

OFFICE OF THE DISTRICT ATTORNEY
BLUE RIDGE JUDICIAL CIRCUIT

SUSAN K. TREADAWAY
District Attorney

Cherokee County Justice Center
90 North Street, Suite 390
Canton, Georgia 30114
Phone 770-479-1488
Fax 770-479-3105



BLUE RIDGE JUDICIAL CIRCUIT PRETRIAL DIVERSION PROGRAM (PDP)
GUIDELINES FOR ELIGIBILITY, ACCEPTANCE, AND ADMINISTRATION
PROTOCOL

I. PURPOSE

The Blue Ridge Judicial Circuit Pretrial Diversion Program, hereinafter referred to as “PDP,” was created pursuant to O.C.G.A. §15-18-80 as an alternative to prosecuting offenders in the traditional manner through the criminal justice system. This program is designed to serve low-level, low-risk offenders with no previous felony convictions who are charged with non-violent crimes in the Superior Court of Cherokee County and are charged with an offense for which the law does not provide a mandatory minimum sentence of incarceration or imprisonment that cannot be suspended, probated or deferred.

A defendant deemed ineligible for the PDP may be eligible to be screened for other specialty courts to include Drug Court, Veterans Treatment Court, or Treatment Accountability Court.

II. ELIGIBILITY

Eligibility Guidelines

Acceptance into the PDP is at the discretion of the District Attorney or her designee. The District Attorney may consider any aggravating or mitigating circumstances of the charged offense in considering eligibility. In order to be eligible for the PDP, a candidate must meet the following **general eligibility criteria** (assuming the criminal charge qualifies for diversion):

- Charged with a nonviolent offense;
- Has no previous felony convictions and has not previously been sentenced under the First Offender Act or O.C.G.A. §16-13-2 (Conditional Discharge) for a felony offense;
- Has no more than three prior misdemeanor convictions;
- Is not charged with a violation of public trust;
- Has no continuing pattern of criminal behavior;
- Is able to make full restitution to the victim at time of entry into program;
- Is able to comply with random drug and alcohol screenings at Cherokee Probation Services and/or comply with recommended counseling;
- Is willing to acknowledge his/her wrongdoing;
- Shows a good-faith willingness to participate in the program.

Exclusion Criteria

As a general rule, the following offenses are **ineligible** for consideration in the PDP:

- An offender presently on felony probation or parole;
- Any offense that requires a mandatory minimum sentence of incarceration that cannot be stayed, probated, or paroled;
- An offender who resides outside the State of Georgia.

III. PROGRAM TRACKS

Based on the initial charges, as well as the substance abuse history or any other information or evidence provided that indicates the Participant has a substance abuse problem, Participants will be placed in either Track I (Substance Abuse Track) or Track II (Non-Substance Abuse track).

Track I (Substance Abuse Track)

- 1) Participants in Track I shall complete a minimum length of six (6) months and a maximum length of twelve (12) months;
- 2) Length of the program is at the sole discretion of the District Attorney or her designee based on the crime committed, opinion of law enforcement and victim(s), as well as any aggravating or mitigating circumstances surrounding the case;
- 3) Length of the program shall be established at the time of acceptance into the PDP and shall be designated in the Participant Agreement signed by the ADA, the Participant and Participant's attorney, if the Participant has an attorney;
- 4) Length of the program shall not be shortened or lengthened beyond the designated period in the Participant Agreement without the written consent of the District Attorney or Chief Assistant District Attorney;
- 5) Participants in Track I are required to log into the Cherokee Probation Services Drug Testing Randomizer, found at www.cherokeega-probation.org, every day, Sunday through Saturday, after 8:00 pm and report as directed. Participants shall begin to log into the website the day of the Participant's intake appointment.

Track II (Non-Substance Abuse Track)

- 1) Participants in Track II shall complete a minimum length of three (3) months and a maximum length of nine (9) months unless circumstances require a longer period;
- 2) Length of the program is at the sole discretion of the District Attorney or her designee based on the crime committed, opinion of law enforcement and victim(s), as well as any aggravating or mitigating circumstances surrounding the case;
- 3) Length of the program shall be established at the time of acceptance into the PDP and shall be designated in the Participant Agreement signed by the ADA, the Participant and Participant's attorney.

- 4) Length of the program shall not be shortened beyond the designated period in the Participant Agreement without the written consent of the District Attorney or Chief Assistant District Attorney.
- 5) Participants in Track II are required to log into the Cherokee Probation Services Drug Testing Randomizer, found at www.cherokeega-probation.org, every day, Sunday through Saturday, after 8:00 pm and report as directed. Participants shall begin to log into the website the day of the Participant's intake appointment.

IV. STINSON PLEA

Under the terms of the program, a Participant must enter a plea of guilty to the charge(s) prior to entering into the program and waive his/her right to withdraw that plea of guilty.

A Participant must have an attorney to enter pre-trial diversion. Participants can either retain their own attorney or contact Indigent Defense at 678-493-6190 regarding the application process and eligibility for a court-appointed attorney.

PDC will schedule the plea by rule nisi for a criminal non-jury day prior to the date of the PDP intake appointment. The Participant must agree to successfully abide by and fulfill certain special conditions which are set forth in the written Participant Agreement. These special conditions include not having any new arrests during the pendency of the probation-supervised Program and completing any counseling or treatment, community service work, and payment of restitution, and any other conditions to which the participant has agreed.

At the time the Participant pleads guilty, further adjudication by the Court on the plea will be withheld. If the Participant fully meets all the terms and conditions of the PDP, the ADA will, on the record, move to withdraw the plea of guilty and dismiss the eligible charges and have the record restricted. However, should the Participant be arrested for a criminal offense during the term of the program or fail to fully complete the PDP terms and conditions, the Participant will come back into court and be sentenced by the Court on the plea of guilty.

Exception to the Stinson Plea: A charge of DUI cannot be dismissed by the completion of a diversion program. At the discretion of the District Attorney, based upon the charges involved and any aggravating evidence, certain other offenses may not be eligible for dismissal.

Record restriction of criminal history record information for charges that are dismissed due to a successful completion of the pretrial diversion program is controlled by O.C.G.A. § 35-3-37(h)(2)(A). Participants and their attorneys should consult this code section to determine whether or not the record of their arrest can be restricted. In cases where a Participant is required to be sentenced on a charge, DUI for example, the record of the eligible PDP offenses may not be able to be restricted under O.C.G.A. § 35-3-37(h)(2)(A).

V. PROGRAM FEES

All fees paid to the PDP are non-refundable and the total amount of all monies to be paid shall be determined prior to the Stinson plea and shall be included in the PDP Participant Agreement.

All monies paid shall be in the form of cashier's check, money order or attorney escrow check (absolutely no cash) unless otherwise directed and shall be submitted to the designated authority as further defined below.

Participants shall pay **prior to their intake appointment** an **administrative program fee** of **\$405** made payable to the Cherokee County Clerk of Court.

Participants with a court appointed attorney shall pay **prior to their intake appointment** an appointed attorney fee of **\$400** made payable to the Cherokee County Clerk of Court.

Participants shall pay the administrative fee, and any court appointed attorney fee, as directed in their Participant Agreement. Participants shall obtain a receipt for the administrative fee, and any appointed attorney fee, and shall take the receipt as proof of payment to their intake appointment.

In addition to the administrative program fee, Participants will pay fees directly to **Cherokee Probation Services** (herein after referred to as "CPS") for **drug and alcohol testing**.

Participants in Track I shall pay at the intake appointment a drug and alcohol testing fee in the amount of **\$361 for programs up to 9 months and \$480 for a 12-month program**. Said payment shall be in the form of a money order made payable to the Cherokee Probation Services. This fee will cover drug and alcohol testing required by the PDP. Said fee shall not be waived in part or in whole nor made payable in monthly increments.

Participants in Track II shall pay at the intake appointment a drug and alcohol testing fee of **\$25** in the form of a money order made payable to the Cherokee Probation Services. Participants shall pay \$25 in the form of a money order for each subsequently requested drug and alcohol test directly to the CPS prior to submitting to said testing. Participants in Track II will be required to submit to a minimum of three and maximum of nine tests during the duration of the program.

Participants are **expected to test negative** for any drugs or alcohol at intake and during the program. If a Participant tests positive for drugs or alcohol at this initial testing, a determination will be made by the District Attorney or PDC/ADA as to whether or not the Participant will be permitted to join the program. The Participant and the attorney, if any, will be notified of any positive screens.

In addition to the fees outline above, Participants owing restitution are required to pay any and all **restitution** owed **in full prior to the intake appointment**. Restitution shall be payable to the Cherokee County Clerk of Court by money order, cashier's check, or other means accepted by the Cherokee County Clerk of Court.

The amount of restitution will be determined by the District Attorney or her designee prior to the Participant entering the PDP and shall be clearly established in the Participant Agreement.

Written proof of payment of restitution shall be submitted to the CPS at the intake appointment.

VI. ACCEPTANCE

Acceptance into the PDP shall be at the sole discretion of the District Attorney or her designees. Defendants are screened for the program when their warrants are forwarded to the District Attorney's Office.

A defendant, or the attorney for a defendant, can also request to be screened by submitting the Pretrial Diversion Packet (located on the website of the Blue Ridge Judicial Circuit Office of District Attorney in the "Pretrial Diversion" tab) via email at pretrialdiversion@cherokeega.com **within 90 days of the arrest** to determine eligibility and acceptance. **While an unrepresented defendant can apply to the program, the defendant must have an attorney at the time of the plea.**

If the defendant is eligible for PDP, a Notice of Eligibility letter and program documents shall be sent to the defense attorney, or to an unrepresented defendant, inviting them to apply. When a defendant is accepted into the program, all associated documents will be sent to the defense attorney.

Defendants have 45 days to accept or decline the program. After that time has lapsed, the case will be returned to the trial team for prosecution.

Once a defendant accepts the program, the defense attorney will be served with a rule nisi date to enter a Stinson plea, or other conditioned plea, and sign the Waiver of Right to Withdraw a Guilty Plea. The defendant will also be sent an email with the date and time for the intake appointment. **The defendant shall submit their probation forms online as directed in the intake email.** Defendants in Track I shall bring their substance abuse evaluation, to the intake appointment, or provide in advance if so instructed.

The defendant shall attend the intake appointment at the date and time indicated in the intake email. **One is not considered to be an official participant of the program until they attend and complete the intake appointment.** The term of the PDP program begins upon successful completion of the intake appointment.

The Participant shall bring to the intake appointment receipts showing proof of payment of administrative fee, appointed attorney fee (if applicable), and restitution (if applicable).

If a defendant is not eligible for PDP, the case will be returned to the trial team for prosecution, or if appropriate, the case may be referred to an accountability court, such as Drug Court, Veterans Court or Treatment Court.

VII. SUCCESSFUL COMPLETION

Upon verification of the Participant's successful completion of all the terms and conditions of the PDP, a Petition and Order to Withdraw Guilty Plea and Motion for Entry of Nolle Prosequi as to the eligible charges will be presented to the judge for signature and filing.

Participants who successfully complete the PDP are eligible for record restriction pursuant to O.C.G.A. §35-3-37. Record restriction approval shall be reflected on the Petition to Withdraw Guilty Plea and Motion for Entry of Nolle Prosequi shall be submitted to the Clerk of Court after the order has been signed by the judge.

Participants who are required to be sentenced on charges not eligible for record restriction under the PDP will receive notice by rule nisi of the sentencing date for those charges.

VIII. NONCOMPLIANCE AND TERMINATION

At the sole discretion of the District Attorney or her designee, noncompliance with the terms and conditions of the PDP shall result in termination from the PDP and the case will then be submitted for sentencing in the traditional criminal justice system. Circumstances that may lead to termination include, but are not limited to:

- Accrual of any new charges while participating in the PDP;
- Positive drug or alcohol screens;
- Failure to pay fees and restitution as directed;
- Failure to complete counseling and/or treatment as directed;
- Failure to perform and provide proof of community service as directed; and
- Failure to comply with any of the agreed upon conditions in the Participant Agreement.

If the Participant is in non-compliance, the District Attorney or PDC may allow the Participant a period of time to come into compliance, may extend the length of the program, or may elect to terminate the Participant from the PDP immediately.

The Participant will receive a notice of deficits or noncompliance prior to termination from the program, or depending upon the violation, may receive a termination notice. If the Participant is terminated from the PDP, the Participant's case will be set for sentencing.

No fees or restitution paid into the PDP will be returned to the Participant in the event the Participant does not successfully complete the PDP.