



# OFFICE OF THE CHEROKEE COUNTY SOLICITOR- GENERAL

## DIVERSION PROGRAMS FOR MINOR IN POSSESSION, V.G.C.S.A. OFFENSES, AND THEFT-RELATED OFFENSES

Effective Date: May 1, 2022

### General Procedures and Requirements:

#### I. Program Eligibility:

- Defendants charged for the first time with Minor in Possession of Alcohol (MIP), V.G.C.S.A. offenses (such as Possession of Less Than One Ounce of Marijuana and Possession of Drug Related Objects), and theft-related offenses are eligible for (but are not guaranteed) diversion.
- The following factors will DISQUALIFY a defendant from admission into the diversion program:
  - A prior felony or misdemeanor *conviction* (with the exception of non-serious traffic offenses as determined by the Solicitor-General), including a plea under the First Offender Act and those in which the defendant either entered a *nolo contendere* plea or utilized the applicable conditional discharge statute;
  - A prior *arrest* for MIP, a V.G.C.S.A. offense, or a theft-related offense;
  - Any prior diversion of any charge in any jurisdiction of this State or another State;
  - Any arrest for, or charge of, another crime (with the exception of non-serious traffic offenses as determined by the Solicitor-General) after admission into the diversion program;

- Defendants charged with a divertible offense in conjunction with a serious traffic offense or an act of family violence are not eligible for diversion.
- Refusal to submit to an alco-sensor test, a State administered chemical test of any sort, or to permit the execution of a search warrant for blood after being arrested for DUI.
- Driving while MIP, whether or not a DUI charge resulted (i.e., the defendant drove and either an alco-sensor or a State administered chemical test showed the presence of alcohol; or the defendant drove and refused to submit to such a test or tests).
- Driving while smoking or using marijuana while under the age of 21, whether or not a DUI charge resulted (i.e., if the defendant drove and either admitted to using marijuana or a test showed the presence of THC or a metabolite of THC; or the defendant drove and refused to submit to such a test).
- **ADDITIONAL CONSIDERATIONS:**
  - If, upon completion of the program or at any time during the defendant's participation in the program, a criminal history check reveals that the defendant has been arrested during the pendency of or prior to the entry into the diversion program, eligibility for the program will terminate immediately.
  - If the defendant successfully completes the diversion program, the dismissing document (*nolle prosequi* order) will indicate that his/her record will be restricted insofar as allowed by law.

## **II. General Requirements:**

- In order to ensure equal treatment for all defendants, there will be no deviations from the procedures and requirements contained herein.
- A defendant seeking diversion must either (a) be represented by an attorney (retained or appointed); or (b) assisted by a Cherokee County Attorney of the Day (AOD).
  - Defendants seeking to enter the diversion program with the assistance of an AOD must first execute a waiver of counsel

and then complete the required diversion paperwork with the help of the AOD.

- No AOD shall be responsible for the provision of any legal services to any defendant after they are accepted into the diversion program, and program compliance is the **SOLE RESPONSIBILITY OF THE *PRO SE* DEFENDANT**.
- Diversion Petitions and related forms may be picked up at the Solicitor-General's reception desk, or from Assistant Solicitors-General.
- Defendants must waive their right to a jury trial on the record *before* entering the program.
- Defendants must waive their 4th Amendment rights on the record *before* entering the program.
- A non-refundable program fee is required for entry into diversion, and must be paid on the date the defendant enters into the program. Payment is to be made by cash, credit card, money order or a check from an attorney's escrow account made payable to "Cherokee County Clerk of Courts." The memo portion of all escrow account checks must contain both the case number and the notation "PTD fee."
  - For defendants age 21 and over upon entry into the program, the diversion fee is \$350.00.
  - For defendants under the age of 21 upon entry into the program, the diversion fee is \$200.00.
- For truly indigent defendants, the program fee is waived upon completion of 40 additional hours of community service and payment of the \$50.00 fee required by the Office of Indigent Defense (unless waived in writing by that office). The Office of Indigent Defense will determine a defendant's indigency and will appoint an attorney in appropriate cases. An attorney appointment sheet must be attached to the diversion petitions of indigent defendants at the time the petition is filed. Proof of payment of the \$50.00 Indigent Defense fee in accordance with the requirements of the Office of Indigent Defense must be attached to the petition.
  - NOTE: *Pro se* defendants who elect to enter the program with the assistance of an AOD rather than seek an appointed attorney WILL NOT be considered indigent.

- **Defendants are deemed to have entered the program on the date that they appear with their attorney (where applicable) to waive their jury trial and 4<sup>th</sup> Amendment rights and to file the original, signed petition with the Clerk of Court *on the record*.**
- **After entering diversion, the Defendant will meet with Cherokee Probation Services (CPS) for an intake appointment no later than the Friday of the week following entry into the program. CPS will monitor the Defendant's progress on a monthly basis for the duration of the program.**
  - **Whenever required by CPS, the Defendant or his / her attorney must provide proof that the Defendant is successfully completing the requirements outlined in their specific diversion petition.**
  - **If at any time a Defendant or his/her attorney cannot provide proof of compliance as requested, or if the proof provided shows that the defendant has failed to make sufficient progress towards completion, CPS shall report the failure to comply to the assigned Assistant Solicitor-General as soon as possible. Defendants reported in this manner are subject to immediate termination from the program in the sole discretion of the assigned Assistant Solicitor-General.**
  - **Should new arrests, failed drug screens, or any other failure to fully and completely comply with the terms of the diversion agreement come to light or be discovered at any time by CPS, the same shall be reported to the assigned Assistant Solicitor-General as soon as possible. Defendants reported in this manner are subject to immediate termination from the program in the sole discretion of the assigned Assistant Solicitor-General.**
  - **Failure to appear for any meeting requested by CPS will result in the defendant's immediate termination from the program.**
  - **Upon a defendant's successful completion of the program, CPS will place their case on a calendar at which time their case will be submitted for dismissal by the assigned Assistant Solicitor-General. Unless specifically notified by the assigned Solicitor-General, there is no need for the defendant or his/her attorney to appear on that date.**

### **III. Procedures for Program Entry:**

- **Defendants seeking admission into the diversion program must appear in Court on the day they enter into the program.**
- **Defendants charged with Minor in Possession of Alcohol or a V.G.C.S.A. offense wishing to enter the diversion program must test clean on the day they enter into the program—NO EXCEPTIONS.**
- **Attorneys or an AOD must have the defendant review, initial, and sign the diversion petition.**
  - **For indigent defendants, the appointed attorney shall attach a copy of his/her appointment sheet and proof of payment of the Indigent Defense fee to the Diversion Petition.**
  - **For defendants under the age of 21, an essay written by the defendant about what they expect to do with the “second chance” provided to them by the diversion program must accompany the diversion petition. The essay must be two (2) legible handwritten pages (defined as two sheets of clean, standard rule loose leaf paper) – not typed. The essay needs to be submitted to the Assistant Solicitor-General with the petition at the time program admission is requested.**
- **AFTER the defendant has reviewed, initialed, and signed the diversion petition, the attorney or AOD should:**
  - **Deliver the initialed and signed petition (with the attached appointment sheet and essay where applicable) to the Assistant Solicitor-General assigned to the defendant’s case.**
  - **Have the assigned Assistant Solicitor-General review, approve, and sign the petition.**
  - **Appear before the assigned judge and enter the waivers of jury trial and the defendant’s 4<sup>th</sup> Amendment rights *on the record*. At the same time, the approved and signed original diversion petition must be filed with the Clerk of State Court *on the record*.**
  - **Upon a defendant’s successful completion of the program, CPS will place their case on a calendar, at which time their case will be submitted for dismissal by the assigned Assistant Solicitor-General. Unless specifically notified by the assigned Solicitor-General, there is no need for the defendant or his/her attorney to appear on that date.**
  - **After the waivers are entered and the original petition is filed with the Clerk in the Courtroom, the defendant or his/her attorney shall immediately go to the Cherokee Probation office**

located in the Frank Mills Justice Center, sign up with Cherokee Probation, set the intake appointment, pay the required fee, and return to the Courtroom with the receipt. A copy of the receipt will be put into the State's file and the Clerk's file.

- If alcohol and/or drug testing is required as part of the defendant's diversion program, he/she will sign up for testing when he/she meets with Cherokee Probation. The registration packet for testing through the Cherokee County Drug Lab is also available online at <https://www.cherokeega.com/Drug-Lab/resources/documents/Donor%20Testing%20Registration%20Packet.pdf>. (Please note that testing does occur on Saturdays, Sundays, and holidays, as the Cherokee County Drug Lab is open on the weekend and holidays). Failure to enroll for testing as required *will result in immediate termination* from the program.
- It is the responsibility of the defendant's attorney to advise the defendant of the diversion completion deadline. In cases where a *pro se* defendant entered the program with the assistance of an AOD, the defendant is *personally responsible* for understanding the completion date and the importance of personally appearing in court at that time.



# OFFICE OF THE CHEROKEE COUNTY SOLICITOR-GENERAL

## DIVERSION PROGRAM FOR MINOR IN POSSESSION OF ALCOHOL

Effective Date: May 1, 2022

### Offense-Specific Requirements:

- I. MINOR IN POSSESSION OF ALCOHOL: The defendant must complete the following requirements WITHIN 150 DAYS OF ENTERING THE PROGRAM. There will be no exceptions.**
- Provide a copy of a valid photo identification document to the assigned Assistant Solicitor-General.
  - State under oath on the record this is his/her 1st offense, AND that he/she has never entered any other diversion program in this or any other state.
  - Commit NO violations of the criminal laws of any governmental unit or any conditions of a bond in the current case in effect upon entry into the program.
    - The defendant must report any and all arrests or citations to their attorney, or if they entered the program with the assistance of a Cherokee County AOD, to Cherokee Probation within 48 hours.
  - Stay away from and have no contact with any Co-Defendant(s), and testify truthfully at any trial or hearing of any Co-Defendant(s).
  - Complete a drug and alcohol evaluation within 30 days of entry into the program, and any and all recommended treatment.
    - Evaluations must be conducted by a state-certified practitioner. These approved practitioners include: LPCs, LCSWs, LMFTs, Clinical PhDs in psychology, and MDs of psychiatry.
    - Evaluations should be completed early enough in the 150 day program period to allow sufficient time to complete all recommended treatment.

- Recommended treatment must begin within 10 days of the completion of the evaluation.
- Do NOT drink any alcohol or possess or use any illegal drugs.
- Submit to random breath or urine screens for the presence of alcohol or illegal drugs as directed by the Cherokee County Drug Lab, no less than twice per month.
  - Program participants must sign up for testing through the Cherokee County Drug Lab and follow all rules and regulations for such testing.
    - Program participants will sign up for testing when they meet with Cherokee Probation Services, or as otherwise directed by the Assistant Solicitor-General assigned to the case. Failure to enroll for testing as required will result in immediate termination from the program.
    - A registration packet to sign up for testing through the Cherokee County Drug Lab is available online at <https://www.cherokeega.com/Drug-Lab/resources/documents/Donor%20Testing%20Registration%20Packet.pdf>
    - Testing will be at the defendant's expense and presently costs \$35 per test.
    - Defendants may pay using a credit/debit card, or must have a money order for \$35 each time (s)he appears at the lab for testing to cover the cost of the test.
  - A release form must be signed, and all results will be sent directly to Cherokee Probation.
  - If requested by defense counsel or a *pro se* defendant, and for good cause, the assigned Assistant Solicitor-General MAY BUT IS NOT REQUIRED TO allow the defendant to complete certain drug/alcohol screens at a certified, established drug facility other than the Cherokee County Drug Lab. Such deviations will be considered on a test-by-test basis, and permission to utilize an alternative facility on one occasion DOES NOT extend to ANY subsequent tests. Permission to test elsewhere may be granted based on the emergence of extenuating circumstances, and is solely at the discretion of the Assistant Solicitor-General assigned to the case.
  - Diluted screens present significant problems for defendants in



the diversion program. Second and subsequent diluted screens WILL be deemed positive screens and may, in the sole discretion of the assigned Assistant Solicitor-General, result in termination from the program.

- Missed screens also present significant problems for defendants in the diversion program. The Solicitor-General will not terminate a defendant for a single missed screen. HOWEVER, a second missed screen WILL result in termination from the program, regardless of the reason, and without exception.
- **Perform Community Service:**
  - Provide proof of community service on the letterhead of an approved 501(c)(3) charity signed by a representative of the charity, with a contact name and number for verification. Cherokee Probation will provide a list of approved community service locations. Should a defendant wish to complete community service at a non-approved location, (s)he and/or his/her attorney must get written approval of the alternative location from the assigned Assistant Solicitor-General *prior to* beginning community service at such a location.
  - For MIP cases where the defendant provides a breath sample below a .08, is in physical possession of alcohol without proof of consumption, or is not offered the opportunity to give a breath sample, the defendant will be required to complete forty (40) hours of community service.
  - For MIP cases where the defendant provides a breath sample between .08 and .15, the defendant will be required to complete eighty (80) hours of community service.
  - For MIP cases where the defendant provides a breath sample above .15, the defendant will be required to complete one hundred and twenty hours (120) hours community service.
- Within 90 days of entry into the program, attend one (1) session of the Cherokee County DUI Court and pay the \$125.00 fee.
- Complete both the Civics Academy Minor in Possession Awareness Program (can be completed online) within 90 days, and one or more of the following, as specified by the assigned Assistant Solicitor-General (programs CANNOT be completed online unless specifically noted):
  - MADD victim impact panel;
  - Risk Reduction Program;

- **The STOP class (CAN be completed online);**
- **Defensive Driving Program;**
- **Alive@25;**
- **Traffic Violators Impact Program (TVIP).**

**Restitution, if any, will be determined by the assigned Assistant Solicitor-General and must be paid IN FULL before the end of the 150 day diversion period. If a defendant fails to make restitution within that timeframe, they are subject to termination from the program even if all other requirements have been satisfied. Restitution payments will be paid through the Cherokee County Clerk of Court.**

- **In cases where the defendant was not fingerprinted at the time he/she was arrested or cited AND if deemed appropriate by the assigned Assistant Solicitor-General, be fingerprinted for GCIC purposes within 10 days of entry into the program.**



# OFFICE OF THE CHEROKEE COUNTY SOLICITOR-GENERAL

## DIVERSION PROGRAMS FOR V.G.C.S.A. OFFENSES

Effective Date: May 1, 2022

### Offense-Specific Requirements:

#### II. V.G.C.S.A. Offenses:

- Provide a copy of a valid photo identification document to the assigned Assistant Solicitor-General.
- State under oath on the record this is his/her 1st offense, AND that he/she has never entered any other diversion program in this or any other state.
- Commit NO violations of the criminal laws of any governmental unit or any conditions of a bond in the current case in effect upon entry into the program.
  - The defendant must report any and all arrests or citations to their attorney, or if they entered the program with the assistance of a Cherokee County AOD, to Cherokee Probation within 48 hours.
- Stay away from and have no contact with any Co-Defendant(s), and testify truthfully at any trial or hearing of any Co-Defendant(s).
- Complete a drug and alcohol evaluation within 30 days of entry into the program, and any and all recommended treatment.
  - Evaluations must be conducted by a state-certified practitioner. These approved practitioners include: LPCs, LCSWs, LMFTs, Clinical PhDs in psychology, and MDs of psychiatry.
  - Evaluations should be completed early enough in the 150 day program period to allow sufficient time to complete all recommended treatment.

- Recommended treatment must begin with 10 days of the completion of the evaluation.
- Do NOT drink any alcohol or possess or use any illegal drugs.
- Submit to random breath or urine screens for the presence of alcohol or illegal drugs as directed by the Cherokee County Drug Lab, no less than twice per month.
  - Program participants must sign up for testing through the Cherokee County Drug Lab and follow all rules and regulations for such testing.
    - Program participants will sign up for testing when they meet with Cherokee Probation Services, or as otherwise directed by the Assistant Solicitor-General assigned to the case. Failure to enroll for testing as required will result in immediate termination from the program.
    - A registration packet to sign up for testing through the Cherokee County Drug Lab is available online at <https://www.cherokeega.com/Drug-Lab/resources/documents/Donor%20Testing%20Registration%20Packet.pdf>
    - Testing will be at the defendant's expense and presently costs \$35 per test.
    - Defendants may pay using a credit/debit card, or must have a money order for \$35 each time (s)he appears at the lab for testing to cover the cost of the test.
  - A release form must be signed, and all results will be sent directly to Cherokee Probation.
  - If requested by defense counsel or a *pro se* defendant, and for good cause, the assigned Assistant Solicitor-General MAY BUT IS NOT REQUIRED TO allow the defendant to complete certain drug/alcohol screens at a certified, established drug facility other than the Cherokee County Drug Lab. Such deviations will be considered on a test-by-test basis, and permission to utilize an alternative facility on one occasion DOES NOT extend to ANY subsequent tests. Permission to test elsewhere may be granted based on the emergence of extenuating circumstances, and is solely at the discretion of the Assistant Solicitor-General assigned to the case.

- Diluted screens present significant problems for defendants in the diversion program. Second and subsequent diluted screens WILL be deemed positive screens and may, in the sole discretion of the assigned Assistant Solicitor-General, result in termination from the program.
- Missed screens also present significant problems for defendants in the diversion program. The Solicitor-General will not terminate a defendant for a single missed screen. HOWEVER, a second missed screen WILL result in termination from the program, regardless of the reason, and without exception.
- Perform Community Service:
  - Provide proof of community service on the letterhead of an approved 501(c)(3) charity signed by a representative of the charity, with a contact name and number for verification. Cherokee Probation will provide a list of approved community service locations. Should a defendant wish to complete community service at a non-approved location, (s)he and/or his/her attorney must get written approval of the alternative location from the assigned Assistant Solicitor-General *prior to* beginning community service at such a location.
  - The defendant will be required to complete forty (40) hours of community service.
- Within 90 days of entry into the program, attend one (1) session of the Cherokee County Misdemeanor Drug Court and pay the \$125.00 fee.
- Complete both the Civics Academy Drug & Alcohol Awareness Program (can be completed online) within 90 days, and one or more of the following, as specified by the assigned Assistant Solicitor-General (programs CANNOT be completed online unless specifically noted):
  - MADD victim impact panel;
  - Risk Reduction Program;
  - The STOP class (CAN be completed online);
  - Defensive Driving Program;
  - Alive@25;

- **Traffic Violators Impact Program (TVIP).**
- **Restitution, if any, will be determined by the assigned Assistant Solicitor-General and must be paid IN FULL before the end of the 150 day diversion period. If a defendant fails to make restitution within that timeframe, they are subject to termination from the program even if all other requirements have been satisfied. Restitution payments will be paid through the Cherokee County Clerk of Court.**
  - **In cases where the defendant was not fingerprinted at the time he/she was arrested or cited, be fingerprinted for GCIC purposes within 10 days of entry into the program.**



# OFFICE OF THE CHEROKEE COUNTY SOLICITOR-GENERAL

## DIVERSION PROGRAMS FOR THEFT-RELATED OFFENSES

Effective Date: May 1, 2022

### Offense-Specific Requirements:

#### III. THEFT-RELATED OFFENSES

- Provide a copy of a valid photo identification document to the assigned Assistant Solicitor-General.
- State under oath on the record this is his/her 1st offense, AND that he/she has never entered any other diversion program in this or any other state.
- Commit NO violations of the criminal laws of any governmental unit or any conditions of a bond in the current case in effect upon entry into the program.
  - The defendant must report any and all arrests or citations to their attorney, or if they entered the program with the assistance of a Cherokee County AOD, to Cherokee Probation within 48 hours.
- Stay away from and have no contact with any co-defendant(s), and testify truthfully at any trial or hearing of any co-defendant(s).
- Complete the Civics Academy Theft Awareness Program within 90 days of entry into the program.
- Perform Community Service:
  - Provide proof of community service on the letterhead of an approved 501(c)(3) charity signed by a representative of the charity, with a contact name and number for verification. Cherokee Probation will provide a list of approved community service locations. Should a defendant wish to complete community service at a non-

approved location, (s)he and/or his/her attorney must get written approval of the alternative location from the assigned Assistant Solicitor-General *prior to* beginning community service at such a location.

- The defendant will be required to complete forty (40) hours of community service.
- **DO NOT** return to the store or retail establishment that was the victim of the theft while enrolled in the program. This includes other locations of the same store, if applicable (i.e., avoid ALL Target stores, not just the specific store where the incident occurred).
- If determined to be appropriate by the assigned Assistant Solicitor-General:
  - Complete a drug and alcohol evaluation within 30 days of entry into the program, and any and all recommended treatment.
    - Evaluations must be conducted by a state-certified practitioner. These approved practitioners include: LPCs, LCSWs, LMFTs, Clinical PhDs in psychology, and MDs of psychiatry.
    - Evaluations should be completed early enough in the 150 day program period to allow sufficient time to complete all recommended treatment.
    - Recommended treatment must begin with 10 days of the completion of the evaluation.
  - Do NOT drink any alcohol or possess or use any illegal drugs.
  - Submit to random breath or urine screens for the presence of alcohol or illegal drugs as directed by the Cherokee County Drug Lab, no less than twice per month.



- Program participants must sign up for testing through the Cherokee County Drug Lab and follow all rules and regulations for such testing.
  - Program participants will sign up for testing when they meet with Cherokee Probation Services, or as otherwise directed by the Assistant Solicitor-General assigned to the case. Failure to enroll for testing as required will result in immediate termination from the program.
  - A registration packet to sign up for testing through the Cherokee County Drug Lab is available online at <https://www.cherokeega.com/Drug-Lab/resources/documents/Donor%20Testing%20Registration%20Packet.pdf>
  - Testing will be at the defendant's expense and presently costs \$35 per test.
  - Defendants may pay using a credit/debit card, or must have a money order for \$35 each time (s)he appears at the lab for testing to cover the cost of the test.
- A release form must be signed, and all results will be sent directly to Cherokee Probation.
  - If requested by defense counsel or a *pro se* defendant, and for good cause, the assigned Assistant Solicitor-General MAY BUT IS NOT REQUIRED TO allow the defendant to complete certain drug/alcohol screens at a certified, established drug facility other than the Cherokee County Drug Lab. Such deviations will be considered on a test-by-test basis, and permission to utilize an alternative facility on one occasion DOES NOT extend to ANY subsequent tests. Permission to test elsewhere may be granted based on the emergence of extenuating circumstances, and is solely at the discretion of the Assistant Solicitor-General assigned to the case.
  - Diluted screens present significant problems for defendants in the diversion program. Second and subsequent diluted screens WILL be deemed positive screens and may, in the sole discretion of the assigned Assistant Solicitor-General, result in termination from the program.

- Missed screens also present significant problems for defendants in the diversion program. The Solicitor-General will not terminate a defendant for a single missed screen. **HOWEVER**, a second missed screen **WILL** result in termination from the program, regardless of the reason, and without exception.
- **If determined to be appropriate by the assigned Assistant Solicitor-General, complete one or more of the following within 90 days of entry into the program:**
  - **The Civics Academy:**
    - **Responsibility Awareness Program;**
    - **Life Skills Awareness Program;**
    - **Cyber Awareness Program.**
- **Restitution, if any, will be determined by the assigned Assistant Solicitor-General and must be paid IN FULL before the end of the 150 day diversion period. If a defendant fails to make restitution within that timeframe, they are subject to termination from the program even if all other requirements have been satisfied. Restitution payments will be paid through the Cherokee County Clerk of Court.**
  - **In cases where the defendant was not fingerprinted at the time he/she was arrested or cited, be fingerprinted for GCIC purposes within 10 days of entry into the program.**