

THIRD JUDICIAL DISTRICT ATTORNEY'S OFFICE
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FAST TRACK
PRE-PROSECUTION DIVERSION PROGRAM
GUIDELINES FOR APPLICATION

I. ELIGIBILITY REQUIREMENTS

A. The defendant must retain or be appointed a defense attorney prior to applying to the Pre-Prosecution Diversion (PPD) Program.

B. The defendant must meet the minimum eligibility criteria established by statute 31-16-A-4 NMSA, 1978 Comp. (1984 Repl. Pamp.) and as modified by the District Attorney for the Third Judicial District for Pre Prosecution Diversion Program.

1. The current charge against the defendant must be for a nonviolent felony offense. A defendant charged with arson, a sex offense or residential burglary will generally not be considered for diversion.

2. The offense must not involve the substantial possession of a controlled substance. A defendant charged with drug trafficking will not be considered.

3. The defendant must have no prior felony convictions or significant criminal record.

4. The defendant must not have previously participated in a first offender diversion program.

5. The defendant must agree to submit to all requirements of the PPD Program.

C. Additionally, the defendant must also meet eligibility criteria for the Fast Track Pre Prosecution Diversion Program.

1. The Current Charge must be one of the following

a. Contributing to the Delinquency of a Minor

b. Criminal Damage to Property

c. Selling or Giving Alcoholic Beverages to a Minor

d. Unlawful Taking of a Motor Vehicle

e. Breaking and Entering

f. Unauthorized Graffiti

g. Possession of a Controlled Substance (felony level only)

h. Embezzlement

i. Receiving Stolen Property

j. Credit Card Offense

k. Worthless Check

l. Shoplifting

m. Larceny

n. Fraud

- o. Forgery
- p. Other offenses deemed appropriate by District Attorney's Office.

D. The defendant must have proof of legal residence in the United States in the form of a birth certificate, certificate of citizenship, resident alien card, work authorization card, VISA, or proof of other legal status.

E. A defendant who is charged with multiple criminal charges occurring at different times and different locations may not be considered for the PPD Program.

F. The defendant must exhibit characteristics indicating that he or she would successfully complete the PPD Program. The PPD Program is intended to divert those defendants who are most amenable to rehabilitation and least likely to commit future offenses.

G. The defendant must readily admit guilt and voluntarily submit a statement of admission. The statement of admission must provide adequate information to establish every element of each offense charged.

H. In cases in which restitution is owed to the victim, the defendant must pay the full amount of restitution prior to or at the time of application to the program. If the amount due is so great that the defendant cannot afford to pay the entire amount, the defendant will then be considered ineligible for FTPPD and will then be considered for PPD.

II. **REFERRAL PROCEDURE**

A. District Attorney staff; intake prosecutor, case prosecutor, intake team, etc.; will identify candidates for Fast Track Pre Prosecution Diversion (FTPPD).

B. District Attorney staff will set case for Grand Jury 3 weeks from the date of offer for FTPPD. Staff will inform defense counsel that they have 2 weeks to turn in the FTPPD Application/Referral, or the case will continue to Grand Jury.

C. The application/referral packet includes:

1. Release of Information Form;
2. Applicant Questionnaire Form and;
3. Voluntary Statement Form.

a. Even though the defendant may have given some form of statement previously, a statement meeting PPD Program requirements is necessary.

b. This statement will only be used against the defendant if he or she is accepted into the program but terminated unsuccessfully.

c. If the defendant is not accepted into the program, the statement will be returned upon request.

d. The statement must be true, complete and voluntary and the facts should not be altered by the defendant in order to qualify for the PPD Program.

e. Extenuating circumstances and a claimed defense are inappropriate since the defendant must accept the responsibility for his or her actions. If the defendant believes that he or she is innocent, then a trial on the merits is the only appropriate action.

- required.
essential
- f. The statement should provide adequate information to establish every element of each offense charged.
 - g. If more than one crime is involved, a separate narrative on each crime is required.
 - h. The statement must contain the defendant's detailed admission to each element of the crime, including:
 - 1. Date of crime;
 - 2. Location of crime (address, county, state);
 - 3. Defendant's intent;
 - 4. Defendant's description of how he or she committed the crime;
 - 5. Description of damage done and/or property taken including acknowledgment of cost of damage and/or value of property taken and;
 - 6. Description of participation of other individuals.
 - i. If the defendant's statement is not accepted by the prosecutor, the Fast Track Pre-Prosecution Diversion Program offer expires.

D. The procedures and deadlines enumerated in this section must be met in order to provide the defendant with the best opportunity to be admitted into the PPD Program.

E. If restitution is due in the case, the defense attorney must present the defendant's plan for voluntary, up-front, payment of restitution at the time of application/referral.

III. **SCREENING:**

A. The PPD officer will pre-screen the case to determine if the defendant meets the eligibility criteria and whether the defendant will be allowed to make formal application to the program. Eligibility is partially based on the following criteria:

- 1. Circumstances of the offense;
- 2. Victim's comments;
- 3. Investigating law enforcement agent's comments;
- 4. Defendant's prior criminal record;
- 5. Payment of restitution, if applicable;
- 6. Indications of defendant's overall stability and;

VI. **REJECTION FROM FTTPD**

A. The decision by the District Attorney to reject the defendant for participation in the FTTPD Program is final and is not subject to appeal.

B. A defendant may be rejected at any time during the application process and if so, the PPD officer will notify the defendant and the defense attorney in writing.

C. A defendant may be rejected from FTTPD consideration, but may still be considered for PPD. The PPD screening will continue from the point of FTTPD rejection.

- 1. Defense will be notified, via e-mail, of this action.

D. Should the defendant be rejected from both FTPPD and PPD, the prosecution process shall continue in District Court.

VII. ACCEPTANCE

A. The PPD officer will draft the Terms and Conditions document which specifies the length of the defendant's term in the PPD Program and sets forth all rules of participation.

B. The PPD officer will send the original Terms and Conditions to the defense attorney.

C. The PPD officer will simultaneously send a copy of the Terms and Conditions and a letter to the defendant. The letter will instruct the defendant to immediately contact his or her defense attorney for an appointment to review and sign the Terms and Conditions.

D. The defendant and defense attorney shall review the Terms and Conditions and if acceptable, must both sign the document before a Notary Public. **The defense attorney must return the document to the PPD officer within 5 days from the date of receipt.**

E. Once the PPD officer receives the signed and notarized Terms and Conditions, the document will be given to the District Attorney for approval. If approved, the District Attorney will sign the Terms and Conditions and draft a motion and order to suspend criminal proceedings.

F. The District Attorney's Office will file the motion and order suspending criminal proceedings with District Court and will furnish an endorsed copy of the motion and order to the defense attorney.

VIII. PROGRAM REQUIREMENTS

A. The defendant must abide by all requirements as set forth in the Terms and Conditions.

B. These requirements include but are not limited to:

1. Participate in the PPD Program for an average of 6 months (the term will be no less than 6 months and no more than 24 months);
2. Report to the PPD Program officer twice each month or as instructed and keep all appointments;
3. Pay restitution to the victim, if applicable;
4. Pay monthly costs (\$85.00);
5. Complete 40 hours of community service work;
6. Submit to and pay for counseling or other treatment programs as deemed necessary;
7. Remain completely law-abiding;
8. Submit to and pay for urinalyses;
9. Maintain employment and/or attend school;
10. Will not consume drugs or alcohol;
11. Not possess any firearms or other deadly weapons, and;
12. Abide by any additional, reasonable conditions as deemed necessary by the District

Attorney's Pre-Prosecution Diversion Program.

IX. SUCCESSFUL COMPLETION

A. To successfully complete the PPD Program, the defendant must comply with all terms and conditions of the program.

B. Upon the defendant's successful completion of the PPD Program, the District Attorney's Office will prepare a Nolle Prosequi to dismiss the criminal proceedings.

C. The District Attorney's Office will file the Nolle Prosequi, dismissing criminal proceedings in District Court and will furnish an endorsed copy of the Nolle Prosequi to the defendant and defense attorney.

X. UNSUCCESSFUL TERMINATION

A. Violation of any terms and conditions of the PPD Program may constitute grounds for unsuccessful termination from the program.

B. If the defendant has been accepted into the program and it is later determined that the defendant has any prior serious criminal violations or convictions, this will constitute sufficient grounds for the defendant's immediate unsuccessful termination from the program.

C. If terminated from the PPD Program, the PPD officer will notify the defendant in writing of the specific reason(s) for the termination. Notice will also be provided to the defendant's attorney.

D. The District Attorney's Office will file a Notice of Termination and Reinstatement of the Criminal Proceedings with District Court and will provide the defense attorney with an endorsed copy.

E. The prosecution process shall continue.