



Office of the District Attorney
BLUE RIDGE JUDICIAL CIRCUIT

Pretrial Diversion Program Policy and Procedure Manual

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BLUE RIDGE JUDICIAL CIRCUIT PRETRIAL DIVERSION PROGRAM

Guidelines for Eligibility, Acceptance, and Administration Protocol

I. PURPOSE

The Blue Ridge Judicial Circuit Pretrial Diversion Program was created pursuant to O.C.G.A. §15-18-80 as an alternative to prosecuting offenders 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.

II. ELIGIBILITY

Acceptance into the Pretrial Diversion Program 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 determining eligibility. In order to be eligible for the program, a candidate must meet the following general eligibility criteria.

- 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 not previously participated in a diversion program for a felony offense.
- Has no more than three misdemeanor convictions.
- 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.

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.
- An offender charged with a violation of public trust.
- An offender charged with the crime of possession of a firearm during the commission of a felony.
- An offender charged with the crime of sale or distribution of a controlled substance as defined by O.C.G.A. §16-13-30(b).

III. PROGRAM TRACKS

Based on the initial charges and the facts of the case, participants will be placed in either Track I (Substance Abuse) or Track II (Non-Substance Abuse).

Participants in Track I shall complete a minimum program length of nine months and a maximum program length of twelve months. Participants in Track II shall complete a minimum program length of six months and a maximum program length of twelve months. The program length shall not exceed twelve months unless circumstance requires a longer period.

Length of the program is at the sole discretion of the District Attorney or her designee and is determined based on the crime committed, opinion of law enforcement and victim(s), as well as any aggravating or mitigating circumstances surrounding the case.

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.

IV. PROGRAM REQUIREMENTS

All participants 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 program and completing any counseling or treatment, community service work, payment of restitution, and any other conditions to which the participant has agreed.

V. DRUG TESTING REQUIREMENTS

All participants must test negative for alcohol and controlled substances (including CBD, THC, hemp, and marijuana) at the time of intake. Any positive screen will result in termination. All participants should ensure that they are in compliance with the requirements of the [Urine Abstinence Testing and Incidental Alcohol Exposure Contract](#) and the [Urine Abstinence Testing and Incidental Drugs of Abuse Exposure Contract](#). These documents can be found on the Cherokee Probation Services website under forms.

Participants in Track I and 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 p.m. and report as directed. Participants shall begin to log into the website the day of the Participant's intake appointment. All participants will report to Cherokee Probation Services for all drug screens unless otherwise specified.

All participants must undergo a substance abuse evaluation. Information on how to schedule the evaluation will be provided to the participant at the intake appointment. Participants are required to attend any recommended treatment outlined in the evaluation report. The evaluation and treatment will be at participants' own expense. Participants must begin recommended treatment within 30 days of entering this program and within 10 days of completing the substance abuse evaluation.

VI. PROGRAM FEES

All fees paid to the Pretrial Diversion Program are non-refundable. The total amount to be paid shall be determined prior to the Stinson plea and shall be included in the Participant Agreement.

An administrative fee of \$405, a court-appointed attorney fee of \$400 (if applicable), and all restitution owed (if applicable) must be paid in full prior to the scheduled intake appointment with Cherokee Probation Services. Payment can be made by certified check or money order payable to Cherokee County Clerk of Courts, or pay online by selecting Superior Court Payments at [FivePoint Payments | Welcome To The Cherokee County Payment System](#). No installment payments will be accepted under any circumstance unless approved by the District Attorney. Proof of payment must be taken to the intake appointment.

VII. DRUG TESTING FEES

Participants in Track I must submit to random drug and alcohol screenings throughout the program at a cost of \$361 (for the 9-month program) or \$480 (for the 12-month program), and this fee is payable in full at the time of intake.

Participants in Track II must submit to random drug and alcohol screens, not to exceed 12 screens during the course of the program. Each screen will cost \$25. Track II participants must pay \$25 at the time of intake for the initial screen.

Payment for all drug and alcohol screens is accepted by credit or debit card, or by money order made payable to Cherokee Probation Services.

Depending on the participant's initial drug test results, the participant may be required to wear a sweat patch at his/her own expense for an additional cost of \$50 per patch. The sweat patch may be worn no longer than 10 consecutive days, and a patch must be worn until the participant has two consecutive negative urine drug screens.

VIII. ACCEPTANCE

Acceptance into the Pretrial Diversion Program 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. However, a defendant or his/her attorney may request to be screened by emailing the [Pretrial Diversion Application Packet](#) to PretrialDiversion@cherokeecountyga.gov. Applications must be submitted 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 a defendant is not eligible for the program, 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.

If the defendant is eligible for the program, the defense attorney or defendant, if unrepresented, will be informed of the defendant's acceptance. 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. Cherokee Probation Services will schedule an intake appointment for the participant to begin the program. Prior to the Stinson plea, attorneys and participants must complete all paperwork and bring the original documents to court. No payment is required at the time of the plea.

IX. 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.

The Program Coordinator will schedule the plea by rule nisi for a criminal non-jury day. Cherokee Probation Services will provide the date and time of the participant's intake appointment via email.

At the time the participant pleads guilty, further adjudication by the Court will be withheld. If the participant fully meets all the terms and conditions of the program, 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 program 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 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 Pretrial Diversion Program offenses may not be able to be restricted under O.C.G.A. § 35-3-37(h)(2)(A).

X. INTAKE

The defense attorney will be notified via email by Cherokee Probation Services of the date and time of the intake appointment. The defendant shall submit their probation forms online prior to the intake appointment as directed in the intake email.

The defendant shall attend the intake appointment at the date and time indicated in the intake email. Failure to appear for the intake appointment may result in termination. An individual is not considered an official participant of the program until they attend and complete the intake appointment. The term of the Pretrial Diversion 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).

XI. NONCOMPLIANCE AND TERMINATION

At the sole discretion of the District Attorney or her designee, noncompliance with the terms and conditions of the Pretrial Diversion Program shall result in termination 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 program.
- 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.
- 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 Program Coordinator 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 program immediately.

The defense attorney will receive a notice of noncompliance prior to termination from the program, or depending upon the violation, may receive a termination notice.

No fees or restitution paid into the Pretrial Diversion Program will be returned to the participant in the event the participant does not successfully complete the program.

XII. SUCCESSFUL COMPLETION

Upon successful completion of all the terms and conditions of the Pretrial Diversion Program, 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 Pretrial Diversion Program 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 and 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 Pretrial Diversion Program will receive notice by rule nisi of the sentencing date for those charges.