

PRETRIAL DIVERSION PROGRAM
District Attorney's Office
Cobb Judicial Circuit

GUIDELINES

The Pretrial Diversion Program was created pursuant to O.C.G.A. § 15-18-80 as an alternative to the prosecution of certain offenders in the criminal justice system. The program is designed for first offenders who have committed crimes that did not result in injury to a victim and are otherwise non-violent and non-aggressive in nature, or for certain other offenders who have committed crimes involving domestic violence.

Everyone accepted to participate in the Pretrial Diversion Program will be required to enter into a contractual agreement, and will be subject to an individualized program of supervision, which may include counseling, education, drug screening, and community service work, for a specified period of time in lieu of traditional prosecution.

The decision to request to participate in the Pretrial Diversion Program must be made freely and voluntarily and should be made with the advice of counsel. Participation will occur prior to adjudication (that is, before the defendant pleads or is found guilty), and successful completion of the program will result in dismissal or Nolle Prosequi of the charges. The program is designed to benefit the individual participant as well as the overall criminal justice system for Cobb County.

Acceptance into the Diversion Program will generally be based upon consideration of the following:

- 1) The nature of the crime,
- 2) The prior arrest record of the offender,
- 3) The victim's response to the defendant's petition for diversion.

A charge of Driving Under the Influence (O.C.G.A. §40-6-391) will not be dismissed, nor a Nolle Prosequi entered, due to completion of the Pretrial Diversion Program. However, other charges associated with such an arrest may be eligible for such dismissal or Nolle Prosequi. Drug related charges, and charges related to domestic violence, may require increases in the overall length of the program as well as the frequency and intensity of drug testing and/or counseling.

In general, participants must meet the following eligibility criteria; deviation from these criteria may be considered when appropriate by the Diversion Coordinator, with the consent of the District Attorney, after consideration of the factors above.

- 1) The participant must be at least 17 years of age and voluntarily petition the District Attorney requesting consideration for participation in the Pretrial Diversion Program.
- 2) The participant must reside within the state of Georgia during the program, and must be able and willing to travel to the Cobb County Drug Treatment Court laboratory for drug testing whenever instructed to do so. To accomplish such testing, the participant must maintain a valid, current, state-issued form of identification.
- 3) The participant, as part of the application process, must waive certain constitutional and statutory rights.
- 4) The participant must agree to pay all applicable monetary obligations, which may include an administrative fee, restitution to victims, reimbursement for appointed attorney's fees, and/or drug screening fees. Such payments must be made in full prior to beginning this program.
- 5) The participant must agree to be supervised for a reasonable period of time (typically either six or nine months), which will be determined following an evaluation of the individual circumstances of his or her case.
- 6) The participant must agree to perform a specified amount of community service, and/or to complete at his/her expense counseling or education programs required by the Diversion Coordinator. The necessity of counseling will be determined following an evaluation of the individual circumstances of the offender and his or her case.
- 7) The circumstances surrounding the defendant's arrest and subsequent conduct must reasonably lead to the conclusion that the defendant is amenable to correction and unlikely to offend again.

The following persons will generally not qualify for participation in the Pretrial Diversion Program:

- 1) Persons with extensive juvenile criminal records.
- 2) Persons who have previously been arrested or convicted, as an adult, of any criminal offense, unless unusual circumstances indicate that an exception should be made.
- 3) Persons who have escaped custody or willfully failed to appear in court while on bond.
- 4) Persons who are currently dependent upon drugs and/or alcohol or have used illegal drugs after arrest.
- 5) Currently affiliated gang members.

To be considered for acceptance in the Pretrial Diversion Program, the offender's attorney will be required to file application materials with the Diversion Coordinator of the District Attorney's Office. The Coordinator will assess the eligibility of the individual offender based upon the criteria outlined above. If the offender is rejected the case will be returned to the assigned Judge and Assistant District Attorney for prosecution. If the offender is accepted, a contractual agreement outlining the conditions of participation will be prepared and executed.

At the time of orientation into the program, the offender will be required to pay an administration fee which will not exceed \$1000.00, pursuant to O.C.G.A. § 15-18-80. If restitution is owed to a victim or to the Cobb County Circuit Defender's Office for the services of an appointed attorney, such funds must also be paid at the time of orientation.

Upon execution of the contractual agreement, the offender will be enrolled in the Pretrial Diversion Program for a specified period of time, and for the duration of the program the offender will be under the supervision and monitoring of the Diversion Coordinator of the District Attorney's Office. Upon successful completion, bond will be released, the charges dismissed or a Nolle Prosequi entered (except as to a charge of DUI), and pursuant to O.C.G.A. § 35-3-37 the criminal history record regarding the charges will be restricted.

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