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**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.

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. 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.

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

E. 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.

F. 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.

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G. 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, partial payment may be accepted and the defendant must pay the balance in monthly payments over a specified period of time. Any exceptions to this rule must be approved by the District Attorney and the victim of the crime.

## II. **REFERRAL PROCEDURE**

A. The criminal charges against the defendant must be filed in District Court as the result of a Criminal Information or Grand Jury Indictment.

B. Court settings continue as scheduled within the time constraints set by statute. Referral of a defendant to the PPD Program does not interrupt or toll this process.

C. 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.

D. If the defense attorney evaluates the defendant as being a potential candidate for the PPD Program, the defense attorney must contact the PPD Program supervisor and submit the defendant's name for **pre-screening within sixty (60) days from the date of the defendant's arraignment or waiver of arraignment in the District Court.** A referral form is attached to these guidelines.

E. If restitution is due in the case, the defense attorney should present the defendant's plan for voluntary payment of restitution.

## III. **PRE-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;
7. Prosecutor's comments.

B. **The pre-screening process will usually take three (3) weeks.** The PPD officer will notify the defense attorney regarding the outcome of the pre-screening by means of a letter stating that:

1. The defendant **may not apply** to the PPD Program or;
2. The defendant **may apply** to the PPD Program. Included with this letter is a PPD Program application packet.

**IV. DEFENDANT MAY NOT APPLY TO THE PPD PROGRAM**

- A. The decision by the District Attorney’s Pre-Prosecution Diversion Program to reject the defendant for application to the PPD Program is final and is not subject to appeal.
- B. The prosecution process shall continue in the District Court.

**V. DEFENDANT MAY APPLY TO THE PPD PROGRAM**

- A. The defendant and his or her attorney will receive a letter and an application packet confirming the defendant may apply to the program.
- B. **The application paperwork must be completed and returned to the PPD Program office within seven (7) working days from the date that the defense attorney receives it.**
- C. The application 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.
    - 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 essential 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. The attorney for the defendant must sign the statement acknowledging that the defendant has been advised of and understands the purpose and consequences of giving the statement.

j. Failure to provide an acceptable statement may result in the defendant's application to the PPD Program being rejected.

D. Once the PPD officer receives the completed application packet from the defense attorney, the PPD officer will schedule a personal interview with the defendant. **In most cases, the interview will take place within 10 days from the receipt of the completed application.**

E. Following the personal interview with the defendant, the PPD officer will submit a written case summary and recommendation to the Special Programs Director and the District Attorney. Consideration will be given to all of the information obtained during the pre-screening process (refer to guideline III, A) and to the PPD officer's assessment of the defendant's:

1. Amenability to rehabilitation;
2. Honesty and forthrightness during the application process and;
3. Risk to the community.

F. The District Attorney will make the final decision regarding the defendant's rejection for participation or acceptance to participate in the PPD Program.

## VI. **REJECTION**

A. The decision by the District Attorney to reject the defendant for participation in the PPD 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. 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 18 months (the term will be no less than 12 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 (\$15.00 - \$85.00);
5. Complete 80 hours of community service work;
6. Submit to and pay for counseling or other treatment programs as deemed necessary;
7. Attend a prison tour;
8. Remain completely law-abiding;
9. Submit to and pay for urinalyses;
10. Maintain employment and/or attend school;
11. Refrain from excessive consumption of alcohol;
12. Not possess any firearms or other deadly weapons, and;
13. 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.