

## **COMAL COUNTY DIVERSION PROGRAM GUIDELINES**

The following sets forth the policy, procedure, and minimum eligibility requirements for obtaining the District Attorney's approval for the entry of a defendant into the Comal County Diversion Program ("Diversion Program") supervised by the Comal Division of the Caldwell, Comal, and Hays County Community Supervision and Corrections Department ("CSCD"). To be eligible, the defendant must complete the application and agreement, be willing to complete all of the terms of the Diversion Program, and refrain from any further criminal activity.

### **1. MISSION STATEMENT**

The mission of the Diversion Program is preventing crime and increasing public safety by holding an eligible defendant accountable while providing the resources, skills, community-relationship building, and education needed to break the cycle of crime. The program is an alternative to prosecution that offers a defendant a chance to avoid a criminal conviction and other punitive sanctions, including fines, community supervision, and incarceration, in return for their successful completion of the Program.

### **2. WHAT IS DIVERSION?**

The Diversion Program is a voluntary program for a defendant charged with a criminal offense. Pursuant to Government Code Sec. 76.011, defendants who complete the program may avoid prosecution and potential conviction for their charge. The Diversion Program only accepts certain types of criminal offenses and each referral must go through an assessment prior to being accepted into the program. Once accepted into the program, a contract will list the specific requirements and obligations for each defendant.

### **3. DEFENDANT PROFILE**

The Diversion Program accepts referrals from law enforcement and prosecutors from within Comal County. Denial of admission to the Diversion Program will not be based on race, gender, sexual preference, economic status, disability, or inability to pay program fees.

The Diversion Program does not accept referrals for violent crimes, domestic violence, sexual-offender-related crimes, or Driving While Intoxicated (DWI) or related offenses. Exceptions may be approved by the Criminal District Attorney.

### **4. PAST ADULT OFFENSE HISTORY**

The defendant should have no prior adult felony convictions and no prior convictions for violent misdemeanors. Arrest history, as well as the final disposition of charges, will be reviewed and considered. Exceptions may be approved by the Criminal District Attorney.

### **5. PAST JUVENILE OFFENSE HISTORY**

If a defendant is twenty-five (25) years old or less and possesses a juvenile record of criminal offenses indicative of disregard for criminal laws, the defendant may be disqualified for entry into the Diversion Program based on this record. Exceptions may be approved by the Criminal District Attorney.

## **6. OFFENSE**

The criminal offense for which the defendant has been arrested or charged must be a non-violent criminal offense. The Diversion Program does not accept referrals for violent crimes, domestic violence, sexual-offender-related crimes, or Driving While Intoxicated (DWI) or related intoxication offenses. The Criminal District Attorney may preclude the entry into the Diversion Program for any reason, including the underlying circumstances of the offense.

Charges potentially eligible for the Diversion Program include, but are not limited to:

- Drug possession, including obtaining by fraud, forged prescription
- Trespass
- Criminal Mischief
- Tampering with evidence
- Theft

In exceptional circumstances, other offenses may be considered for the Diversion Program after review and approval by the Criminal District Attorney.

## **7. APPLICATION**

Applications for entry into the Diversion Program must be submitted through the Criminal District Attorney's website within 30 calendar days of the date an attorney is hired or appointed or within 30 calendar days of the first appearance, whichever is later. The Diversion Program Application can be found [HERE](#). The Diversion Program Agreement can be found [HERE](#).

Required documents for the application should be gathered before beginning the online application submission, including:

- Sworn Application
- CSCD Forms
- Diversion Program Agreement
- 2 Letters of Recommendation
- Resume
- High School or College Transcript

## **8. SWORN PERSONAL STATEMENT**

Upon applying for entry into the Diversion Program and prior to any further processing of such application, the defendant must voluntarily execute a signed and sworn typed application which includes a personal statement on why the applicant wants to be considered and what the applicant has learned from the offense. This personal statement must include both an educational goal and occupational goal of the applicant. If the defendant is not accepted into the Diversion Program, for any reason, the provided statement will not be used as evidence against the defendant in the State's case in the event of trial on these charges. If the defendant is accepted into the Diversion Program and is subsequently unsatisfactorily terminated from the Program, this statement MAY be used for purposes of impeachment.

## **9. LETTERS OF RECOMMENDATION REQUIRED**

Upon applying for entry into the Diversion Program and prior to any further processing of such application, the defendant must submit two letters of recommendation. The recommender must specify why he/she believes the defendant is a good candidate for the Diversion Program, what

he/she is going to do to help hold the defendant accountable and be successful in the Diversion Program, and how he/she believes participation in the Diversion Program will affect the defendant's life. The application will be rejected if, in the sole discretion of the Criminal District Attorney, the letters of recommendation do not speak to the offense at hand and does not show specific support of the defendant's participation in the Diversion Program.

#### **10. SIGNED AGREEMENT REQUIRED**

If a defendant desires to be considered for entry into the Program, upon applying for entry into the Program and prior to any further processing of such application, the defendant must voluntarily, knowingly, and intelligently sign the Agreement stating that he/she has been fully advised of his/her Constitutional Rights, including, but not limited to, the right to remain silent regarding the facts and circumstances related to the offense for which the defendant has been arrested/charged. This Agreement also states that the defendant has waived the right to a Speedy Trial on the said offense for the period of time required for a final decision regarding the Application. In the event the defendant is accepted into the Diversion Program, the defendant waives his/her right to a Speedy Trial and the Statute of Limitations until the defendant is terminated from the program, whether satisfactorily or unsatisfactorily. The defendant's attorney shall be required to confirm that he/she has also advised the defendant of these same rights.

This document also includes both mandatory items for all defendants, as well as an acknowledgment that CSCD may assess other conditions which are designed to help the defendant overcome issues that led to the criminal offense and to expand their life skills to help them be successful, non-offending adult members of the community. Defendants are responsible for ALL costs associated with any contract items.

- Mandatory Contract Items
- No further criminal violations
- Truthfully answer all questions asked by employees of the Community Supervision and Corrections Department
- Report all contact with police/law enforcement within 24 hours
- No weapons possession
- Remain in the County of Comal and contiguous counties; unless otherwise granted permission by the Community Supervision Officer to travel elsewhere
- Pay all supervision fees to the CSCD
- Maintain steady, full-time employment (part-time with approval)
- Community Service Restitution Work
- Alcohol and Drug Screening, Assessment and Evaluation
- Breathalyzer Call-Ins
- No drug use – monitored scans
- Drug/alcohol treatment as determined
- Mental Health Evaluation and/or Treatment, as determined
- Drive only with Valid Driver License and Insurance
- Potential Offense Specific Contract Items (determined individually)
- No alcohol use
- Random alcohol and/or drug use monitoring, frequency determined by substance abuse screenings, evaluations, and assessments; and substance use history

- Drug or alcohol treatment, from peer support to out-patient to in-patient, depending on the defendant's history; and the results of substance abuse screenings, evaluations, and assessments
- Mental health treatment, from out-patient to in-patient, depending on history and mental health evaluation
- Domestic Violence Treatment, including possible group and individual treatment
- Theft Class
- Anger Management Classes
- Ethics Class
- Moral Reconciliation Therapy
- Victim Empathy Class
- Potential Life Skills Contract Items (determined individually for each defendant):
- Life Skills Class
- Parenting Classes
- Budget Classes
- Texas Workforce Development Counseling
- GED/HS Diploma/Vocational Training
- Meetings with Mentor
- Meetings with Small Group Circles
- Conflict Resolution Class
- Stress Management/Assertiveness/Self-Esteem Class

## **11. SPECIAL CONDITIONS FOR COMPLETION**

If in the opinion of the Criminal District Attorney or CSCD, the defendant is in need of special counseling, mentoring, classes, therapy, or services, the defendant must agree to participate, successfully complete, and pay for such programs as a specific condition of his/her satisfactory completion of the Diversion Program. This may include requiring the defendant to attend life skills or self-improvement courses. If the defendant is not willing to accept these conditions, the defendant will not be able to successfully complete the Diversion Program.

## **12. FEES**

The Diversion Program has a \$100.00 fee for felony offenses and \$50.00 fee for misdemeanor offenses to the Comal County Diversion Program which must be paid in full before admittance into the Program. This application fee may be reduced or waived for indigent defendants. The defendant is also required to pay CSCD a supervision fee of \$60.00 per month, which may be reduced or waived for indigent defendants, as well as to submit to a drug/alcohol test at the initial interview. The Defendant will also be required to pay a one-time fee of \$100.00 for felonies and \$50.00 for misdemeanors for drug/alcohol testing throughout the period of community supervision.

## **13. RESTITUTION REQUIRED**

If a person or persons suffered monetary loss as a direct result of the commission of the offense for which the defendant was charged, the defendant must be ready, willing, and able to make full restitution, and such restitution shall be paid in full prior to entry into the Diversion Program. Where a defendant is determined to be indigent, the defendant may be approved for a payment plan which will be detailed in the rules of community supervision.

#### **14. PROCEDURE FOR DIVERSION PROGRAM**

- Review all of the Diversion Program Guidelines found on the Comal County Criminal District Attorney's Website.
- The defendant meets the requirements and submits an application within 30 days of the date of first appearance or date attorney was appointed/retained, whichever is later.
- Gather the required documents:
  - Application
  - 2 Letters of Recommendation
  - Signed Agreement
  - Community Supervision & Corrections Department Forms
  - Resume
  - Transcript
- The application is reviewed by the prosecutor and Criminal District Attorney. Defense counsel is generally notified within two weeks of a decision.
- The defendant will be required to pay a monthly supervision fee of \$60, pay any restitution, and pay the program fee of \$100 Felony/\$50.00 Misdemeanor. The program application fee and CSCD supervision fee may be reduced or waived for indigent defendants.
- The defendant is admitted into the Diversion Program for no more than 12 months for misdemeanor offenses and no more than 24 months for felony offenses.
- At the discretion of the CSCD and with the permission of the Criminal District Attorney's Office, defendants who are in the Diversion Program for misdemeanor offenses may move into unsupervised status after 6 months if there are no violations and all special conditions have been satisfied.
- The defendant will be responsible for the costs of any drug or alcohol testing, as well as any classes or programs.
- The defendant will be required to comply with CSCD rules and any conditions deemed necessary by the CSCD.
- At the end of the program, the criminal history of the offender is reviewed to determine if there have been any additional arrests. If there are no new arrests, if all rules and conditions set forth by the CSCD have been followed, and if all conditions are satisfied, the case is dismissed.

#### **15. ADMISSION INTO THE DIVERSION PROGRAM**

Admission of an applicant into the Diversion Program will be granted at the sole discretion of the County Criminal District Attorney's Office. Acceptance into the program constitutes an agreement between the Applicant and the Criminal District Attorney's Office, such that the Applicant agrees to follow the terms of the program as set out in this paperwork and the Criminal District Attorney's Office agrees to file a dismissal of the case if the Applicant successfully completes the program. No Applicant is entitled to acceptance into the Diversion Program. Applicants may be denied admission into the program for any reason and without explanation from the Criminal District Attorney's Office.

## **16. SUCCESSFUL COMPLETION OF THE DIVERSION PROGRAM**

Successful completion of this Diversion Program provides participants with the opportunity to succeed and avoid a criminal conviction. Successful completion of the Program will result in dismissal of my case without prosecution by the Comal County Criminal District Attorney.

**Felony Offenses:** To the extent I may be or may become entitled to an expunction of the arrest underlying the offense charged under Article 55.01 of the Texas Code of Criminal Procedure, in accordance with Article 1.14 of the Texas Code of Criminal Procedure, I hereby agree to knowingly, intelligently and voluntarily waive any and all current and future rights to an expunction as a condition of my participation in the Diversion Program, except and to the degree the District Attorney may later agree to recommend the expunction under Article 55.01(b)(2). I understand that such a recommendation is completely at the District Attorney's discretion and I have not been promised any recommendation.

**Misdemeanor Offenses:** I understand that I have a right in accordance with article 55.01 of the Texas Code of Criminal Procedure to have my criminal record in this case expunged if I successfully complete the Pretrial Intervention Program; however, in accordance with article 1.14 of the Texas Code of Criminal Procedure, I hereby intelligently, knowingly, and voluntarily agree to waive my right to any expunction of records and files from the District Attorney's Office as a condition of my participation in the Pretrial Intervention Program. Accordingly, the District Attorney's Office and its records and files will be exempt from any future expunction(s) under any provisions of article 55.01 of the Texas Code of Criminal Procedure. Said records and files are also exempt from articles 55.03 and 55.04 of the Texas Code of Criminal Procedure. For law enforcement purposes-including but not limited to prosecutions for future law violations-said records, files and related information may be maintained, used, released, disseminated, and introduced into evidence and through testimony as said Office deems necessary, despite Articles 55.03(1)-(3) and 55.04 (1)-(3).

## **17. TERMINATION FROM THE DIVERSION PROGRAM AND EXCLUSIVE REMEDIES PROVISION**

Participants accepted into the Diversion Program may be unsuccessfully discharged from the program and removed from the program at any time by the Criminal District Attorney's Office for failure to comply with the terms of the Diversion Program. The Criminal District Attorney's Office will have sole discretion in determining whether a participant shall be removed from the Diversion Program. There is no right to a hearing to determine whether a participant shall be removed from the program. Written notice from the Criminal District Attorney's Office stating that the participant has violated the terms of the Diversion Program Agreement and has therefore been terminated from participation in the Diversion Program is all that is required for removal from the Diversion Program.

In the event that this agreement is breached by either party, the sole and exclusive remedy shall be that the parties shall be returned to the same positions that they were in prior to entering this agreement. Therefore, the agreement shall not be used as evidence against the participant in any way in any subsequent trial of the offense or offenses and any statements made by the participant in applying to the program shall not be used against them, except for the purposes of

impeachment in the event that participant testifies at a subsequent proceeding. In the event that a participant is terminated from the Diversion Program, they will have the right to a trial by jury, to enter a plea of not guilty, and to assert any defenses available to them prior to entering into the agreement. In the event that a participant is terminated from this Diversion Program, the State of Texas, through its Criminal District Attorney, shall have the right to prosecute them for the offense or offenses covered by the Diversion Program Agreement because the participant has executed a waiver of their right to a speedy trial and a waiver of any statute of limitations. Pursuant to this Program, termination from the Diversion Program is in the sole discretion of the Criminal District Attorney; all participants have expressly waived any right to seek, by any means, judicial review of the Criminal District Attorney's exercise of said discretion. Participants will have specifically waived any and all right to seek the enforcement of this Diversion Program Agreement through specific performance.

Where a participant is unsuccessfully discharged from the program, the Criminal District Attorney will contact Defense Counsel and Court Administration seeking to have the case set for a Pre-Trial hearing and prosecution will continue as normal.

Questions? Please contact us at email.