



Official Memorandum of the Linn County Attorney's Office

Re: Marijuana Diversion Program

Date: December 28, 2020

Policy Statement and Guideline

It is the purpose and intent of this Official Memorandum to commemorate prescribed office guidelines for a newly established Linn County Attorney's Office Marijuana Diversion Program to take effect January 1, 2021. This Memorandum will outline the rationale for the program, eligibility guidelines for referral to the program and the structure for processing and disposition of marijuana possession cases handled through the Linn County Attorney's Office Marijuana Diversion Program.

I. Rationale for the Linn County Marijuana Diversion Program

It is the goal of the Linn County Attorney's Office to pursue fair and just outcomes in all criminal cases filed and pursued by this office from arrest to conviction. However, the Linn County Attorney's Office recognizes that a conviction for a marijuana offense may have serious and lasting consequences for those charged and convicted with Possession of a Controlled Substance (Marijuana). Likewise, the Linn County Attorney's Office also recognizes the potential dangers presented by the abuse of marijuana. To address these concerns and in an effort to accomplish just and fair outcomes for our community and first-time offenders, the Linn County Attorney's Office hereby announces the establishment of a Marijuana Diversion Program (hereinafter "program").

The program has multiple goals. **First**, to mitigate the inordinate negative collateral consequences a conviction may have on obtaining housing and employment, on access to higher education, and upon the short and long-term financial security of defendants convicted of Possession of a Controlled Substance (Marijuana) while still providing for a fair measure of

accountability. **Second**, to reduce recidivism of first time offenders found in possession of user-quantity amounts of marijuana. **Third**, to rehabilitate defendants by treating and addressing underlying issues surrounding substance abuse. **Fourth**, to promote the judicious use of court and prosecutorial resources. **Fifth**, to be responsive to the evolving concerns of the community we serve while still fulfilling our legal obligation to enforce state law.

II. Eligibility for the Linn County Marijuana Diversion Program

The primary candidates for referral to the program will be first time offenders found in possession of user-quantity amounts of marijuana. Linn County prosecutors will weigh multiple factors when considering whether to recommend a defendant to participate in the program. The following factors will be used to identify those most appropriate for referral to the marijuana diversion program.

Factors Considered for Referral to the Linn County Marijuana Diversion Program

1. Defendant is a first time offender found in possession of a user-amount quantity of marijuana charged with Possession of a Controlled Substance (Marijuana) and/or Possession of Drug Paraphernalia.
2. The defendant's charge is pending or arrest occurred on or after January 1, 2021.
3. Defendant has not previously participated in the Linn County Attorney's Office Marijuana Diversion Program.
4. Defendant has not been granted a deferred judgement or convicted for the offense of Possession of a Controlled Substance or other offense related to controlled substances.
5. Defendant is not charged with either another indictable offense in the same or in a separate prosecution or currently charged with any crime of violence, as determined by the Assistant Linn County Attorney.
6. Defendant does not have a prior felony conviction.

III. Structure and Requirements of the Linn County Marijuana Diversion Program

Once a defendant is charged with Possession of a Controlled Substance (Marijuana), the assigned Assistant Linn County Attorney will consider the above-mentioned factors and determine whether to recommend the defendant participate in the program. That recommendation will be made at the defendant's first case management conference. If the defendant elects to participate in the program, a dispositional hearing will be set 180 days from the date the defendant signs the program agreement. The requirements of the program must be completed by the date of the dispositional hearing for a defendant to receive the deferred prosecution. Should the defendant agree to participate in the program and successfully completes the program's requirements, the State will dismiss the case at the defendant's cost and recommend that the court expunge the arrest and charge from the defendant's record. The



defendant will be required to provide proof of fulfillment of the requirements to receive dismissal of the charge and expungement of the record of arrest and complaint.

The Linn County Attorney's Office believes the imposition of the following requirements are the most appropriate to achieve the aforementioned goals of the program:

- 1.—Defendant shall obtain a Substance Abuse Evaluation from a credible substance abuse treatment provider.
- 2.—Defendant shall complete any treatment recommended by the Substance Abuse Evaluation by the date set for disposition hearing and file proof of completion of any recommended treatment with the Court.
- 3.—Defendant shall complete 10 hours of community service and file proof of completion with the court.
- 4.—Defendant shall not be arrested and/or be convicted for any new law violations (save for traffic citations) between the date of the agreement and the date set for disposition.
- 5.—Defendant shall appear for all court dates.
- 6.—Defendant understands that they have a right to have a speedy trial within 90 days of the date that the Trial Information was filed in their case. The defendant knowingly, voluntarily, and intelligently waives the right to a speedy trial pursuant to Iowa R. Crim. P. 2.33(2)(b) and 2.33(2)(c).
- 7.—Defendant knowing, voluntarily, and intelligently waives the right to file a pretrial Motion to Suppress Evidence to challenge the constitutionality of the admissibility of evidence in the case.

Should the defendant agree to participate in the program but fail to complete the Program's requirements, the State will ask the case to be placed back into the regular criminal docket and set it for a case management conference, at which point the defendant's previously waived rights are restored.

IV. Disposition of Cases Referred to the Marijuana Diversion Program

If a defendant successfully completes the program, the State will dismiss the Possession of Marijuana and/or Possession of Drug Paraphernalia charge(s) at the defendant's cost. Additionally, the State will agree to recommend expungement of the arrest and charge(s) to the court. Any other associated charge or case will be handled and disposed of separately.

If a defendant is unsuccessful in completing the program and it is scheduled to go back to the regular criminal docket, all previously waived rights, including, but not limited to, the right to file a motion to suppress evidence and/or to assert speedy trial, will be restored to the defendant. Additionally, defendants who qualify may still request a deferred judgment to resolve their case.



V. Marijuana Diversion Program Review

The Linn County Attorney's office will compile relevant information as the marijuana diversion program is implemented and conduct a complete review of the effectiveness of the program at the end of the year. If the review shows meaningful progress towards the stated goals of the program, the Linn County Attorney's Office will continue and may modify and/or expand the scope of the diversion program as warranted by the outcome of the first year's evaluation.

VI. Additional Information

The Linn County Attorney's Office considered the results of studies and programs implemented by other jurisdictions. The following are links to the information we considered in establishing the marijuana diversion program.

<https://www.sciencedirect.com/science/article/abs/pii/S0362331914000822>

<https://www.ncjrs.gov/pdffiles1/nij/grants/251665.pdf>

<https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/PretrialDiversionResearchSummary.pdf>

Respectfully submitted: **Jerry A. Vander Sanden**
Linn County Attorney
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