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December 15, 2023

Minnesota State Court Administrator
Attn: Jeff Shorba
135 MN Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd
St. Paul, MN 55155

Legislative Reference Library
Attn: Chris Steller
645 State Office Bldg
100 Rev Dr. Martin Luther King Jr. Blvd
St. Paul, MN 55155

RE: 2022-2023 Biennial Report on Sherburne County Adult Diversion Program
County Attorney File No. 187699 (PbK 071-0151002)

Dear Mr. Shorba and Mr. Steller:

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. We operate the program with assistance from Sherburne County Community Corrections. This report is for the calendar years of 2022 and 2023 and is offered in compliance with MS§299C.46 Subd. 5, and MS§401.065 Subd.4.

For the year 2022 the following information is submitted:

Our previous reporting period ended 11/30/2021. There were 19 cases that carried over into 2022.

Of those 19, 3 successfully completed the program prior to 12/31/21. There was 1 male and 2 females. Their average age was 38 years.

Of those 19, 16 completed the program in 2022. Of those 16, 13 were successful; there were 7 males and 6 females and their average age was 25.3 years. Of those 16, 3 were returned by diversion as either ineligible or not completed (failed); there was 1 male and 2 females and their average age was 33 years.

For the period beginning 12/1/21 through 12/31/22, of the eligible offenses screened, 35 met the criteria to be referred to diversion.

Of those 35, 22 completed the diversion program in 2022. Of those 22, 10 were successful; there were 6 males and 4 females and their average age was 31.9 years. Of

those 22, 12 were returned by diversion as either ineligible or not completed (failed); there were 7 males and 5 females and their average age was 32.7 years.

Of those 35, 13 completed the diversion program in 2023. Of those 13, 11 were successful; there were 5 males and 6 females and their average age was 20.5 years. Of those 13, 2 were returned by diversion as either ineligible or not completed (failed); there were 2 females and their average age was 6 years.

For the year 2023 (through 11/30/2023) the following information is submitted:

Of the eligible offenses screened, 17 met the criteria to be referred to diversion.

Of those 17, 11 completed the program prior to 11/30/2023. Of those 11, 8 were successful; there were 4 males and 4 females and their average age was 36.6 years. Of those 17, 3 were returned by diversion as either ineligible or not completed (failed); there was 1 male and 2 females and their average age was 57.3 years.

Of those 17, there are currently 6 referrals who are currently in the diversion program but have not yet completed it. There are 3 males and 3 females and their average age is 35.3 years.

My opinion on the program's effects on the Sherburne County criminal justice program is as follows: it provides individuals who encounter the criminal justice system for the first time with low level cases an opportunity to mitigate the collateral consequences of a conviction.

Cordially,



Kathleen A. Heaney
Sherburne County Attorney

KAH:te
Enclosures

cc: Corey Mabis Rowe

SHERBURNE COUNTY ADULT DIVERSION PROTOCOL
As amended February 11, 2022

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 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 applies 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. The Community Accountability Program also applies to the following controlled substance offenses:
 - a. Gross misdemeanor Controlled Substance Crime in the Fifth Degree Possession in violation of 152.025 Subd. 2(1), excluding possession of heroin, fentanyl, and carfentanil which are not eligible for diversion
 - b. Felony Controlled Substance Crime in the Fifth Degree Possession of marijuana, marijuana wax, THC cartridge, or edibles in violation of 152.025 Subd. 2(1)
- IV. Guidelines for Diversion Eligibility

- a. For offenses listed in Paragraph II, 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, so long as the conviction was not for a crime against the person.
 - b. For offenses listed in Paragraph III, if the offender has a felony or gross misdemeanor conviction, and the conviction was not for a violation of Chapter 152 and not for a crime against the person, they are eligible for diversion if 10 years have elapsed since the date of conviction. An offender is eligible if they have a misdemeanor conviction, so long as the conviction was not for a crime against the person.
 - c. For offenses listed in Paragraph III, no prior felony, gross misdemeanor conviction under Chapter 152 or prior stay of adjudication or discharge from probation without conviction per 152.18
 - d. 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.
 - e. An offender is NOT eligible if they were previously in a diversion program as an adult.
 - f. On approval of the County Attorney or Lead Assistant County Attorney, an offender with offenses listed in Paragraphs II and III who does not meet all eligibility requirements may participate in the Community Accountability Program. If approved, the offender is subject to the requirements listed in Paragraphs VII-XIV as applicable.
- V. 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 or felony charge, the prosecuting authority will file a long form complaint. Law enforcement will provide the prosecuting authority a point of contact for diversion issues.
- VI. 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 Community Corrections.
- 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.

VII. 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 worked off by performing community work service or adult work crew at a rate of \$10 per hour.

VIII. 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 and Felonies – 32 hours

During the pandemic, Community Corrections may waive the community work service requirement if doing so adheres to the health and safety protocols set by the Minnesota Department of Health.

- IX. A party referred to the Community Accountability Program may be required to participate in the Restorative Conferencing Program.
- X. A party entering the Community Accountability Program for the offense of Gross Misdemeanor or Felony Controlled Substance Crime in the Fifth Degree-Possession must complete a chemical use assessment approved by Community Corrections, pay the fee and follow the recommendations of the assessment including aftercare. The party must also submit to random testing and pay the fees for the testing as directed by Community Corrections. Failure to follow the recommendations of the assessment and aftercare, failure to submit to testing and/or pay the fees, failure to remain chemical free (except for prescribed medications) is a basis to be terminated from the Community Accountability Program. Community Corrections has the discretion to waive the requirement for the party to do Community Work Service depending on the recommendations of the chemical use assessment.
- XI. A party must admit guilt, acknowledge responsibility and provide a factual basis regarding the offense to participate in the Community Accountability Program.

- XII. A party must pay restitution in full to complete the Community Accountability Program.
- XIII. A party who is in the Community Accountability Program and is charged with new criminal offenses will normally be terminated from the program.
- XIV. A. A party must complete the Community Accountability Program for crimes listed under Section II. (a.-j.) 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.

B. A party entering the Community Accountability Program for the offense of Gross Misdemeanor or Felony Controlled Substance Crime in the Fifth Degree-Possession must complete the program no later than six months from the date the party signs the diversion agreement. Community Corrections can grant one (1) six-month extension for good cause (e.g., cases in which the party needs more time to complete treatment or recommendations for aftercare). A party may spend no more than one year 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 period of time exceeding one year.
- XV. Sherburne County Community Corrections will notify the Sherburne County Attorney's Office or Elk River City Attorney's office of the following:
 - XX. Diversion was successfully completed;
 - XX. Diversion not completed or ineligible due to declining to participate, failure to attend diversion meeting, or terminated for not meeting diversion requirements.

OFFICE PROCEDURES

- XVI. 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.

- XVII. 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
- XVIII. Gross misdemeanor and felony 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.
- XIX. The Sherburne County Attorney's Office will open a file as soon as a case is referred by law enforcement.
- XX. 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 or felony charge, the prosecuting authority will file a long-form complaint.

EFFECTIVE DATE

Updates to this policy are effective September 1, 2021 and apply to offenses committed on or after that date.

ADDENDUM EFFECTIVE IMMEDIATELY

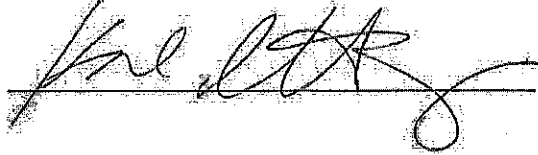
Effective February 1, 2022, pending charged cases that pre-date the September 1, 2021 protocol will be considered for diversion under the following circumstances:

- I. The case must fall under one the eligible offenses in Paragraphs II and III of the protocol;
- II. The case must be unresolved, meaning set at Pre-trial or earlier;
- III. The offender must not have had more than one missed court appearance nor more than one positive chemical test while the case has been pending;
- IV. The offender must not have been charged or cited with committing a new offense since charges were filed in the present pending case.

- V. The offender must meet the requirements listed in the protocol listed in Paragraphs VII-XIV as applicable.

Dated: 11 February 2022

Sherburne County Attorney
Kathleen A. Heaney

A handwritten signature in black ink, appearing to read 'K.A. Heaney', is written over a horizontal line. The signature is stylized and cursive.