# [Your County Attorney Letterhead]

**Juvenile Diversion Program Guidelines**

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**Program Description**

**Purpose**:

Juvenile pretrial diversion programs are based on the belief that not all cases are best handled through a formal court process. Juvenile pretrial diversion is a voluntary program available to youth charged with an offense before adjudication. Youth are referred to a pretrial diversion program by their county attorney or city attorney who determines the eligibility of the alleged offender. Participation diverts the youth from involvement in the juvenile justice system and into a program that offers a continuum of requirements and services. Juvenile pretrial diversion is a positive alternative to juvenile court and can provide more appropriate methods of treating juveniles charged with an offense, providing better outcomes for the youth. The end result of successfully completing a juvenile pretrial diversion program is dismissal or non-filing of the diverted case.

**Goals and Objectives**:

Nebraska statute 43-260.03 outlines the goals and objectives of juvenile pretrial diversion programs to be:

1. To provide eligible juvenile offenders with an alternative program in lieu of adjudication through the juvenile court;
2. To reduce recidivism among diverted juvenile offenders;
3. To reduce the costs and caseload burdens on the juvenile justice system and the criminal justice system; and
4. To promote the collection of restitution to the victim of the juvenile offender's crime.

Other goals and objectives of the \_\_\_\_\_\_ County Diversion program include:

1. Providing Services: Assuring youth who are in need of intervention and treatment receive services that will help to reduce the likelihood of future offending;
2. Avoiding Labeling Effects: Reducing the likelihood youth obtain a social label or self-perception as delinquent, which may actually contribute to further delinquency;
3. Reducing Unnecessary Social Control: Assuring youth, as citizens, are subjected to no more state intervention than is necessary, and caretakers (rather than the state) are responsible for their children whenever possible;
4. Increasing Successful Outcomes for Youth: Seek to increase school engagement, offer opportunities for positive skill development, increase prosocial activities or target other criteria that measure success for youth;
5. Assuring Accountability: Assuring youth, while avoiding adjudication, understand the seriousness of their actions and the effects their behaviors may have on the victim(s), community, their family, etc., and holding them accountable through some type of restitution instead of juvenile court sentencing;
6. Reducing Disproportionate Minority Contact (DMC): Assuring minority youth are not overrepresented in the juvenile justice system;
7. Avoiding Collateral Consequences: Unintended collateral consequences youth might face by involvement in the juvenile justice system might include employment opportunities, military admission, adult sentencing, and access to higher education and financial aid.

**Participant Rights and Protections**:

1. *Confidentiality*: Information received by the \_\_\_\_\_ County Juvenile Diversion Program regarding the juvenile is confidential unless a release of information is signed upon admission to the program, subject to statutory and constitutional conditions. All information discussed regarding the pending charges is used for the purpose of linking youth with a continuum of services designed to avoid further delinquent and criminal behavior.
2. *Voluntary*: A juvenile may participate only on a voluntary basis. The juvenile may also voluntarily withdraw from the program at any time before completion and be remanded to the court system without prejudice during the ordinary course of prosecution.
3. *Diversion Agreement*:A juvenile diversion participant shall be provided a written juvenile diversion agreement and be informed of the requirements for successful completion.
4. *Right to Counsel:* A potential participant shall have the right to review with counsel, at the participant’s expense, the merits of his or her case and the diversion requirements and guidelines prior to making the decision to participate.
5. *Guilty Plea*: Statements or information divulged during diversion are confidential, subject to statutory and constitutional conditions. Admission of guilt is not required to participate in a diversion program, and incriminating statements made by a juvenile participant during diversion shall not be used later against the declarant.
6. *Inability to Pay*: No eligible juvenile shall be denied participation due to financial inability to pay the costs of diversion. The diversion program will allow for sliding fee scales, waiving of fees, and/or scholarships when necessary.
7. *Denial of Participation*: Juveniles specifically requesting the opportunity to participate in the juvenile pretrial diversion program who are denied the opportunity shall have the right for administrative review and written reason for denial upon request.
8. *Outcomes of Participation*: The possible outcomes of participation in the juvenile pretrial diversion program are (1) dismissal of the juvenile petition or criminal charges or equivalent if the juvenile successfully completes the program, or (2) if the participant does not successfully complete the diversion program, the case will be submitted to the court system.
9. *Sealing of Records*: Upon successful completion of the program, diversion records will be automatically sealed.

**Program Requirements**:

A diversion agreement for juveniles that participate in the \_\_\_\_\_County Juvenile Diversion Program may include, but is not limited to, one or more of the following:

1. *Victim apology*: If appropriate, the juvenile can be required to apologize to the victim, either in writing or in person.
2. *Mediation*: If appropriate, mediation allows youth and their victims an opportunity to work together to heal the damage done.
3. *Completion of screenings and assessments*: The completion of screenings and assessments will help identify the needs of the juvenile and the best suited diversion requirements.
4. *Chemical dependency evaluation/assessment*: If it is determined the youth has a potential substance abuse problem then an evaluation is appropriate.
5. *Community service*
6. *Participation in diversion classes*
7. *Participation in community resource programs and counseling*
8. *Payment of all program fees and court costs, if filed*: No juvenile is denied the opportunity of diversion due to inability to pay.
9. *Restitution, when applicable*
10. *No re-offenses while in the program*
11. *Monitoring of academic performance and attendance*
12. *Active parental involvement*
13. *Curfew* *Restrictions*
14. *Completion* *of a release of information form and other diversion forms*
15. *Signing* *of the diversion agreement*: The diversion agreement signed by the juvenile should also be signed by a parent or legal guardian for legal purposes and to ensure the parents are aware of the juvenile’s activities.
16. *Random* *drug testing*

**Fee**:

The \_\_\_\_ County Juvenile Diversion Program fee is $\_\_\_\_\_\_\_. It is encouraged that the youth/diversion participant be held financially responsible for the fee, as opposed to the parents having that burden. It is encouraged that program fees be paid in full at time of intake, although, monthly payments are allowed if necessary. A minimum monthly payment plan will be established upon intake. The participant may be required to pay for additional services (i.e., counseling, evaluations, classes, drug testing, etc.) as outlined in the diversion agreement.

**Program Duration:**

Each participant’s diversion program shall be as individually tailored to the participant’s needs and nature of offense. All participants are expected to complete their diversion requirements within the projected time limit listed on the diversion agreement. Participants will not ordinarily remain in the diversion program longer than six months, unless granted an extension.

**Program Completion**:

Upon successful completion of the Diversion Program, the participant’s diversion case will be closed and notification will be sent to the referring County/City Attorney to close the case without filing, or dismiss the case. A notice will also be sent to the participant that they have successfully completed the program.

**Program Termination**:

A participant may be terminated from the program if he or she fails to meet any of the requirements of the program, and referred back to the referring attorney for prosecution.

**Program Withdrawal:**

A participant may voluntarily withdraw from the \_\_\_\_\_ County Juvenile Diversion Program at any time prior to completion and be remanded back to the referring attorney for prosecution without prejudice to them during the ordinary course of prosecution.

**Eligibility Guidelines**

The \_\_\_\_\_\_\_\_\_\_\_\_\_ County juvenile diversion program is limited to persons referred by the county attorney who have been cited with a law violation, infraction, or status offense. Individuals who voluntarily wish to participate in Juvenile Diversion Services must:

1. Be under the age of eighteen (18) years;
2. Accept responsibility for the offense, without an admission of guilt;
3. Be willing to comply with all of the program’s requirements.
4. *{{{other requirements could also include: not currently on probation or parole for any offense; may not have a previous conviction or admission of guilt for the same offense category; may not have participated in the juvenile diversion program for the same offense category in the last year; etc.;}}}*

# The referring attorney may use the following information when considering the final eligibility on a case-by-case basis:

1. The juvenile's age;
2. The nature of the offense and role of the juvenile in the offense;
3. The number and nature of previous offenses involving the juvenile;
4. The dangerousness or threat posed by the juvenile to persons or property; or
5. The recommendations of the referring agency, victim, and advocates for the juvenile.

# Eligible Offense

All offenses are generally eligible for Juvenile Diversion except those set forth below as ineligible. The referring attorney reserves the right to prevent an eligible offense from progressing to Juvenile Diversion on a case-by-case basis.

Examples of eligible offenses include, and not limited to:

1. Status offenses
2. Criminal trespass
3. Disturbing the peace
4. Criminal mischief
5. Vandalism
6. Minor in possession of alcohol
7. Minor in possession of drugs
8. Possession of drug paraphernalia
9. Theft by shoplifting
10. Most nonviolent misdemeanors
11. Infractions
12. Traffic violations
13. *{{{{{Traffic violations and infractions: generally youth are not placed on juvenile diversion for traffic offenses. The STOP program is available for most traffic cases through the County Attorney’s office}}}}}*

## Ineligible Offenses

The referring attorney reserves the right to determine the eligibility of a specific offense on a case-by-case basis.

Ineligible offenses generally include:

1. Driving while Intoxicated
2. Implied consent refusal
3. Most felonies, such as: arson (first degree), assault (first and second degree), bribery, child abuse, child pornography, consumer fraud, failure to appear, gambling, kidnapping, murder, manslaughter, motor vehicle homicide, pandering, perjury, robbery, sexual assault, tampering with a witness, evidence or jury.

# Administrative Review of Cases Denied Eligibility

Individuals who have been denied eligibility for the Juvenile Diversion program shall be given written reasons for the denial upon request, and may contest this finding by requesting an administrative review of the denial. The juvenile or the juvenile’s counsel must request an administrative hearing by filing written notice with the prosecuting attorney and \_\_\_\_ County Juvenile Diversion Program.

*{{{{Come up with a procedure that works in your county. For example, the local attorneys who volunteer their time to review diversion eligibility cases will hear administrative reviews}}}} Example: The prosecuting attorney will schedule a hearing within the three weeks of the juvenile’s request for the hearing. Administrative reviews are heard by \_\_\_\_\_\_\_\_\_\_\_\_. The determination reached at the review hearing is advisory in nature and is conducted to determine whether the decision denying eligibility was arbitrary and capricious. The referring attorney is not bound by the finding of the hearing officer or the administrative review process*.