

**THIRD JUDICIAL DISTRICT ATTORNEY'S OFFICE**

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**JUVENILE PRE-PROSECUTION DIVERSION PROGRAM  
GUIDELINES FOR APPLICATION**

**I. MISSION STATEMENT**

THE GOALS OF THE JUVENILE PRE-PROSECUTION DIVERSION PROGRAM ARE TO IDENTIFY JUVENILE OFFENDERS WHO ARE AMENABLE TO REHABILITATION, DIVERT THEM FROM THE JUVENILE JUSTICE SYSTEM AND REDUCE THEIR RISK OF FURTHER INVOLVEMENT IN DELINQUENT ACTS BY PROVIDING THEM WITH SUPERVISION AND TREATMENT SERVICES.

**II. ELIGIBILITY REQUIREMENTS**

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

B. To participate in the program, the respondent must have been between the ages of 12 and 17 at the time of the offense.

C. The current petition against the respondent must be for a misdemeanor or first-time felony offense.

D. The respondent will not be considered for the JPPD Program if he/she has any prior adjudications or a significant number of previous referrals to the Juvenile Probation-Parole Office (JPPO). If a respondent has previous referrals, he or she must have cooperated with the juvenile probation authorities.

E. The delinquent act must not involve the sale of a controlled substance or the possession of a substantial amount of drugs.

F. The respondent must not have previously participated in a first offender diversion program similar to the JPPD Program.

G. The respondent must exhibit characteristics indicating that he or she would successfully complete the JPPD Program. The JPPD Program is intended to divert those respondents who are most amenable to rehabilitation and least likely to commit future delinquent acts.

H. The respondent 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 delinquent act cited in the petition. This statement must be signed by the respondent's parent/guardians and the respondent's defense attorney. The Children's Court attorney at the District Attorney's Office must approve the statement.

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I. In cases in which restitution is owed to the victim, the respondent must compensate the victim. Whenever possible, restitution must be paid up front and in full. At minimum, the juvenile offender

must agree to follow a realistic restitution payment schedule.

J. The respondent and parents/guardians must sign a release of information form allowing the JPPD officer to exchange information, pertinent to the respondent, with other agencies, schools and private practitioners.

K. The respondent and parents/guardians must participate in an interview with the JPPD officer. The purpose of the interview is to inform the JPPD officer about the history, concerns and strengths of both the child and family.

L. The respondent's parents/guardians must be willing to be made party to the petition. This means that the parents/guardians must be willing to abide by the JPPD Program contract and will encourage and support their child in meeting all obligations agreed upon in the contract.

M. The respondent and parents/guardians must agree to submit to all requirements of the JPPD Program and to remain in the program until all contract obligations are completed. They must agree to participate in the JPPD Program a minimum of six months to a maximum of eighteen months.

N. The Children's Court attorney, JPPD officer, and the defense attorney must all agree that the respondent should participate in the JPPD Program.

### III. **PROGRAM REQUIREMENTS**

A. If accepted to participate in the JPPD Program, the respondent and parents/guardians must abide by all requirements set forth in the JPPD Program contract.

B. The terms of the contract include but are not limited to:

1. Participate in the JPPD Program for a period not to exceed 18 months;
2. Report to the JPPD Program officer as instructed and keep all appointments;
3. Pay restitution, if applicable, to the victim;
4. Complete assigned community service work;
5. Attend school or work;
6. Assure the child is supervised by an adult at all times. Age appropriateness will be considered and exceptions may be authorized by the PPD officer;
7. Submit to and pay for counseling or other treatment programs as deemed necessary. This applies to both the parents and the child;
8. Remain within Dona Ana County unless the JPPD officer is notified of travel plans at least two days in advance and grants the respondent permission to travel;
9. Notify the JPPD officer of any change in address within one week of the change;
10. Refrain from any gang activity or association with gang members;
11. Abide by a curfew;
12. Refrain from any consumption of alcohol and use of solvents and illegal drugs;
13. Submit to breathalyzer tests and random urinalyses for detection of drug and alcohol use;
14. Allow the JPPD officer to visit at your home, school, and place of employment;
15. Remain completely law-abiding;
16. Abide by any additional, reasonable conditions deemed necessary by the District Attorney's Juvenile Pre-Prosecution Diversion Program.

#### IV. REFERRAL PROCEDURE

A. Juvenile offenders are referred by the police to the JPPO. The JPPO may send a referral to the Children's Court attorney at the District Attorney's Office and recommend that the juvenile be considered for participation in the JPPD Program.

B. The Children's Court attorney may also refer appropriate cases to be considered for the JPPD Program.

C. Referrals to the JPPD Program may also originate with the defense attorney. The defense attorney should make the referral by contacting the children's court attorney or the JPPD officer.

D. The Children's Court attorney will file a petition in the District Court, Children's Court Division and court settings will continue as scheduled within the time constraints set by statute and court rules. Referral of a respondent to the JPPD Program does not interrupt or toll this process. All referrals to the JPPD Program must be made in a timely manner.

E. Once the JPPD officer receives a referral, the officer will screen the case to determine if the respondent meets the eligibility requirements. Eligibility is partially based on the following criterion:

1. Circumstances of the offense;
2. Respondent's record of prior delinquent acts and compliance with previous intervention strategies;
3. Input from the children's court attorney;
4. Victim's comments and restitution, if applicable;
5. Investigating law enforcement agent's comments;
6. Input from JPPO and ;
7. Information obtained from school authorities or any other relevant sources.

F. If the JPPD officer determines that the case does not meet eligibility criteria and that the respondent **may not apply**:

1. The JPPD officer will notify the defense attorney and refer the case back to the Children's Court attorney and the JPPO.
2. The JPPD officer will notify the law enforcement agent and the victim, if applicable, that the respondent will not participate in the JPPD Program.

G. If the JPPD officer determines that the case meets eligibility criteria and that the respondent **may apply**, the JPPD officer will provide the defense attorney and respondent with the application forms, including the following:

1. Applicant Questionnaire form;
2. Release of Information form and;
3. Respondent Voluntary Statement form:
  - a. The respondent must submit a statement admitting guilt and providing all essential facts regarding each delinquent act, including: date, time, location, intent how the act was committed, damage done and property taken, and participation of other individuals.
  - b. The statement must be true, complete and voluntary and the facts should not be altered

in order for the respondent to qualify for the JPPD Program.

- respondent
- c. Extenuating circumstances and a claimed defense are inappropriate since the respondent must accept responsibility for his or her actions. If the respondent believes that he or she is innocent, then a trial on the merits is the only appropriate action.
  - d.. The defense attorney must sign the statement acknowledging that the respondent and parents/guardians have been advised of and understand the purpose and consequences of giving the statement.
  - e. The Children's Court attorney and JPPD officer must approve of the statement.
  - f. Failure to provide an acceptable statement may result in the respondent not being allowed to participate in the JPPD Program.
  - g. A statement made by the respondent may be used for impeachment purposes if the respondent testifies in the criminal case.
  - h. If the respondent is not accepted into the JPPD Program, the statement will not be used against the respondent and will be returned to the defense attorney upon request.
  - i. If the respondent participates in the JPPD Program and is unsuccessfully terminated for violating program rules, the admission statement may be used against the respondent to aid the Children's Court attorney in prosecuting the underlying charges.
- H. Once the JPPD officer receives the completed application paperwork from the defense attorney, the JPPD officer will contact the respondent to schedule a personal interview with him or her. At least one parent/guardian must be present during the interview. The defense attorney is not required to attend the interview.
- I. Following the personal interview with the respondent, the JPPD officer will utilize the signed release of information form to obtain additional information about the respondent's school history and information from any treatment providers or agencies who are or have been involved in treating the respondent.
- J. The JPPD officer will submit a written summary of findings to the program supervisor and special programs director. The JPPD officer will recommend whether or not the respondent may participate in the JPPD Program. The recommendation will be based on the information obtained during the pre-screening and application processes and on the JPPD officer's assessment of the respondent's:
1. Amenability to rehabilitation;
  2. Honesty and forthrightness during the application process;
  3. Risk to the community.
- K. If the respondent is **not allowed to participate** in the JPPD Program:
1. The JPPD officer will notify the defense attorney and the case will be referred back to the Children's Court attorney and the JPPO.
  2. The JPPD officer will also notify the victim and law enforcement agent that the respondent will not participate in the JPPD Program.
  3. The Children's Court attorney will continue the prosecution process.
  4. The decision to reject the respondent for participation in the JPPD Program is final and not subject to appeal.
- L. If the respondent is **accepted to participate** in the JPPD Program:
1. The JPPD officer will notify the defense attorney, respondent, and parents/guardians and provide the terms and conditions contract for them to review and sign. The contract establishes the date that participation in the JPPD Program will start and sets forth

all program requirements.

2. The JPPD officer will also notify the JPPO, victim, and law enforcement agent that the respondent will participate in the JPPD Program.

3. The Children's Court attorney will file the Motion for Waiver of Time Limits and Suspension of Proceedings and the Order Suspending Proceedings and Granting Time Waiver and provide the defense attorney with an endorsed copy of the Order.

#### V. **SUCCESSFUL COMPLETION**

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

B. Upon the respondent's successful completion of the JPPD Program:

1. The Children's Court attorney will file a Nolle Prosequi in District Court, Children's Court Division and will furnish an endorsed copy of the Nolle Prosequi to the defense attorney.

2. The JPPD officer will forward a letter and copy of the Nolle Prosequi to the respondent and parents/guardians notifying them that the respondent has successfully completed the JPPD Program and that no further action will be taken by the District Attorney's Office in regard to the delinquent act.

3. The JPPD officer will notify the JPPO, law enforcement agent and the victim of the respondent's successful completion of the JPPD Program.

#### VI. **UNSUCCESSFUL TERMINATION**

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

B. If the respondent has been accepted into the program and it is later determined that the respondent has a record of prior adjudications, this will constitute sufficient grounds for the respondent's unsuccessful termination from the program.

C. If terminated from the JPPD Program, the JPPD officer will notify the respondent and parents/  
guardians in writing of the specific reason(s) for the termination. Notice will also be provided to the defense attorney.

D. The JPPD officer will notify the JPPO, law enforcement agent, and the victim of the unsuccessful termination.

E. The Children's Court attorney will file a Notice of Termination and Reinstatement of the Criminal Proceedings in District Court, Children's Court Division and will provide the respondent's attorney with an endorsed copy of the Notice.

F. The prosecution process shall continue.

