



OFFICE OF THE WASHINGTON COUNTY ATTORNEY

PETER J. ORPUT COUNTY ATTORNEY

15 - 1151

October 20, 2015

Minnesota State Court Administrator
25 Rev Dr Martin Luther King Jr. Boulevard
St. Paul, MN 55155

Legislative Reference Library
645 State Office Building
Saint Paul, MN 55155

RE: Washington County Attorney's Office Diversion Report
Pursuant to Minn. Stat. § 401.065, subd. 4

Dear State Court Administrator and Legislature:

This report is being submitted for the years 2011, 2012, 2013 and 2014. It constitutes a report mandated by the above-referenced statute as to the operation of the Washington County Attorney's Office Adult Felony Diversion Program. As required by statute this report includes a description of the program as now operated. That description is in the form of the Washington County Attorney's Office Policy and Procedure Manual relating to Adult Diversion attached to this letter.

A review of the data indicates overall in each of the four years subject to this report a certain number of individuals were considered or have requested participation in diversion and a related number were accepted into the program. As a matter of clarification there may be circumstances in which the application was made to participate in diversion in one year but if it was toward the latter part of the year and the person may have been accepted or formally rejected in the subsequent year. However a table indicating the number of individuals in each of the four years who requested diversion and those who were accepted demonstrates as follows:

Considered/Requested	
2011	51
2012	58
2013	53
2014	70

Accepted	
2011	18
2012	32
2013	40
2014	55

Records kept by the Washington County Attorney's Office for individuals in each of the four years establishes a number of persons who successfully completed diversion, those who failed, and those who

applied or considered and were rejected for failure to meet criteria of the office. The gender of those individuals who fall within each of those categories has also attempted to be determined by the County Attorney's Office. The result of that analysis for each of the four respective years is set forth below:

Within 2012		
Completed		9
	Male	5
	Female	4
	Unknown	0
Failed		7
	Male	3
	Female	4
	Unknown	0
Rejected by CA		2
	Male	2
	Female	0
	Unknown	0

Within 2014		
Completed		36
	Male	20
	Female	16
	Unknown	0
Failed		4
	Male	3
	Female	1
	Unknown	0
Rejected by CA		2
	Male	1
	Female	1
	Unknown	0

Minn. Stat. § 401.065, subd. 1 also directs to include in the report certain characteristics of the offenders who either successfully complete or fail the diversion program. The gender breakdown of those offenders is established above. In terms of the offenses for which individuals participate or are considered for the Washington County Adult Felon Diversion Program presents general categories of the types of crimes for which individuals who are charged end up in the diversion program. In terms of broad categories and numbers of the types of crimes for which individuals were charged are in the below table:

Individuals participating in diversion in 2011 who were successfully discharged:

Theft	9
Check fraud and related crimes	7
Criminal damage to property	5
Theft by swindle	3
Third degree burglary	3
Welfare fraud	2

For 2011 those who failed or were removed from the program:

Check fraud and related crimes	2
Theft	2
Credit card fraud	1
Criminal damage to property	1

For 2012 those that successfully completed:

Theft	7
Stolen property	1
Criminal damage to property	1

For 2012 those that were not successful and were removed or rejected:

Check fraud and related crimes	7
Criminal damage to property	1
Theft	1

For 2013 the offense categories for those that were successful were:

Theft	9
Criminal damage to property	4
Check fraud and related crimes	3
Receiving stolen property	3
Credit card fraud	3
Other forgery	1
Controlled substances	1

For 2013 those removed or unsuccessful the offenses were:

Criminal damage to property	2
Theft	2
Stolen property	1

For 2014 those who were successful the offenses were:

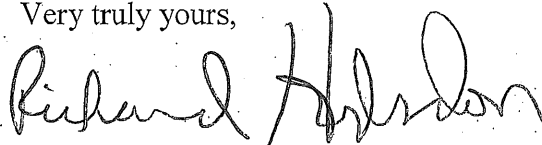
Theft	15
Credit card fraud	5
Drugs	4
Criminal damage to property	3
Check related crimes	3
Theft by swindle	2
Voting violations	2
Insurance fraud	1
Possession of burglary of theft tools	1

For 2014 those that were unsuccessful the offenses were:

Theft	3
Check fraud and related crimes	1
Credit card fraud	1
Stolen property	1

The reporting statute also mandates an evaluation of the program's effect on the operation of the criminal justice system in the County. In 1998, the undersigned completed a Master's Degree in Public Administration with the thesis being an analysis of the actual operation of the Washington County Attorney's Office Adult Diversion Program by analysis of data and making a statistically valid comparison and analysis to determine if the alleged benefits of the diversion program could be substantiated by statistically valid evidence. For example, advocates of diversion often state it will have the effect to reduce long-term recidivism and save criminal justice resources. At the time I conducted that analysis I found no statistically valid evidence to support either proposition. We have seen no evidence in support of either of those propositions in the ensuing years. The primary beneficiaries of this program are in some cases the victims who appear to receive restitution at a faster rate than might otherwise be the case if these cases went through the traditional criminal prosecution and conviction and probation process. The true primary beneficiaries of adult felony diversion are the offenders themselves who otherwise would end up with a criminal record of a conviction. These offenders are able to avoid, if they are successful in diversion, having such a record of conviction. This benefit has been significantly expanded effective January 1, 2015 by virtue of amendments to Minn. Stat. Chapter 609A. Under the new amendments to the expungement statute an individual who is enrolled in a diversion program and is thereafter successfully discharged from it may petition the Court and receive expungement of that record. Such individual is presumptively entitled to have both judicial and executive branch records sealed. Thus even more than in prior years of analysis and programs it would appear the primary beneficiary of adult criminal diversion are the offenders who participate, successfully complete the program and are thereby allowed to avoid the direct and collateral consequences of a record of a criminal conviction.

Very truly yours,



Richard D. Hodsdon
Assistant County Attorney

RDH/tk

**OFFICE OF WASHINGTON COUNTY ATTORNEY
POLICIES AND PROCEDURES**

CRIMINAL DIVISION

Number 1228

Title of Policy: **PRE-TRIAL DIVERSION PROGRAM**

Date Issued/Revised: June 2011; August 2012

I. POLICY

Minn. Stat. 401.065 mandates in appropriate cases County Attorneys in Community Corrections Act counties implement a program of diversion from the criminal justice system prior to adjudication of guilt. This program applies to all cases within the prosecutorial jurisdiction of the Washington County Attorney's Office and is an alternative to prosecution and conviction for adults who agree they have made a mistake and want to correct it. It is not an additional right of an accused. The decision to refer a case for diversion is exclusively that of the prosecutor.

II. RESPONSIBILITIES

All prosecution staff are responsible for compliance with this policy and procedure.

III. PROCEDURES

A. Goals of the Program

The goals of the program are:

1. Development of responsible alternatives to criminal prosecution and conviction for eligible offenders.
2. Reduction of recidivism.
3. Restoration of the victim to the position held before the crime was committed.
4. Reduction of costs to the criminal justice system.

B. Accountability

The County Attorney's Office shall report biennially to the Department of Corrections and the legislature on the operation of the pretrial diversion program as required by Minn. Stat. 401.065, subd. 4.

C. Eligibility for Participation in the Program

For a case to be considered for the diversion program:

1. A criminal complaint shall be fully executed and filed.
2. Booking shall have been completed and a Rule 5 hearing conducted.
3. The defendant and his/her attorney shall submit a written diversion application to the Assistant Washington County Attorney before the omnibus hearing if the offense is a felony and before the pre-trial hearing if the offense is a misdemeanor or gross misdemeanor. In any case the diversion request must be made before a contested omnibus hearing is held.
4. All types of cases will be considered for diversion except those containing the following factors:
 - a. Individuals with a prior felony or gross misdemeanor conviction.
 - b. Persons who as a juvenile have entered a plea of guilty or have been adjudicated of a felony offense.
 - c. Individuals who have been previously diverted as adults or who have been placed on probation under Minn. Stat. 152.18.
 - d. Individuals who refuse to admit guilt or pay costs of participation in the program.
 - e. Individuals who refuse to cooperate in the investigation and/or prosecution of others if applicable.
 - f. Individuals who have failed to appear for any scheduled hearing without good cause.
 - g. Individuals with more than \$5,000 of restitution except as provided below.
 - h. Individuals who are charged with a violent crime as defined in Minn. Stat. 609.1095.

- i. Individuals with drug sale charges or who would otherwise be ineligible for disposition under Minn. Stat.152.18.
 - j. Individuals charged with traffic offenses.
 - k. Individuals who use or are in possession of a dangerous weapon while committing the charged offense.
 - l. Disqualifications even if above criteria are otherwise met:
 - i. Burglary cases
 - ii. Identity theft cases
 - iii. Punched column auto theft cases
 - iv. High degree of planning or sophistication
 - v. Theft of public funds by public employee
 - vi. Vulnerable adult victim
 - vii. Other aggravating factors including but not limited to significant juvenile record, chronic misdemeanor offender or violation of a position of trust
5. The prosecutor may vary these considerations "in the interests of justice" with the approval of the County Attorney or designee.
6. If the exceptions in Section 4 above do not apply so the defendant may be eligible for diversion, the following financial criteria will be used to determine the financial eligibility of the case for participation in the Diversion Program:
- a. Victim(s) actual loss of \$5,000 or less will automatically receive consideration.
 - b. If the victim(s) has/have an actual loss of more than \$5,000, but less than \$6,000, and:
 - i. The defendant at the time of entry into the Diversion Program pays at least double the difference between the amount owed and \$5,000; and
 - ii. The appropriate law enforcement agency approves in writing; and
 - iii. The victim approves in writing.
7. 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 admitted to by the defendant or through testimony or law enforcement reports.
8. The prosecutor must concur in the request for diversion consideration.
9. The defendant must fully complete and execute a diversion application. Any false, incomplete or misleading statement in the diversion application without regard to when discovered will result in denial of entry into the program or expulsion from the program and resumption of criminal prosecution.
10. If the defendant submits a diversion application and the prosecutor does not concur in the request, the defendant may make a written appeal of the prosecutor's decision to the Washington County Attorney. The written appeal should contain a copy of the diversion application and the reasons why a defendant should be allowed to participate in diversion over the objection of the prosecutor.
11. The defendant must agree to participate in the Washington County Adult Diversion Program and pay the fee associated with the program that is a one-time fee payable to Washington County Community Corrections that is currently \$162.00. The fee is due before dismissal of the complaint pursuant to Rule 30.01 Minnesota Rules of Criminal Procedure.
12. Failure to pay restitution pursuant to the schedule determined by the Community Corrections will result in termination from the diversion program and resumption of prosecution.
13. Washington County Community Corrections will screen the case for diversion eligibility. That department will then notify the prosecutor and defendant's attorney, if any, whether the defendant meets the program eligibility requirements and whether Community Corrections recommends diversion for the defendant.
14. If the prosecutor and Community Corrections approve the defendant for diversion, the defendant will fully complete and execute under penalty of perjury a diversion contract. The defendant must admit the elements of the offense, waive all speedy trial demands and otherwise meet the terms of the diversion contract. The Court will not accept a plea of guilty, but will order the defendant into the diversion program and continue the criminal prosecution pending successful completion of the program.
15. The diversion contract will specify the time period of diversion, which will not exceed two years without written approval of the County Attorney or designee. A copy of the contract form is attached to this policy.

16. Community Corrections will notify the prosecutor or County Attorney's diversion coordinator 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.

17. 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 in the possession of law enforcement or prosecutors.

18. Termination from Diversion

- a. A defendant may be terminated from the diversion program for the following reasons:
 - i. Providing false material information to the court, the County Attorney's Office or Community Corrections during the screening process, entrance into or during participation in the diversion program;
 - ii. Failing to complete any condition of the diversion contract;
 - iii. Failing to pay timely restitution pursuant to the restitution contract;
 - iv. Committing a new felony, gross misdemeanor or misdemeanor offense during the diversion period.
- b. In the event of a violation of any rule or condition of diversion Community Corrections will notify the defendant, defendant's attorney, prosecutor or County Attorney's diversion coordinator of the violation. The defendant will be returned to court for prosecution of the offense.
- c. Upon notification of the failure to complete diversion the prosecutor shall contact the court to schedule resumption of the prosecution.

D. Diversion Coordinator

The Washington County Community Corrections Diversion Coordinator shall be responsible within the County Attorney's office for:

1. Gathering information on the status of the diverted person.
2. Obtaining relevant evaluations.

3. Coordinating the terms and conditions of diversion including the findings of the prosecutor, Community Corrections and the recommendations of all other evaluators.
4. If the recommended programs cannot be satisfactorily addressed within the time set by the prosecutor or if the individual in a program is not proceeding in a satisfactory manner for any reason, the matter shall be referred to the prosecutor for re-evaluation.
5. Reporting on the progress of each individual in the program, if requested by the prosecutor.
6. Notifying the prosecutor when the program has been satisfactorily completed.
7. Notifying the prosecutor if the terms or conditions of the program have been violated and prosecution should resume.

E. Application Process

The application process is as follows:

1. The diversion application shall be submitted as stated in III(C)(3).
2. The parties will request that the omnibus or pretrial hearing be continued to a date approximately 60 days in the future.
3. The application will be reviewed by the prosecutor and, if eligible, will be referred to Community Corrections for a final determination of eligibility and recommended conditions of diversion if accepted into the diversion program.
4. The County Attorney's Office will notify defense counsel and Community Corrections of acceptance or rejection in the program.
5. If an application is rejected the next court date will remain an omnibus or pretrial hearing and the prosecution will continue.
6. If a defendant is accepted into the diversion program, the next court date will serve as a hearing in which the defendant will waive speedy trial and other procedural rights on the record.

F. Veteran's Court

At the present time Washington County has no veterans' court. Until such time that one may be created this office has a diversion policy specifically for the purpose of dealing with military veterans who meet the criteria for that

policy. While all persons, including veterans, are eligible for consideration of diversion under the above policy and procedure, if a defendant is an honorably discharged military veteran the case should also be reviewed under the criteria of the Military Veteran Diversion Policy contained in this manual.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ZZCONFIGCOUNTYNAME

TENTH JUDICIAL DISTRICT

State of Minnesota,

DIVERSION APPLICATION

Plaintiff,

vs.

Court File No. zzCourtFileNumber
County Attorney File No. zzCaseNumber

zzDefendantFullName,
zzDefendantAliasNamesComplaint

Defendant.

1. Biographical Information of Defendant.

1. Full Name: zzDefendantFullName

2. Alias(es): _____

3. Date of Birth: zzDefendantdob

4. Driver's License Number: _____

Issuing State: _____

4. Social Security Number: zzDefendantSSN

5. Gender: zzDefendantGender

6. Current Home Address: zzDefendantAdd1N2, zzDefendantCity, zzDefendantState

zzDefendantZip

7. Name and Address of Current
Employer: _____

8. _____ Hours per week of employment.

_____ Wages at employment.

_____ Other sources of income.

_____ Monthly net income.

9. Current Telephone Numbers:

Home: _____

Work: _____

10. Educational Background:

High School _____

Date of Graduation of High School Graduation or G.E.D. _____

Post High School Education _____

2. Prior Criminal History - JUVENILE AND ADULT

Failure to disclose criminal history will result in your application being denied or will result in termination from the diversion program.

1. Prior Arrests (date, county, type of offense, disposition)

2. Prior Convictions (date, county, type of offense, disposition)

3. Prior Diversions

The Defendant agrees to make total restitution on the following payment schedule:

\$ _____ Per Month for _____ Months.

1. Failure to make restitution pursuant to this schedule will result in termination in diversion program.
2. Failure to provide requested information or providing false information will result in denial of application or in termination from the diversion program.
3. The defendant agrees to pay a fee in the amount of \$162. to Washington County Community Corrections within 30 days of entering a plea of guilty after acceptance into the Diversion Program.

DATE

Defendant

DATE

Defendant's Attorney

DATE

Prosecutor

TO BE COMPLETED BY PROSECUTOR:

Victim Input:

1. Victim (does) (does not) object to diversion.

Restitution shall be paid by Defendant in the amount of \$ _____

- 1.
- 2.
- 3.
- 4.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ZZCONFIGCOUNTYNAME

TENTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

REQUEST FOR DIVERSION
CONSIDERATION

vs.

zzDefendantFullName,
zzDefendantAliasNamesComplaint

Defendant.

Court File No. zzCourtFileNumber
County Attorney File No. zzCaseNumber

TO THE OFFICE OF THE WASHINGTON COUNTY ATTORNEY

I, _____, the Defendant in this case with the assistance and advice of counsel request I be considered for participation in the Washington County Adult Detention Program.

I understand that to be eligible for consideration I must meet eligibility criteria and agree to comply with all terms and conditions of the program.

Further, pending determination of my eligibility to participate in the program I waive my right to demand a speedy disposition of the above-entitled proceeding.

Dated: _____

Diversion Applicant/Defendant

Dated: _____

Counsel for Defendant

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ZZCONFIGCOUNTYNAME

TENTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

**STATEMENT OF DIVERSION
ELIGIBILITY/INELIGIBILITY**

vs.

zzDefendantFullName,
zzDefendantAliasNamesComplaint
Defendant.

Court File No. zzCourtFileNumber
County Attorney File No. zzCaseNumber

This document is prepared to determine the eligibility/ineligibility of the Defendant for participation in the Washington County Attorney Adult Diversion Program. Based upon the representations made by the Defendant, Defendant's counsel and my own investigation, to the best of my information I have determined and applied eligibility criteria as follows:

1. Biographical information concerning the Defendant.

A. The Defendant's full name is zzDefendantFullName

and Defendant has been known by the following nickname(s) or alias

B. The Defendant's date of birth is zzDefendantdob

C. The Defendant's social security number is zzDefendantSSN

D. The Defendant's gender is zzDefendantGender

E. The Defendant's home address is zzDefendantAdd1N2, zzDefendantCity,
zzDefendantState zzDefendantZip

F. The Defendant's phone number is: Home: _____ Work:

G. The Defendant's prior home address was:

_____, which is located in _____ County,
State of _____.

2. The Defendant is charged with the crime(s) of:

A. Defendants charged with any of the following types of offenses are not normally eligible for diversion:

- (1) An offense involving violence or the threat of violence against the person.
- (2) A traffic offense, including criminal vehicular operation.
- (3) Burglary of a dwelling, whether or not occupied at the time of the offense.
- (4) A drug sale.

B. Based upon the charged offense(s) and this criteria, Defendant [_____] is] [_____] is not] eligible for diversion.

3. If the Defendant has previously been enrolled in a diversion program, the defendant is not eligible for diversion.

A. A check of the following records reveals:

(1) Washington County Attorney's Office:

[_____] prior diversion] [_____] no prior diversion]

(2) Bureau of Criminal Apprehension Records:

[_____] prior diversion] [_____] no prior diversion]

(3) Defendant's Representations:

[_____] prior diversion] [_____] no prior diversion]

B. Based upon these records, the Defendant [_____] is] [_____] is not] eligible for diversion.

4. If the Defendant has a significant criminal or juvenile delinquency history, the Defendant is not eligible for diversion.

A. A check of the following records reveals:

(1) Washington County Attorney's Office:

(2) Washington County District Court:

(3) Bureau of Criminal Apprehension:

(4) District Court Records of Defendant's home county:

(5) Defendant's admissions/representations:

B. Based upon these records, the Defendant [_____] is} [_____] is not] eligible for diversion.

5. A defendant who owes more than \$5,000 in restitution is usually not eligible for diversion.

A. The amount of restitution claimed by the victim(s) is: \$ _____.

B. If the amount exceeds \$5,000, a resolution satisfactory to the victim an Defendant has been reached. [_____] Yes] [_____] No]

C. Based upon this criteria, the Defendant [] is [] is not] eligible for diversion.

6. If either the victim of the Defendant's crime or the investigating law enforcement agency reasonably objects to the diversion of the Defendant, the Defendant will not be diverted.

A. The victim(s) [] does(do)] [] does(do) not] object to diversion. If the victim(s) object(s), the stated reasons are: _____

B. The law enforcement agency [] does] [] does not] object to diversion. If the law enforcement agency objects, the stated reasons are: _____

7. To be eligible for diversion the Defendant must freely and voluntarily request enrollment in the diversion program, execute a diversion contract and agree to abide by the conditions of the program, which includes cooperation in the prosecution of accomplices or co-defendants, if any.

A. The Defendant [] has] [] has not] stated a willingness to participate in the diversion program under these conditions.

B. Based upon this criteria the Defendant [] is] [] is not] eligible for diversion.

8. Is the State holding property of the Defendant upon which a forfeiture action has been commenced or upon which you believe a forfeiture action will be commenced? [] Yes]
[] No]

9. Based upon all of the above criteria, I find that the Defendant [] is] [] is not] eligible for diversion.

Additional comments: _____

Dated: _____

Washington County Community Corrections

STATE OF MINNESOTA
COUNTY OF ZZCONFIGCOUNTYNAME

DISTRICT COURT
TENTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

vs.

zzDefendantFullName,
zzDefendantAliasNamesComplaint

Defendant.

DIVERSION ENROLLMENT CONTRACT,
WAIVER OF SPEEDY TRIAL,
AFFIDAVIT OF ESSENTIAL ELEMENTS
AND WAIVER OF RIGHTS

Court File No. zzCourtFileNumber
County Attorney File No. zzCaseNumber

STATE OF MINNESOTA)
)
COUNTY OF WASHINGTON)

_____, being first duly sworn and with the assistance and
advice of legal counsel, states the following:

1. I am the Defendant in this proceeding and I sign this affidavit freely and voluntarily and upon the advice and assistance of legal counsel.
2. I wish to participate in the Adult Diversion Program of the Washington County Attorney's Office. I understand this affidavit is made by me under oath, subject to the penalties for perjury and that the information contained herein is directly material to my enrollment in that program.
3. I understand that I have a right to a speedy trial and I waive that right for the entire time I am a participant in the Adult Diversion Program. If at any time I change my mind and demand a speedy trial I understand such a demand will result in my immediate termination from the diversion program and resumption of the criminal prosecution.
4. I understand that as a Defendant in a criminal proceeding I have certain constitutional rights and that by enrolling in the Adult Diversion Program I am giving up those rights at this time. As to those rights I state as follows:

a. My full name is _____ I am _____ years old,

my date of birth is _____. The last grade that I went through in school is _____.

- b. I have received, read and discussed a copy of the charges against me with my attorney.
- c. I understand the charge made against me.
- d. I understand that I have been charged with the crime of _____
_____ committed on or about _____
(month/day/year) in Washington County, Minnesota.
- e. I am represented by an attorney whose name is _____; and
 - (1) I have had sufficient time to discuss my case with my attorney, and
 - (2) I am satisfied that my attorney is fully informed as to the facts of this case, and
 - (3) My attorney has discussed possible defenses to the crime that I might have, and
 - (4) I am satisfied that my attorney has represented my interests and has fully advised me in this matter.
- f. I do not make the claim that I was so drunk or so under the influence of drugs or medicine that I did not know what I was doing at the time of the crime.
- g. I have been told by my attorney and I understand:
 - (1) If I wish to plead not guilty I am entitled to a trial by jury of _____ persons and all jurors would have to agree I was guilty before the jury could find me guilty, and
 - (2) If I enter this agreement and complete it I will not have a trial by either a jury or by a judge without a jury, and
 - (3) With knowledge of my right to a trial I waive that right so I can participate in this program.
- h. I have been told by my attorney and I understand that if I plead not guilty and have a trial by a jury or trial by a judge I would be presumed innocent unless and until my guilt is proved

beyond a reasonable doubt.

i. I have been told by my attorney and understand:

(1) If I plead not guilty and have a trial, the prosecutor would be required to have the witnesses testify against me in open court in my presence and I would have the right through my attorney to question these witnesses, and

(2) That with knowledge of my right to have the prosecution's witnesses testify in open court in my presence and questioned by my attorney, I waive this right at this time.

j. I have been told by my attorney and I understand:

(1) If I plead not guilty and have a trial, I would be entitled to require any witnesses that I think are favorable to me to appear and testify at trial, and

(2) That with knowledge of my right to require favorable witnesses to appear and testify at trial, I waive this right at this time.

k. Except for the agreement between me, my attorney and the prosecuting attorney:

(1) No one, including any attorney, any peace officer, prosecutor, judge, or any other person, has made any promises to me, to any members of my family, to any of my friends or other persons to convince me to enter into this agreement, and

(2) No one, including my attorney, any peace officer, prosecutor, or judge or any other person, has threatened me or any member of my family or my friends or other persons, to convince me to enter into this agreement.

l. My attorney has told me and I understand that if I fail to successfully complete this diversion program I will stand trial on the original charge or charges against me, the prosecution could proceed against me just as if there had been no agreement to participate in diversion and this affidavit in which I admit the essential elements of the charge or charges will be used against me in trial. I waive any right to object to the admission of this document into evidence at any

such trial.

m. I make no claim that I am innocent of the charge or charges that are now pending against me.

n. I have been told by my attorney and I understand that if I plead not guilty and have a jury

trial:

(1) I could testify at trial if I wanted to but I could not be forced to testify, and

(2) If I decided not to testify neither the prosecutor nor the judge could comment on my

failure to testify, and

(3) That with knowledge of my right not to testify and that neither the judge nor the

prosecutor could comment on my failure to testify at trial I waive this right and I will

acknowledge in this affidavit the facts of the crime.

5. I certify that I have never previously been enrolled in an adult diversion program in

Minnesota or in any other state.

6. I certify that I have never been convicted of any crime in Minnesota or in any other

jurisdiction for which a jail or prison sentence was or could have been imposed except: _____

7. I have been charged with the crime or crimes of _____

_____ and I admit the

following facts and essential elements as to those charges:

a. _____

b. _____

c. _____

d. _____

e. _____

8. I understand and agree that if I fail to complete the diversion program that paragraph 7 of

this document will be used against me in my trial and I waive any objection to such use.

9. I understand that a claim for restitution as a result of the incident(s) that resulted in these charges has been made as follows:

	<u>Victim</u>	<u>Amount</u>
a.		
b.		
c.		

10. I agree to pay restitution in the amount and to the victim(s) as set for the in paragraph 9 on the following schedule: _____

11. I understand failure to make timely payment of restitution is grounds for termination from the diversion program. I also understand that filing of bankruptcy or any other action taken to attempt to avoid payment of this restitution obligation will result in termination from the diversion program.

12. I agree to abide by all terms and conditions of diversion and cooperate with the Washington County Attorney and Washington County Community Corrections. The terms of this agreement include:

- a. I understand that while in the diversion program I will be treated as though I am on probation and I will be held accountable for my conduct to Community Corrections and the County Attorney.
- b. I understand that if I am convicted of, or involved in the commission of a felony, gross misdemeanor, misdemeanor or any violation of Federal, State or local law or ordinances, my participation in diversion will be immediately terminated.
- c. I understand the Community Corrections officer is the person who will report to the County

Attorney concerning my diversion and that I am to remain in diversion until discharged by this agreement.

- d. I understand it is my responsibility to maintain monthly contact with my Community Corrections officer unless otherwise directed by my Community Corrections officer.
- e. I will reply promptly to any communication from my Community Corrections officer.
- f. I will at all times keep my Community Corrections officer informed of my employment and residence.
- g. I will obtain permission from my Community Corrections officer before leaving the State.
- h. I will immediately notify my Community Corrections officer if I am arrested for any reason.
- i. I will cooperate and be truthful with my Community Corrections officer in all matters affecting my participation in diversion.
- j. I understand I cannot own, use or possess any firearm or other dangerous weapon during the period of diversion.
- k. I will abide by my Community Corrections officer's instructions in the use of intoxicants and will submit to urinalysis or any other verification procedure as directed.
- l. I understand that my person, place and personal property may be subject to search by my Community Corrections officer or any agent for the office, if the officer or agent has reasonable suspicion that a search will produce evidence that I have engaged in criminal activity or other violation of this agreement.
- m. If I leave the State, I understand that the State of Minnesota can initiate extradition proceedings to return me to Minnesota from any jurisdiction in or outside of the United States where I may be found.

13. I understand that as a condition of my participation in diversion I must agree to an evaluation for _____ and comply with and complete any recommended

treatment. I further understand such treatment is at my own expense unless I make arrangements for other funding and that under no circumstances will the Washington County Attorney's Office or Washington County Community Corrections be financially responsible for such expenses.

14. I agree to assist law enforcement and the prosecution and, if needed, testify truthfully concerning the facts of my crime in any trial of any accomplice or co-defendant, if there are any.

15. I agree to sign all documents and releases requested by the Community Corrections officer for the purpose of monitoring my participation in and compliance with this agreement.

16. I understand and agree as conditions of diversion I must:

1. _____
2. _____
3. _____
4. _____
5. _____

Dated: _____

Diversion Applicant/Defendant

Subscribed and sworn to before me this
_____ day of _____, _____.

Notary Public

Dated: _____

Counsel for Defendant

Received and Approved by:

Dated: _____

Assistant Washington County Attorney