

PRETRIAL DIVERSION PROGRAM

**District Attorney's Office
Cobb Judicial Circuit**

NOTICE

Applications for acceptance into Pretrial Diversion must be made pursuant to the instructions below, and should be directed to the Diversion Coordinator.

An administrative fee of **\$425.00** will be assessed and must be paid by certified check, money order, or attorney's escrow check made payable to the Cobb County Clerk of Superior. Any applicable payment for restitution or appointed attorney's fees must be made by the same methods, payable to the Cobb County Clerk of Superior Court.

Participants not charged with drug-related offenses will be required to submit to a minimum of five random drug screens during the program (more random screens will be required for Participants charged with drug-related offenses). The cost of each screen is \$25 or \$35 depending on the type of screen required. Participants will be required to present a picture ID at the time of screening.

All drug screening for this program will take place at the Cobb County Drug Treatment Court lab. No other accommodations will be made. Participants must be willing and able to appear at this lab in the courthouse complex whenever instructed to do so, subject to the requirements described above. Participants must reside within the state of Georgia throughout the program.

All payments due for program fees, attorney's fees, or restitution must be paid at the program orientation. *No installment payments will be accepted under any circumstances.* Defendants who appear without such payment will not be allowed to attend orientation or begin participation in the program until all payments due are made in full.

A charge of DUI will not be dismissed due to completion of this program. Other charges in the same Indictment or Accusation will not be dismissed until the DUI charge has been resolved by agreement. If there is no agreement as to the resolution of the DUI (i.e. a negotiated plea, reduction, or dismissal) then all charges will be referred to the assigned court for further prosecution. In no event will the State agree to litigate the DUI charge while dismissing the remaining charges.

The documents included in this packet may be amended or supplemented at any time at the discretion of the District Attorney's Office, therefore a new packet must be obtained for each defendant. **Copies should not be kept for future use.**

PRETRIAL DIVERSION PROGRAM

District Attorney's Office
Cobb Judicial Circuit

APPLICATION INSTRUCTIONS

- 1) Complete and sign all documents included in this packet. If the case has been indicted or accused, *you must include the Indictment/Accusation number on each applicable document.* If the case has not been indicted or accused, *you must include the warrant number.* Do not include any other identifying numbers, such as the police complaint number.
- 2) File the "PETITION FOR PRETRIAL DIVERSION" form (2 pages only) with the Clerk of Superior Court, if the case has been indicted or accused, and include a stamped filed copy with the packet. If there is no indictment or accusation, the original petition should be submitted with the packet.
- 3) **Do not file the remaining original documents with the court clerk, but deliver those original documents to the Diversion Coordinator. Do not include any payment now.**
- 4) Defense counsel will be notified of the date and time of the defendant's scheduled program orientation and of the amount of restitution and appointed attorney's fees due, if any. It is the responsibility of the attorney to ensure that the defendant appears at the scheduled time.
- 5) The administrative fee of \$425.00 must be paid at the orientation. This may only be paid by money order, cashier's check, or attorney's escrow check made payable to **Clerk of Superior Court.**
- 6) Any applicable restitution or attorney's fees must be paid at orientation by the methods above, made payable to **Clerk of Superior Court.**
- 7) Once completed, please keep a copy of these materials for the defendant's records. Copies will not be provided at orientation.

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APPLICANT CERTIFICATION

(Please check each below. Do not file this application unless each of these can be checked truthfully.)

- I understand that the “**Pretrial Diversion Program Participant Handbook**” can be found online at www.cobbdca.com under the heading “Accountability Courts/Pretrial Diversion”, and that I should consult the Handbook if I have any questions about this program.
- I am prepared to pay the \$425.00 administrative fee on the date of my program orientation.
- I am able to pay the required drug screening fee of either \$25 or \$35 at the time of each drug screening.
- I have discussed with my attorney whether restitution to the victim and/or appointed attorney's fees will be required in my particular case and will be prepared to pay such fees on the date of my program orientation.
- I have a valid, current, state-issued identification card.
- I have a permanent address within the state of Georgia and will be able and willing to report to the Cobb County Drug Treatment Court laboratory for drug screening when instructed to do so.
- I have discussed with my doctor any prescription medications I take, and I understand that I cannot take any medication which may cause a positive drug screen.

By signing below, I certify that each of the above statements is true and correct. I understand that should any of these statements be found to be incorrect or inapplicable my application to enter this program will be denied.

Defendant

Date

IN THE SUPERIOR COURT OF COBB COUNTY

STATE OF GEORGIA

THE STATE OF GEORGIA

*

CASE NO. _____

v.

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*

PETITION FOR PRETRIAL DIVERSION

Comes now, _____, Defendant charged in the above styled case and shows the Court the following:

1.

The defendant is charged with the offense(s) of _____
_____.

2.

Defendant further shows he/she is _____ years of age and has never plead guilty to nor been adjudicated guilty of a felony.

3.

The defendant has been advised of the Cobb Judicial Circuit District Attorney's Pretrial Diversion Program and is able and willing to meet all criteria necessary to enter said program. The defendant has further been advised that upon satisfactorily completing the program an order of Nolle Prosequi will be entered or the charges otherwise dismissed, except a charge of DUI.

4.

The defendant understands that if he/she is not accepted into the program, or should he/she fail to complete its requirements, this case will be returned to the traditional criminal justice system for prosecution.

5.

The defendant has been advised of his/her constitutional rights by the undersigned attorney and understands that he/she is required to waive certain of these rights to enter the program.

6.

It is agreed that the defendant, if accepted into this program, will pay any appointed attorney's fees assessed on the defendant's behalf by the Circuit Defender's Office*.

Attorney for Defendant
Georgia Bar No. _____

Attorney's name and address (please print):

Telephone No. (____) _____
Fax No. (____) _____

Email _____

Retained _____
*Appointed _____ (restitution for fees shall be \$ _____)

PRETRIAL DIVERSION PROGRAM
District Attorney's Office
Cobb Judicial Circuit

THE STATE OF GEORGIA

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CASE NO.

V.

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DIVERSION AGREEMENT

I, _____, understand that the validity of this agreement is conditioned upon my eligibility for the Pretrial Diversion Program. If at any time after the execution of this agreement it is discovered that I am ineligible to participate in the program, I may be immediately terminated from the program. In consideration of the agreement by the State to allow participation in this program in lieu of traditional prosecution of my charged offense(s), I hereby agree to the following (*please initial each*):

1. _____ I will complete each aspect of the Pretrial Diversion Program which I understand involves a minimum time commitment of six months and may be as long as nine months. I understand that should I successfully complete the program an order of Nolle Prosequi will be entered or the charges against me will be otherwise dismissed except as noted elsewhere in this agreement.

2. _____ I understand that if I am charged with DUI such a charge will not be dismissed due to my completion of this program, and no charges will be dismissed until that charge is resolved by my plea of guilty or the State's agreement to dismiss or reduce that charge. I understand that I will not be afforded the opportunity to contest the charge of DUI in court following the dismissal of my felony charge(s), and that if the DUI charge is not resolved by agreement then all charges will be returned to the traditional court system for further prosecution.

3. _____ I understand that I may withdraw from the program at any time, and should I withdraw my case will be returned to its assigned Court for traditional prosecution.

4. _____ I understand I will be informed of the special conditions applicable to my case at the time of the program orientation, and that failure to abide by and complete those conditions within the allotted time will result in my termination from the program. I understand that if I do not agree to abide by any such condition, I may decline to participate in the program and my case will be returned for traditional prosecution.

5. _____ I understand that based upon an assessment of my individual case and application materials I may be required to complete counseling or education. I will report to and cooperate fully with any counselor or agency to which I am referred and will pay all applicable fees.

6. _____ I will pay any applicable fees and any restitution required for the offense including appointed attorney's fees at the time of program orientation. I understand that such payments, including administrative and drug screening fees are non-refundable.
7. _____ I will avoid persons and places of disreputable or harmful character, and I understand that knowingly associating with persons who violate the law may be grounds for termination from this program.
8. _____ I will not ingest any illegal substance, alcohol, or any prescription medication which may cause a positive drug screen result during my participation in this program.
9. _____ I will submit to drug testing screens at my own expense at random intervals during the program, and will abide by each condition of the Drug Screen Policy executed along with this agreement. I understand that any positive drug or alcohol screen at any time during my participation in the program will result in immediate termination from the program.
10. _____ I will obtain and maintain at all times during program participation, a valid, state-issued, photographic identification card, and present such identification each time I report for drug screening.
11. _____ I will not substitute, alter or try in any way to change my body fluids for purposes of drug testing. I understand that doing so will result in immediate termination from this program.
12. _____ I will not violate the laws of any governmental unit during my participation in this program, and I understand that if I am charged with a new offense alleged to have occurred after my acceptance I may be terminated from this program.
13. _____ I will report to the Diversion Coordinator if I have been arrested or issued a citation for any criminal offense at any time following my arrest for the currently-charged offense. I understand that my failure to report any such arrest or citation will be grounds to deny acceptance into or terminate my participation in the program.
14. _____ I will inform any law enforcement officer with whom I come in contact that I am a participant in the Pretrial Diversion Program.
15. _____ I will not carry a weapon of any type, for any reason, during this program without the prior permission of the Diversion Coordinator.
16. _____ I will keep the Diversion Coordinator advised of my current address, telephone number, e-mail address, and employment or school status at all times, and will immediately report any change in status to said Coordinator.
17. _____ I will maintain gainful employment or school participation and support my legal dependents to the best of my ability while in the program. I will provide written verification of employment to the Diversion Coordinator upon request.
18. _____ I will not leave the State of Georgia at any time or stay overnight at a location other than my current residence during the program without the prior permission of the Diversion Coordinator.

19. _____ I will complete the number of hours of community service work assigned to me during the program orientation at a charitable or non-profit organization approved by the Diversion Coordinator. I will complete such work at the rate, if any, specified by the Diversion Coordinator and provide verification of such work as required within the time allotted for completion of the program. I understand that failure to provide such verification on or before my scheduled date of completion may result in my termination from the program. I understand that faked or forged community service hours will result in new felony charges levelled against me and that I will then be prosecuted to the fullest extent of the law.

20. _____ I understand that termination or withdrawal from this program will result in my case being returned to its assigned court for prosecution. I also understand that if I am terminated or withdraw from the program any fees and/or restitution paid will not be refunded, and I may not have the opportunity to apply for re-admission.

I have read the above contract, or had it read to me, and I acknowledge that I understand all the terms and conditions. I have been given the opportunity to ask any questions which I may have. I hereby voluntarily enter into this agreement with the Pretrial Diversion Program.

Defendant

Date

Attorney for Defendant

Date

(print name) _____

District Attorney's Office representative
(Diversion Coordinator or Assistant District Attorney)

Date

TO BE COMPLETED BY DEFENSE COUNSEL *(please initial each):*

_____ I have explained the above information along with the other application materials to the defendant. I have explained the constitutional rights which the defendant hereby waives by submitting these materials.

_____ I believe that the defendant understands his/her constitutional rights and the consequences of entering this agreement.

PRETRIAL DIVERSION PROGRAM
District Attorney's Office
Cobb Judicial Circuit

PROGRAM PARTICIPANT INFORMATION

Personal Information

Date _____

Name _____ D.O.B. _____

Address _____
Street Apt# City State ZIP

Email address(es) _____

Social Security # _____ - _____ - _____ Telephone: (____) _____ - _____

Alternate telephone(s): (____) _____ - _____ (____) _____ - _____

Emergency Contact: _____
Name Relationship

Telephone: (____) _____ - _____

Employment or School

Employer/School _____

Address _____
Street Apt# City State ZIP

Telephone: (____) _____ - _____ Immediate Supervisor _____

PRETRIAL DIVERSION PROGRAM
District Attorney's Office
Cobb Judicial Circuit

THE STATE OF GEORGIA

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CASE NO.

V.

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RELEASE AND WAIVER

I, _____, hereby authorize the release of such confidential information as may be necessary for the District Attorney's Office to determine eligibility for the Pretrial Diversion Program. I agree to hold harmless, and relieve and release from any liability with regard to such information, the Diversion Coordinator and/or any other authorized representative of the District Attorney's Office.

I understand that the Pretrial Diversion Program is operated under the supervision of a sworn Assistant District Attorney, and that my acceptance into and participation in this program may require interaction with such person and other representatives of the District Attorney's Office without the presence of my attorney. I hereby expressly waive my right to have my attorney present during such interaction for the limited purpose of completing a program orientation, periodic status reports, and such other interaction as may be necessary to facilitate my participation in this program.

I also understand that any statements given by me as part of the Pretrial Diversion assessment process will not be used against me in later court proceedings should I voluntarily withdraw from the program.

This the _____ day of _____, 20____.

Defendant

Attorney for Defendant

PRETRIAL DIVERSION PROGRAM
District Attorney's Office
Cobb Judicial Circuit

THE STATE OF GEORGIA

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CASE NO.

V.

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WAIVER OF RIGHTS

I, _____, understand that I am guaranteed by the United States and Georgia Constitutions the following rights:

1. A speedy trial;
2. A trial by jury;
3. The right to confront the witnesses against me;
4. The right not to incriminate myself or give any information which could be used against me,
5. The right to call witnesses and present evidence on my own behalf, and to use the power and process of the court to compel the attendance of such witnesses and evidence,
6. The right to have an attorney represent me at all stages of the criminal process,

and that as a condition of acceptance into, and participation in, the Pretrial Diversion Program, I hereby expressly waive (that is, give up) those rights.

I also understand that if I am not accepted in the program, or voluntarily withdraw from it, my waiver of the rights listed above will also be withdrawn. I also understand that any statements given by me as part of the Pretrial Diversion assessment process will not be used against me in later court proceedings should I voluntarily withdraw from the program.

This the _____ day of _____, 20____.

Defendant

Attorney for Defendant

PRETRIAL DIVERSION PROGRAM
District Attorney's Office
Cobb Judicial Circuit

THE STATE OF GEORGIA

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CASE NO.

V.

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WAIVER OF FOURTH AMENDMENT RIGHTS

I, _____, having requested to participate in the Pretrial Diversion Program, and in consideration of the agreement by the State to allow such participation in lieu of traditional prosecution of my charged offense(s), hereby state the following:

I understand that I have rights that protect me from unreasonable search and seizure.

I understand that these rights are guaranteed by the Fourth Amendment to the United States Constitution, as well as the Constitution of the State of Georgia.

I also understand that I can voluntarily give up these rights as part of an agreement to provide an alternative to traditional prosecution or incarceration.

As a condition of my participation in the Pretrial Diversion Program, I agree to the search of my person, property (including the contents of any electronic devices), place of residence, vehicle or personal effects at any time with or without a warrant, and with or without reasonable cause, when required by any law enforcement officer at any time during my participation in this program. I hereby give permission for such individuals to remove, forcibly if necessary, any locks or other hindrances which may prevent access to such places and property for the purpose of any such search. I consent to the use of any evidence seized during such a search in any prosecution that may arise from said search.

This the _____ day of _____, 20____.

Defendant

Attorney for Defendant

PRETRIAL DIVERSION PROGRAM
District Attorney's Office
Cobb Judicial Circuit

THE STATE OF GEORGIA

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CASE NO.

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CONSENT FOR DISCLOSURE OF CONFIDENTIAL INFORMATION

I, _____, having requested to participate in the Pretrial Diversion Program, hereby consent to communication, within or outside my presence, regarding my medical, psychological, or substance abuse history among any of the following individuals: any evaluator or counselor, physician, psychiatrist, or psychologist who participates in any counseling or treatment required as a condition of this program, any representative of the District Attorney's Office designated by the District Attorney, and my attorney. I further consent to the release of the results of any drug testing required as a condition of this program to the individuals described above, and that such results may be made part of the public record of my case if such testing results in my termination from the program.

I understand and agree that the purpose and need for this disclosure is to assist the District Attorney's Office in evaluating and determining my eligibility to participate in the Pretrial Diversion Program as well as my counseling needs, compliance and progress in accordance with program criteria. I hereby agree to hold such individuals harmless and relieve and release such individuals from all liability regarding any such communication.

Recipients of this information may not re-disclose it except in connection with my counseling or treatment, or otherwise as permitted by federal law and rules. I understand that this consent will remain in effect and cannot be revoked by me until there has been a formal and effective termination of my involvement with the Pretrial Diversion Program, and/or a formal discontinuation of court proceedings regarding my case.

Defendant

Date

STATE OF GEORGIA V. _____, DEFENDANT

CASE/WARRANT NO. _____

SPECIAL CONDITIONS OF PRETRIAL DIVERSION

Based upon a review of the individual circumstances of this case, in addition to the requirements of the *Pretrial Diversion Agreement* executed separately, the defendant shall comply with the following (marked) special conditions:

- Report as directed by the Diversion Coordinator as follows: Beginning on **1st** day of _____, 20____, and continuing on the **1st** of each month through the completion of the program for a total of (six) (nine) months. Reports may be made by e-mail, fax, or hand delivery, unless Defendant is instructed by the Diversion Coordinator to report in person, as follows:

Cobb Judicial Circuit District Attorney's Office Fax (770) 528-3035
70 Haynes St. Marietta, Georgia 30090 E-mail:
pretrialdiversion@cobbcounty.org

- Pay restitution in the amount of \$_____. Such payment shall not be refundable.
- Complete _____ hours of community service work at a charitable or non-profit organization approved by Pretrial Diversion. Verification of your hours must be received within (six) (nine) months of today's date.
- Complete a Theft and Shoplifting Offenders Program approved by Pretrial Diversion.
- Participate in counseling indicated below as directed by the Diversion Coordinator until released from treatment by the assigned counselor(s) or the Diversion Coordinator and pay any required fees in a timely manner:
 - Anger management counseling.
 - Family Violence (Batterers) Intervention Program.
 - Drug/alcohol counseling.

- Other: _____