adult Diversion program began operating in September of 2014. This report is for the calendar years of 2016 and 2017 and is offered in compliance with MS§299C.46 Subd 5, and MS§401.065 Subd.4.

Effective October 1, 2017, the following gross misdemeanor offenses with a loss to the victim(s) of no more than \$1,000 in total were added to the program:

- a. Theft, 609.52
- b. Possession or Sale of Stolen or Counterfeit Checks, 609.528
- c. Receiving Stolen Property, 609.53
- d. Worthless Checks, 609.535
- e. Motor Vehicle Tampering, 609.546
- f. Criminal Damage to Property, 609.595
- g. Trespassing, 609.605
- h. Check Forgery, 609.631
- i. Financial Transaction Card Fraud, 609.821
- j. Ordinance violations maybe considered for entrance into the program upon consent of the prosecutor on a case by case basis

For the year of 2016 the following information is submitted:

Of the eligible offenses screened, 21 cases met the criteria to be referred to diversion.

Of those 21, 4 were returned by diversion as either ineligible or not completed (failed). Of those 4, the average age was 30.5 years and the number of males was 2 and the number of females was 2.

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Of the 17 who were successful, the average age was 32.1 years and the number of males was 5 the number of females was 12.

For the calendar year 2017 (to date), the following information is submitted:

Of the eligible offenses screened, 23 met the criteria to be referred to diversion:

Of those 23, 6 were returned by diversion as either ineligible or not completed (failed). Of those 6, the average age was 32.5 years and the number of males was 2 and the number of females was 4.

Of the 13 who were successful, the average age was 33.2 years and the number of males was 4, and the number of females was 9.

There are currently 4 referrals who are currently in the diversion program but have not yet completed it. Of those 4, the average age is 24.5 years and the number of males is 2 and the number of females is 2.

My opinion on the programs effects on the Sherburne County criminal justice program is as follows:

As noted, we began running this program in September of 2014. The program has been running now for just over 3 years. We amended the program on October 1, 2017, to make several gross misdemeanor property offenses eligible for the program. It is too early to draw any conclusions on what impact this will have on the overall numbers for the program.

Our observation would be that the overall number of people that have entered the program is not all that high. However, the numbers are likely to increase in the future due to the new eligibility criteria and the growth in population of the county. The program has not saved a significant amount of court time to date. That being said, numerous people have avoided having a criminal conviction on their record by completing the program. That was a major goal of the program. Hence, that goal is being met.

Sincerely,



Samuel Wertheimer II  
Chief Deputy County Attorney

SW:te  
Enclosures

## **SHERBURNE COUNTY ADULT DIVERSION PROTOCOL**

The Sherburne County Adult Diversion/Community Accountability Program (herein after Community Accountability Program) is a program designed to assist the Sherburne County Attorney's Office and the Elk River City Attorney's Office in diverting offenders from the criminal court system prior to charging and conviction. This program is designed to comply with Minnesota Statute 401.065. The goal is to have a program to create an incentive for defined first-time offenders to change behavior and thus reduce recidivism while at the same time ensuring full and timely payment of restitution to victims, holding offenders accountable, and reducing costs associated to the criminal justice system.

### **GENERAL GUIDELINES**

- I. Law enforcement will not determine diversion eligibility, nor will they offer diversion.
- II. The Community Accountability Program is limited to the following misdemeanor and/or gross misdemeanor offenses with a loss to the victim(s) of no more than \$1,000 in total:
  - a. Theft, 609.52
  - b. Possession or Sale of Stolen or Counterfeit Checks, 609.528
  - c. Receiving Stolen Property, 609.53
  - d. Worthless Checks, 609.535
  - e. Motor Vehicle Tampering, 609.546
  - f. Criminal Damage to Property, 609.595
  - g. Trespassing, 609.605
  - h. Check Forgery, 609.631
  - i. Financial Transaction Card Fraud, 609.821
  - j. Ordinance violations maybe considered for entrance into the program upon consent of the prosecutor on a case by case basis
- III. Guidelines for Diversion Eligibility
  - a. No prior felony, gross misdemeanor or misdemeanor conviction, or a juvenile adjudication for a felony, gross misdemeanor or misdemeanor offense. An offender is eligible if three years have elapsed since the date of conviction or adjudication of a prior misdemeanor conviction.
  - b. An offender is NOT eligible if they have additional charges pending in any jurisdiction. Pending petty misdemeanor traffic offenses would normally not exclude an offender from participating.
  - c. An offender is NOT eligible if they were previously in a diversion program as an adult.

- IV. Once a case is forwarded to the prosecuting authority, the designated staff member will review the case and make a determination as to whether the party is eligible for diversion. If a party is not eligible for diversion, the prosecuting authority will e-mail law enforcement and direct them to e-file the ticket with Court Administration. If the case involves a gross misdemeanor charge, the prosecuting authority will file a long form complaint. Law enforcement will provide the prosecuting authority a point of contact for diversion issues.
- V. If a party is eligible for diversion, a case referred to the Sherburne County Attorney's office will be forwarded to Sherburne County Victim / Witness Services to contact the victim for any possible concerns they may have about the offender entering the diversion program.
- a. If none, the case will be forwarded to Sherburne County Probation.
  - b. If the victim has concerns, the case will be forwarded to the attorney assigned to the diversion program for a determination if the party will be allowed to enter the diversion program.
  - c. The final determination of whether a party will be allowed to enter the Community Accountability Program is within the sole discretion of the Sherburne County Attorney or Elk River City Attorney.
- VI. The party seeking entrance into the program must voluntarily agree to participate in the program and pay a \$75 diversion fee. There will be an additional fee of \$25 if it is necessary to conduct a restitution study. These fees can be converted to community work service at a rate of \$10 per hour.
- VII. A party shall perform community work services as a condition to complete the Community Accountability Program. Community work service is to be accessed as follows:
- Misdemeanor – 16 hours  
Gross Misdemeanor – 32 hours
- There is a \$50 fee to perform community work service. The fee to perform community work service can be worked off through performing community work service at a rate of \$10 per hour. A party who does not complete the community work service will be terminated from the program.
- VIII. A party referred to the Community Accountability Program may be required to participate in the Restorative Conferencing Program.
- IX. A party must admit guilt, acknowledge responsibility and provide a factual basis regarding the offense to participate in the Community Accountability Program.

- X. A party must pay restitution in full to complete the Community Accountability Program.
- XI. A party who is in the Community Accountability Program and is charged with new criminal offenses will normally be terminated from the program.
- XII. A party must complete the Community Accountability Program no later than three months from the date in which the party signs the diversion agreement. Community Corrections can grant one (1) three month extension for good cause shown (e.g. cases in which the offender needs additional time to pay restitution). A party may spend no more than six months in the Community Accountability Program unless the prosecuting authority approves an extension in which case the entire period of diversion may be extended and individuals monitored up to a maximum of one year.
- XIII. Sherburne County Probation will notify the Sherburne County Attorney's Office or Elk River City Attorney's office of the following:
  - a. Diversion was successfully completed
  - b. Diversion not completed
    - 1. Not eligible because
    - 2. Declined to participate
    - 3. Did not attend diversion meeting
    - 4. Terminated for not meeting diversion requirements

### **OFFICE PROCEDURES**

- XIV. The Sherburne County Sheriff's Office, Big Lake Police Department and Becker Police Department will forward misdemeanor citations charging the above offenses to the Sherburne County Attorney's Office prior to filing them with the court. The Elk River Police Department will forward their citations to the Elk River City Prosecutor.
- XV. When law enforcement forwards a citation charging one of the above offenses to the Sherburne County Attorney's Office or Elk River City Prosecutor, the following items are requested:
  - a. Defendant's current address and phone number
  - b. Victim's current address and phone number
  - c. Police reports establishing probable cause for offense committed
  - d. Dollar amount of restitution (if known)

- e. Ticket/reports generally need to be submitted within 1 (one) week of ticket issuance
- XVI. Gross misdemeanor violations of eligible offenses will be submitted to the prosecuting authority for a long form complaint. The offenses will then be screened for eligibility by the prosecuting authority.
- XVII. The Sherburne County Attorney's Office will open a file as soon as a case is referred by law enforcement.
- XVIII. If the party was not eligible for or did not complete the diversion program, the prosecuting authority will notify law enforcement to file a citation. If the case involves a gross misdemeanor charge, the prosecuting authority will file a long-form complaint.