

OFFICE OF THE SOLICITOR-GENERAL OF COBB COUNTY

Diversion Programs for:

- Minor in Possession/Possession of False ID
- VGCSA
- Theft-Related Offenses

Procedures and Requirements:

Effective date: July 2, 2018

- In an effort to ensure all defendants are treated equally, there will be no deviations from the requirements listed below.
- A defendant seeking diversion must be represented by an attorney. Petition forms may be picked up at the receptionists' desk or from the courtroom.
- The attorney must have Defendant review, initial, and sign petition prior to the following:
 1. Deliver initialed and signed petition to the assistant solicitor assigned to Defendant's case.
 2. After petition is reviewed and signed by the assistant solicitor, it is the responsibility of the attorney to file the approved and signed original diversion petition with the Clerk of State Court.
 3. After petition and fee is filed with the clerk, the attorney shall deliver a file-marked copy of petition to the Solicitor's office. A nonrefundable diversion fee of \$350.00 is required. Payment is to be made by Visa, MasterCard, Discover Card, debit card, money order, or check from the attorney's escrow account, made payable to "State Court of Cobb County." A receipt and a filed copy of the Petition must be given to the Diversion Coordinator of the Solicitor-General's Office within 48 hours of filing with the clerk's office.
 4. ****If the Defendant is truly indigent, the \$350.00 fee is waived if he/she completes 30 additional hours of community service and**

pays the \$50.00 Circuit Defender fee. Payment is to be made by Visa, MasterCard, Discover Card, debit card, money order, or check from the attorney's escrow account, made payable to "State Court of Cobb County." The Circuit Defender's Office will determine true indigency.

5. If the accused is under the age of 21, they will need to write an essay about why they should be admitted to the diversion program. The essay must be two (2) handwritten pages – not typed. The essay needs to be submitted to the Assistant Solicitor with the petition at the time program consent is requested.
 6. It is the responsibility of Defendant's attorney, and NOT the assistant solicitor, to advise the court of admission into the diversion program and reset the defendant's court date according to the rules of the courtroom where the petition originates.
 7. It is the responsibility of Defendant's attorney to advise Defendant of the diversion completion deadline and all court dates.
- **The defendant must complete the following requirements WITHIN 12 WEEKS OF ENTERING THE PROGRAM. There will be no exceptions. *Program begins once the prosecutor signs the petition.***

1. Community Service

- Proof of community service must be provided on letterhead of the 501(c)(3) charity and signed by a representative of the charity, with a contact name and number for verification.
- For VGCSA and Theft-Related Offenses, the defendant will be required to provide forty (40) hours of community service.
- For Possession of False Identification cases as charged under Title 3, sixty (60) hours of community service.
- For MIP cases where the defendant is not in possession of false identification, and 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 defendant possesses false identification and also 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 Sixty (60) 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, with or without possession of false identification.
- For MIP cases where the defendant provides a breath sample above .15 or refuses to provide a breath sample, the defendant will be required to complete one hundred and twenty hours (120) hours community service, with or without possession of false identification.

2. For MIP/Possession of False ID only, the defendant must admit, in writing, from whom and where he or she obtained the alcohol/fake ID.

3. Three (3) clean screens for both alcohol and drugs within 12 weeks after entering the program. ALL drug screens must be done through the Cobb Superior Court Drug Lab (MIP, false ID, and VGCSA only).* The screens are to be done 20-30 days apart. The first drug screen must be completed within 10 days of filing the petition. A release form (page 10) must be signed; the results will be sent directly to the Solicitor's Office. If the first screen is positive for drugs or alcohol, it will serve as a baseline for future tests. If drug or alcohol levels increase on any future tests, the defendant will be removed from the program. The defendant must still provide three (3) clean screens during the 12 weeks and according to the schedule above in order to complete the program. Diluted screens MAY count as a failed drug screen.

***The Assistant Solicitor may allow the defendant to complete their drug/alcohol screens at a certified, established drug facility outside of Cobb County. This is solely at the discretion of the Assistant Solicitor assigned to the case.**

4. A drug and alcohol evaluation (MIP/Possession of False ID/VGCSA only) and any and all recommended treatment.

- Evaluations must be administered by a state-certified practitioner. These approved practitioners include: LPC, LCSW, LMFT, Clinical PHD in psychology, and MD of psychiatry.

- Evaluations should be completed early enough in the 12-week window to allow enough time to complete treatment within that time period.
5. A court-approved theft seminar (theft-related cases only). Currently, the following programs are the only approved seminars:
- Behavior Management Solutions: A three-hour class offered at Chattahoochee Technical College- North Metro Campus. 404-474-0776
 - Shoplifters Alternative Course: An online shoplifting course offered by www.SACourseOnline.org (*Must type website exactly as shown) Cobb's Court number is: 3198
6. Must complete one of the following (MIP/Possession of False ID or VGCSA only):
- (1) victim impact panel (MADD or similar)
 - (2) S.M.A.R.T. program
 - (3) Teen Drug and Alcohol Impact Program (under 25)

*Programs CANNOT be completed online. No exceptions.

7. The defendant MUST appear in court on the day the case is dismissed.
8. ****Restitution, if any will be determined by the Solicitor-General. All restitution must be paid in full on the final court date. Failure to do so will result in removal from the program.**

Those eligible for diversion:

Defendants charged for the first time with theft-related offenses, minor in possession of alcohol/possession of false ID, and VGCSA – less than one ounce.

Those NOT eligible for diversion:

Defendants with any of the following:

- Any prior diversion for any of these charges or domestic violence, whether arrested or not;
- Arrest for any offense other than traffic offenses make defendant automatically ineligible for the program; or
- If the defendant is charged with another crime while the original case is pending.

****Acceptance into the diversion program is at the sole discretion of the Solicitor-General, not the State Court. If the facts of the case or the criminal history of the defendant do not warrant diversion, Defendant will not be placed in the program. This determination is within the discretion of the assistant solicitor (Division I) or the Supervisor reviewing the petition (Division II).**

Additionally:

If upon completion of the program a criminal history check reveals that the defendant has been arrested prior to entry into, or during pendency of, the diversion program, diversion will terminate and the case returns to a regular trial court calendar.

If diversion is successfully completed and the case dismissed, the charge will be automatically restricted on the defendant's criminal history.

A subsequent offense will be treated as a second (or third, etc.) offense, even if the first one has been restricted.

The original Petition is to be filed with the Clerk. A copy of the petition and proof of payment of the diversion fee must be submitted to the Solicitor-General's Office within 48 hours of filing with the clerk's office.

IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA

STATE OF GEORGIA

vs.

* CASE NUMBER: _____

* WARRANT NO.: _____

* ATTORNEY NAME: _____

RETAINED OR APPOINTED: _____

PETITION FOR DIVERSION

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

1.

Defendant is charged with the offense of _____, which is a non-violent offense against the laws of the State of Georgia.

2.

Defendant further shows that he/she is _____ years of age and has never pled guilty to nor adjudicated guilty of a crime.

3.

Defendant has been advised of the Solicitor-General's Diversion Program, is eligible, and agrees to complete all criteria necessary to enter said program. Defendant understands and agrees that if it is discovered, even after completion of the program and a dismissal entered, that Defendant was not eligible for Diversion, the case will be re-accused and Defendant prosecuted as in any other case. Defendant has further been advised that upon satisfactorily completing the program a *Nolle Prosequi* will be submitted by the State.

4.

Defendant understands and agrees that the Diversion program should be equal in its treatment of all who enter. Diversion is a privilege and not a right. Defendant understands and agrees that there will be **NO DEVIATION** from the requirements listed below. Defendant agrees that should he/she not complete the program in its entirety by the date agreed in this petition, the case will be removed from the Diversion Program and prosecuted as any other case. Defendant understands and agrees that should he/she fail to complete all the requirements of the program listed in this petition, Defendant's case will be returned to the normal criminal court process, even if the case has already been dismissed.

5.

Defendant has been advised of all his/her Constitutional Rights by the undersigned attorney and understands the requirements to waive certain of these rights in order to enter the program, but agrees that should he/she not be accepted into the Diversion program for any reason and the case be returned to the normal criminal court calendar, no information released may be used against the defendant in any trial proceeding.

6.

Defendant understands and agrees that the Solicitor-General of Cobb County, and not the Court, is the final arbiter of whether Defendant is eligible for and has successfully completed the Diversion program, or whether the case should be returned and prosecuted as any other case.

7.

Defendant has read the eligibility requirements and Program requirements as listed below, consulted with their attorney, and agrees that all eligibility requirements have been met, and understands and agrees that all requirements will be performed with **NO DEVIATIONS** from the listed criteria. **Defendant must initial the following:**

_____ A defendant seeking diversion must be represented by an attorney.

_____ The attorney must file the original diversion petition approved by this office with the Clerk of State Court.

_____ A diversion fee of \$350.00 will be required. Payment is to be made by Visa, MasterCard, debit card, money order or check from the attorney's escrow account made payable to "State Court of Cobb County." A receipt and a filed copy of the Petition must be given to the Diversion Coordinator of the Solicitor-General's Office within 48 hours of filing with the clerk's office.

_____ If a defendant is truly indigent, the \$350.00 fee is waived as long as he/she completes 30 additional hours of community service and pays the \$50.00 Circuit Defender fee. The Circuit Defender's Office will determine true indigency. A certificate of indigency and the \$50.00 Circuit Defender fee must be submitted with the petition. If indigency is requested and determined, it is the responsibility of the defendant to provide proof of additional community service hours.

_____ Defendant must complete the following within 12 WEEKS OF ENTERING THE PROGRAM:

Community Service (Please initial next to the correct community service hours)

- Proof of community service must be provided on letterhead of the 501(c)(3) charity and signed by a representative of the charity, with a contact name and number for verification. ____
- For VGCSA and Theft-Related Offenses, the defendant will be required to provide forty (40) hours of community service. ____
- For Possession of False Identification cases as charged under Title 3, sixty (60) hours of community service. ____
- For MIP cases where the defendant is not in possession of false identification, and 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 defendant possesses false identification and also 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 sixty (60) 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, with or without possession of false identification. _____
- For MIP cases where the defendant provides a breath sample above .15 or refuses to provide a breath sample, the defendant will be required to complete one hundred and twenty hours (120) hours community service, with or without possession of false identification. _____

_____ For MIP and Possession of False Identification, Defendant must admit, in writing, from whom and where he or she obtained the alcohol.

_____ Three (3) clean screens for both alcohol and drugs within 12 weeks after entering the program. ALL drug screens must be done through the Cobb Superior Court Drug Lab (MIP, false ID, and VGCSA only). The screens are to be done 20-30 days apart. The first drug screen must be completed within 10 days of filing the petition. A release form (page 10) must be signed; the results will be sent directly to the Solicitor's Office. If the first screen is positive for drugs or alcohol, it will serve as a baseline for future tests. If drug or alcohol levels increase on any future tests, the defendant will be removed from the program. The defendant must still provide three (3) clean screens during the 12 weeks and according to the schedule above in order to complete the program. Diluted screens MAY count as a failed drug screen. The Assistant Solicitor may allow the defendant to complete their drug/alcohol screens at a certified, established drug facility outside of Cobb County. This is solely at the discretion of the Assistant Solicitor assigned to the case.

_____ A drug and alcohol evaluation (MIP/false ID/VGCSA only) and any and all recommended treatment to be completed with the 12-week time period.

_____ An approved shoplifting seminar (shoplifting only).

_____ If restitution is necessary, Defendant must pay \$_____ in restitution, payable to the State Court Clerk by Visa, Mastercard, Discover Card, certified attorney's check or money order, at the time dismissal is requested. **The dismissal cannot be filed without restitution paid.**

_____ One of the following:

- (1) victim impact panel (MADD or similar)
- (2) S.M.A.R.T. program
- (3) Teen Drug and alcohol Impact Program (under 25)
(MIP/VGCSA only)

_____ If a defendant is under the age of 21, they must submit an essay on why they want to be accepted into the program. The essay must be two (2) handwritten pages – not typed. The essay must be submitted with the petition for the Assistant Solicitor's consent.

_____ Defendant **MUST** appear in court on the day the case is dismissed.

_____ Defendant understands and agrees that failure to perform all requirements of the Diversion program outlined in this Petition constitutes a material breach of this agreement and will result in the case being removed from the Diversion Program. Defendant further understands and agrees that if the case is dismissed and it is discovered that Defendant did not complete all requirements of the Program, the case will be re-accused and prosecuted like any other case.

_____ Defendant understands and agrees that if the person who furnished the alcohol to him or her or provided a false ID is tried in Court, the defendant must **testify truthfully** at any hearing or trial to satisfy the terms of this agreement. Additionally, the defendant must **testify truthfully** at the trial of any co-defendants. Failure to do so will result in removal from the Diversion program. This testimony would not be used against Defendant in any other proceeding.

_____ **The Program MUST be completed by** _____.

This the _____ day of _____, 20_____.

Defendant

Signature of Defendant's Attorney

Name, Phone, Email, and Bar Number (PLEASE PRINT):

Consented to:

Assistant Solicitor-General

Date

PRETRIAL DIVERSION PROGRAM

**Solicitor General's Office
Cobb Judicial Circuit**

THE STATE OF GEORGIA

CASE NO.

VS

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 Solicitor-General's Office designated by the Solicitor-General, 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 in the event that 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 Solicitor-General'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 any and 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