

DRUG DIVERSION PROGRAM – NORFOLK

ONUS AND COMMENCEMENT OF THE APPLICATION:

1. The onus rests entirely with the accused and counsel, to initiate any application for diversion.
2. Where an accused is unrepresented, the Federal Prosecutor will only consider such application through Duty Counsel who has spoken to the accused and reviewed the Crown Disclosure. Applications will be reviewed only when presented in the format approved. See Form One, attached.
3. This protocol does not bind the Attorney General of Canada.
4. This protocol is subject to change or cancellation at any time.
5. The only endorsement accepting or rejecting an application is that described on the Application for Diversion form.

CRITERIA FOR ELIGIBILITY:

6. Generally, only those offences of simple possession will be considered eligible for diversion, although, in exceptional circumstances, other offences may be considered.
7. Aggravating factors may lead to non-approval of an application. Without limiting the description of such aggravating features, these factors may include:
 - a) Prior criminal record or record of Federal offences,
 - b) Operating a vehicle using or in possession of a drug,
 - c) The amount involved,
 - d) The attitude of the offender at the time of the arrest or charge,
 - e) The type of drug,
 - f) Frequency of the offence in the locality,
 - g) Prior diversion in any jurisdiction in any form.

APPROVAL OF APPLICATION FOR ADULT DIVERSION:

8. Approval of the application for diversion will be endorsed, in writing, on the application only by the Federal Prosecutor.

WHERE APPLICATION REJECTED:

9. The Federal Prosecutor will endorse the application for diversion in the appropriate fashion. In any case where there is reason to believe that an applicant has misrepresented the facts on the application for diversion, the material may be used in a subsequent prosecution. (i.e. obstructing justice). In all cases, a copy of the material will be retained by the Federal Prosecutor's Office or the Police.

10. An application, once rejected, may be re-submitted pursuant to this protocol, with a new/improved diversion proposal following discussions between the Federal Prosecutor and counsel.

PROCEDURE WHERE APPLICATION FOR ADULT DIVERSION IS APPROVED AND PUBLIC ACCOUNTABILITY:

11. Where an application is approved, the accused must appear personally or as permitted at law on his/her next scheduled Court appearance date. The fact of the application, its approval and its general details, will be brought to the attention of the Court. If the diversion proposal has been completed, the charge will be withdrawn at that time. If the diversion proposal has not been completed, the case will be adjourned pending its completion. When completed, the accused must re-attend Court as the Court may direct for the withdrawal of the charge. The accused must verify, on the return date, or on the first appearance date where the accused has already completed the diversion proposal, the contents of the application, i.e. that there are no other pending charges.

12. If an accused does not full complete the diversion proposal within a reasonable period of time, the Federal Prosecutor's office at any time can withdraw its earlier consent to approve, and proceed to set a trial date. The accused will have no right to recover any portion of the diversion proceeds or steps partially completed.

13. Where the accused/applicant is charged with an offence between the submission and approval of the application and its completion and withdrawal of the charge(s) the Federal Prosecutor may in its unfettered discretion withdraw its earlier consent and the accused/applicant will have no right to recover any portion of the diversion proceeds or steps partially completed.

14. The application for diversion, which is completed by the accused and counsel, will include a diversion proposal in Form Two, attached. This should include what steps the applicant suggests meet the public interest. This may include attending at information or counselling sessions, and/or donation to charitable or other legitimate organizations.

15. The recipient of donations must be recognized as charities or organizations in Norfolk. More particularly, organizations in the locale where the offence was committed should be the recipient.

16. If an applicant has no financial resources so as to submit a diversion proposal, in some cases, consideration will be given to proposals for community service work. The applicant or counsel will, in such cases, propose a number of hours of community service work to be performed for a named organization. If the diversion proposal is accepted by the Federal Prosecutor, the applicant and counsel must prove written confirmation from that organization that the applicant has, in fact, performed the agreed upon number of hours of work.

17. The acknowledgement from the organization for whom the community service work was performed need not reflect that the work was done pursuant to the adult diversion program nor need the organization for whom the work was performed necessarily be so informed. The onus will be on the applicant and counsel to arrange the working hours and to provide a written acknowledgement of same pursuant to the diversion proposal submitted by the applicant.

18. Original receipts will be provided to the Prosecutor in Court to be retained by the office where the charge is withdrawn.

PHOTOGRAPHS AND FINGERPRINTS:

24. No application shall relieve an applicant of his or her obligation to attend for photographs or fingerprints under the Identification of Criminals Act.

25. If an application is approved and processed, the withdrawal of the charge does not entitle the applicant to receive or have destroyed the photographs or fingerprints in the possession of the Police or to have the application for diversion returned or destroyed.

DATED at Simcoe, Ontario, this _____ day of _____, 20__ .

Michael D. McArthur,
Federal Prosecutor, Norfolk County,
39 Colborne Street North,
Simcoe, Ontario N3Y 4N5
Phone 1-519-426-6763 Fax 1-519-426-2055

FORM ONE
APPLICATION FOR DRUG DIVERSION – NORFOLK

Name: _____

Address: _____

Next Court Date: _____

Date of Birth: _____

Telephone: Home: _____ and/or Cell/Work _____

1. I am charged with the offence(s) of: _____

2. The date of the offence is: _____

3. The location of the offence is: _____

4. The Police force that initiated the charge was: (please check)
a) Norfolk OPP
b) Other _____ (please specify)
5. I have never been convicted of an offence under the Criminal Code of Canada, the Young Offenders Act or any other Federal Statute.
6. I have been convicted of the following offences, namely:

7. I have never before applied for any other Adult Diversion Program in Canada.
8. I am presently not charged with any offence under the Criminal Code of Canada or any other Federal Statute.
9. I hereby request that I be considered for a program of Drug Diversion for the above-noted charge as described in the Drug Diversion Program (Norfolk).
10. I acknowledge the existence of reasonable grounds for the above-noted charge.
11. I have been advised of my right to be represented by a lawyer.
12. I have been advised of my right to enter a plea of not guilty and to have a trial.
13. I have reviewed with my lawyer or duty counsel, Crown Disclosure or I waive my right to such disclosure.
14. I have been informed of the Diversion Protocol and all its details by counsel.
15. I consent and request to participate in the Drug Diversion Program.
16. I request that consideration be given to this application upon the terms outlined in the Diversion Proposal attached and signed by me.

FORM TWO
DIVERSION PROPOSAL

Submitted by the accused pursuant to the Drug Diversion Program (Norfolk)

To be completed by the applicant and counsel

Pursuant to the Drug Diversion Protocol (Norfolk) and the application for diversion (attached), the applicant proposes the following pursuant to the Drug Diversion Protocol (Norfolk), namely:

- attend drug information / counselling sessions at the Health Unit
- make a charitable donation to _____ in the amount of \$_____.
- other:_____.
- other:_____.

DATED at Simcoe, Ontario, this _____ day of _____, 20 ____ .

Signature of Applicant

Signature of Counsel / Duty Counsel

Having regard to all the circumstances, the Federal Prosecutor

approves

does not approve

the above-noted Diversion Proposal pursuant to the Drug Diversion Protocol (Norfolk)

Federal Prosecutor – Norfolk

Dated