



14th Judicial District Attorney's Office – Adult Diversion Guidelines

Purpose:

Provide alternative interventions to certain adults whose primary driver for intersecting the criminal justice system is a permanent or temporary mental health disorder or substance abuse disorder¹. These interventions are intended to identify and address criminogenic risks present in the individual's life. Through a case manager, the individual will have access to services, interventions and opportunities based on a customized assessment of need.² The goals are to avoid costly and ineffectual interactions with the formal court-based criminal justice system, avoid the unintended collateral consequences of formal criminal prosecution that can increase criminogenic risk, and to reduce recidivism for participants in an effective and sustainable way.

Limitations

These guidelines and this adult diversion program do not create any right or entitlement to program access or participation. The program is supported by extremely limited funding which requires limiting the number of participants so as not to dilute the efficacy of the resources available.

Statutory Requirements:

Pursuant to the mandates of C.R.S. 18-1.3-101, this adult diversion program is subject to the following limitations:

- An individual accused of any of the following offenses is not eligible in that matter to participate in this program: Sexual Assault 18-3-402; SAOC 18-3-405; Any sex offense against an at-risk adult or at-risk juvenile as defined 18-6.5-102(2),(4); Any sexual offense committed with the use of a deadly weapon; Enticement 18-3-305; Sexual exploitation 18-

¹ This includes but is not limited to co-occurring substance abuse/mental health disorders.

² It is expected the individual will have a diverse array of needs, from substantive disorder interventions to logistical matters such as housing, transportation, computer access/skills, etc.

6-403; Procurement of a child 18-6-404; SAOC-POT 18-3-405.3; Child prostitution offenses in part 4, article 7, title 18.

- An individual accused of an offense wherein the underlying factual basis involves domestic violence as defined in 18-6-800.3, or of a sexual offense as defined in 18-1.3-1003(5), is not eligible for consideration for this program unless the following conditions are met: 1) Formal charges have been filed, and; 2) the individual has had an opportunity to confer with counsel, and; 3) the individual has undergone a domestic violence or sex-offense-specific evaluation by a provider/evaluator approved by the Colorado DVOMB/SOMB
- All diversion agreements shall contain a written waiver of speedy trial rights.
- If the diversion occurs after arrest or charging, the following applies: 1) No later than upon successful completion of the program, the criminal charges shall be dismissed with prejudice and in no circumstance will the matter be considered a conviction for any purpose; 2) Sealing of records is available pursuant to CRS 18-1.3-101(10)(c); 3) Revocations for violations of the program are within the sole discretion of the District Attorney's Office subject to the due process provided in C.R.S. 18-1.3-101(10)(d).
- The maximum duration of a diversion agreement and suspension of formal prosecution is two (2) years from the date of the agreement, but a one (1) year extension may be authorized by the District Attorney's Office when the failure to pay restitution due to a demonstrable inability to pay is the sole unfulfilled condition, and the individual has the future ability to pay restitution.
- Participation requires there be sufficient admissible evidence of a crime committed by the individual to support a conviction.

Programmatic Restrictions & Criteria:

The following are not eligible for the program:

- Stand-alone traffic offenses, including DUI, are not eligible
- DF1 offenses are not eligible
- Drug distribution/transfer offenses that result in death are not eligible
- Felony DUI is not eligible
- Individuals on parole are not eligible

The following requirements apply to the program:

- Acceptance into the program is within the sole discretion of the District Attorney's Office and may occur prior to or after any formal arrest or charging.
- Participants must be at least 18 years of age and must have committed an adult criminal offense
- The District Attorney's Office must conclude a participant has a demonstrable mental health disorder and/or substance abuse disorder that presents as the primary driver for their involvement in the criminal justice system.

- The duration of diversion will presumptively be one (1) year with the possibility of adjustments to duration within the confines of C.R.S. 18-1.3-101.
- Participants must demonstrate a sincere willingness to participate actively in the program.
- Participants must provide their case manager with all information necessary to identify and provide effective services, including providing access to medical/mental health, financial, employment, educational and housing records, as requested by the case manager.
- Participants must provide demographic information to the case manager in order for the program to comply with mandates from the Colorado Adult Diversion Funding Committee, which provided the grant funding for the program.
- Participants must fulfill all requirements of the diversion contract.
- Restitution payments during the program, if any, will be established between the case manager and participant in every case and defined in the diversion contract.
- All participants will be screened using the SPIn assessment tool to identify risk levels and domains that need to be addressed to mitigate against or eliminate criminogenic factors.
- A fee not to exceed \$120.00 may be required, subject to an assessment of ability to pay.
- A statement of facts will be included with all diversion contracts

The following preferences and priorities apply to the program:

- High risk/high need participants
- Participants in clear need of rehabilitation/reintegration services to maintain functionality and avoid criminal conduct
- Participants lacking the ability to independently access necessary services
- Participants facing more serious collateral consequences arising from a formal prosecution
- Participants demonstrating a proactive willingness to pursue rehabilitation/reintegration
- Participants taking full responsibility for their choices and conduct

Procedures

A referral for consideration for the program may be made by a prosecutor, law enforcement officer, the applicant or counsel for the applicant, or a judicial officer, to the District Attorney's Office or Adult Diversion Program Manager.

The District Attorney's Office and Adult Diversion Program Manager will evaluate all requests to apply for the program, and notify the requesting or referring party whether a request to apply for consideration is approved.

If a request to apply is approved, the applicant must submit a written application packet at the direction of the Adult Diversion Program Manager.

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Applicants must provide the Adult Diversion Program Manager with all information necessary to identify criminogenic risk factors and necessary services, including access to medical/mental health, financial, employment, educational and housing records, as requested by the case manager.

Applications will be reviewed by the Adult Diversion Program Manager and the elected District Attorney.

Notification of acceptance or non-acceptance into the program will be provided in writing to the applicant or his/her counsel.

Upon acceptance into the program, the Adult Diversion Program Manager will draft a diversion contract which will then be signed by the participant, counsel for the participant if any, and the Adult Diversion Program Manager.

Upon successful completion of the program, the applicant will be notified in writing by the Adult Diversion Program Manager and elected District Attorney that the program was successfully completed, and that any underlying criminal charge or allegation is considered closed and/or dismissed with prejudice.

Upon breach of any term of the diversion contract by the participant, the participant will be notified by the Adult Diversion Program Manager and elected District Attorney that their participation in the program is terminated and will advise the participant whether any formal prosecution will be initiated.