DIVERSION AND DEFERRAL GUIDELINES
INDIANA PROSECUTING ATTORNEYS COUNCIL
(December 2005)

1. The decision to divert cases from the criminal justice system is the responsibility of the Prosecuting Attorney. The Prosecutor should, within the exercise of his or her discretion, determine whether diversion or deferral best serves the interests of justice.

2. Diversion and deferral programs shall only be operated with the consent, oversight, and scrutiny of the elected Prosecuting Attorney.

3. A Prosecutor should not improperly consider the color, creed, disability, national origin, race, religion, sexual orientation, or economic status of the offender when deciding whether to offer diversion or deferral to an offender.

4. A Prosecutor should attempt to obtain all relevant investigative information, personal data, case records, criminal history and/or driving record information necessary to render sound and reasonable decisions on diversion or deferral of individuals.

5. In exercising discretion to divert or defer individuals, factors which may be considered include:

   a. The nature and severity of the offense;
   b. Any special characteristics or difficulties of the offender;
   c. Whether the Defendant is a first-time offender;
   d. Whether there is a probability that the Defendant will cooperate with and benefit from a diversion or deferral program;
   e. Whether an available program is appropriate to the needs of the Defendant;
   f. The impact of the diversion or the deferral upon the community;
   g. Recommendations of the involved law enforcement agency;
   h. Consideration of the opinion of the victim;
   i. Whether the Defendant is likely to recidivate;
   j. Provisions for restitution; and
   k. Any mitigating circumstances.

6. As required by IC 33-39-1-8, the following cases may not be included in a pre-trial diversion program:

   a. Felony cases

   b. Cases in which a person
      (1) holds a commercial driver's license; and
      (2) has been charged with an offense involving the operation of a motor vehicle in accordance with the federal Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106-159.113 Stat. 1748)

   c. Cases in which a person is arrested for or charged with:
      (1) an offense under IC 9-30-5-1 through IC 9-30-5-5; or
      (2) if a person was arrested or charged with an offense under IC 9-30-5-1 through IC 9-30-5-5, an offense involving:
         (a) intoxication; or
         (b) the operation of a motor vehicle

         if the offense involving intoxication or the operation of a motor vehicle was part of the same episode of criminal conduct as the offense under IC 9-30-5-1 through IC 9-30-5-5.

7. As required by IC 34-28-5-1, an infraction may not be deferred for an offense or violation under IC 9-24-6 involving the operation of a commercial motor vehicle.

8. A Prosecutor shall not negotiate a misdemeanor diversion agreement with an unrepresented defendant prior to a waiver of the right to counsel at an initial hearing before a judicial officer.

9. Diversion and deferral agreements shall be in writing, executed by the parties, and filed with the court as a public document.

10. The elected Prosecuting Attorney shall not receive any salary from diversion or deferral funds.

11. Prosecutors' offices which received diversion or deferral funds should make any budget requests to their local county fiscal body based on office funding needs without regard for anticipated or projected diversion or deferral revenues.

12. Diversion or deferral funds shall be maintained by the appropriate county official as required by law in a separate account subject to appropriate accounting controls and financial audits of all deposits and expenditures.

13. The Prosecutor's office shall not handle diversion or deferral fees. All payments made to the program are to be made through the Clerk's office.

14. Only those fees which are consistent with the appropriate statutory authority shall be required and collected.

15. All expenditures of diversion or deferral funds shall be approved by the county fiscal body or the county executive.

16. Pursuant to IC 33-39-1-8(c)(4) and IC 34-28-5-1(f)(6), as a requirement of maintaining a diversion or deferral program the prosecuting attorney must electronically transmit information required by the Prosecuting Attorneys Council. This information is considered confidential and is designed for the use of prosecuting attorneys in making diversion or deferral decisions under Guidelines (4) and (5) above.