

## **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. These letters of recommendation should be considered an opportunity for the defendant to demonstrate there are members of the community who will attest to the character of the defendant and hold the defendant accountable throughout the Diversion Program. A defendant may use a member of his/her family as a source of the letter of recommendation, but only **one** of the two letters may come from a member of the defendant's immediate family. 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 by email.



**PERSONAL HISTORY**  
**COMAL COUNTY DIVERSION APPLICATION**

Full name: \_\_\_\_\_

Address: \_\_\_\_\_

Name all individuals who live in your home, their relationship to you, and criminal history, if applicable:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DOB: \_\_\_\_\_

Highest grade completed: \_\_\_\_\_

SSN: \_\_\_\_\_

DL Number: \_\_\_\_\_

**Employment Information**

Name of Employer: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Length of Employment: \_\_\_\_\_

If unemployed, when and where last employed? \_\_\_\_\_

Occupation Goal: \_\_\_\_\_

**School Information**

Name of School: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Education Goal: \_\_\_\_\_

**Juvenile Arrest Record**

<u>Date</u>	<u>County</u>	<u>Offense</u>	<u>Results</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**Adult Arrest Record**

<u>Date</u>	<u>County</u>	<u>Offense</u>	<u>Results</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Have you ever had a pre-trial intervention, deferred adjudication, community supervision (probation), or a conviction for an offense other than a Class C misdemeanor?    Yes    No  
If yes, please list offense, date, and county: \_\_\_\_\_  
\_\_\_\_\_

Other than your arrest for this offense, have you ever been placed in a city or county jail before?    Yes  
No  
If yes, please list: \_\_\_\_\_

Are you currently on any prescription medications?    Yes    No  
If yes, please list: \_\_\_\_\_  
Are you currently under a doctor's care?    Yes    No  
If yes, please list the conditions cared for: \_\_\_\_\_

Are you currently, or have you ever been through a substance abuse program?    Yes    No  
If yes, when and where: \_\_\_\_\_  
\_\_\_\_\_





Comal County Pre-Trial Diversion Program

No. \_\_\_\_\_ State of Texas v. \_\_\_\_\_

**RULES OF COMMUNITY SUPERVISION**

Follow rules of community supervision 1 through 20 and other rules identified by an “X” or “√”. (“CSCD” means Community Supervision and Corrections Department and “CSO” means Community Supervision Officer)

1. Do not commit any criminal offense or violate any law of this State, any other State, or the United States.
2. Avoid injurious or vicious habits; do not use, possess or consume any alcoholic beverage, controlled substance, narcotic, dangerous drug, or marihuana except medicines prescribed lawfully by a physician. Do not go to places where controlled substances are illegally sold, used, distributed, or administered.
3. Do not enter, remain or be present on the premises of any place where alcoholic beverage are sold for “on premises” consumption except for restaurants that derive less than 50% of its gross revenue from the sale of alcohol.
4. Do not associate with persons of disreputable or harmful character or anyone under indictment, on community supervision, on parole, or convicted of a felony offense or charged with or convicted of a Class A or B misdemeanor offense.
5. Report once a month in person or by mail, as directed by the CSO, on the date specified by the CSO and more often if directed by the CSO.
6. Obey all the rules, regulations, and policies of the CSCD and follow the instructions of the CSO.
7. Work faithfully at lawful employment unless excused by the CSO for school, training or other acceptable reasons. Notify the CSCD within five (5) days if you become unemployed during any period of your community supervision.
8. Permit the CSO to visit and meet you at your home, living quarters, place of employment, training program and/or elsewhere, and answer questions asked by the CSO.
9. Provide truthful and complete information in writing on the CSCD monthly reporting form and orally to the CSO regarding income sources, income (including tax statements), expenses, family history, education, employment, and residency, and provide verifying documentation upon request of the CSO.
10. Submit to fingerprint and photograph processing by the CSCD if required.

11. Notify the CSO the next working day between 8:00 a.m. – 5:00 p.m. if arrested or questioned by a peace officer for any offense.
  12. Do not change your residence unless you get permission from the CSO.
  13. Submit to a breath test, blood test, and urinalysis immediately upon arrest for any offense when requested by a peace officer or the CSO.
  14. Pay a one-time fee of \$100.00 for felonies and \$50.00 for misdemeanors for drug/alcohol testing throughout the period of pretrial diversion supervision and submit to random urine specimen analysis tests at the request of the CSO; before submitting a specimen, submit proof of any medication prescribed for you. Do not test positive for any controlled substance, marijuana, dangerous drug, or narcotic for which you do not have a valid prescription.
  15. Complete a total of \_\_\_\_\_ hours of Community Service Restitution during your supervision period. Submit truthful documentation of your performance of community service to the CSO. Follow the community service rules and guidelines relating to community service.
  16. Submit to screening, assessment, and evaluation as directed by the CSCD. Enroll in, pay for, and successfully complete any programs related to substance use, misuse, and/or abuse as directed by the CSO.
  17. Attend and pay for alcohol and drug counseling as directed by the CSCD.
  18. **CSCD payments.** Make the following payments to the CSCD beginning on \_\_\_\_\_, 20\_\_\_\_ and on the same day of each month thereafter until fully paid:
  19.
    - \_\_\_\_ A. **Community supervision fee** of \$60.00 per month.
    - \_\_\_\_ B. **Restitution** under Code of Criminal Procedure Art. 42.037 as follows:
      - 1) \$\_\_\_\_\_ at the rate of \$\_\_\_\_\_ per month to \_\_\_\_\_.
      - 2) \$\_\_\_\_\_ at the rate of \$\_\_\_\_\_ per month to \_\_\_\_\_.
- This Restitution is to be paid jointly and severally with \_\_\_\_\_.
20. Be at your residence by 11:00 p.m. and remain there until 6:00 a.m. except when at work or on a direct route going to or from work.
    - \_\_\_\_ Attend, pay for, and successfully complete during the term of this pre-trial diversion program a substance abuse treatment program offered through any approved treatment provider(s).
    - \_\_\_\_ Attend, pay for, and successfully complete during the term of this pre-trial diversion program a batterer intervention and prevention program approved by the CSCD.
    - \_\_\_\_ Attend, pay for, and successfully complete within 180 days, at the direction of the CSO, the Texas Driving While Intoxicated Offender Education Program as regulated by the Texas Department of Licensing and Regulation.

\_\_\_\_\_ Attend, pay for, and successfully complete within 180 days, at the direction of the CSO, the Texas Drug Offender Education Program as regulated by the Texas Department of Licensing and Regulation.

\_\_\_\_\_ Attend, pay for, and successfully complete within 180 days, at the direction of the CSO, an Anger Management Program.

\_\_\_\_\_ Donate to a nonprofit food bank or food pantry, charitable organization engaged primarily in performing charitable functions for veterans in the community in which the Defendant resides.

\_\_\_\_\_ Prepare a letter of apology to the victim of this offense and deliver it to the CSO within 30 days.

27. \_\_\_\_\_  
\_\_\_\_\_

**I have received and reviewed a copy of the Pre-trial Diversion Agreement and the Rules of Community Supervision. I agree to and fully understand all the terms and conditions contained herein.**

\_\_\_\_\_  
DEFENDANT

\_\_\_\_\_  
DATE

\_\_\_\_\_  
ATTORNEY FOR DEFENDANT

\_\_\_\_\_  
DATE

CAUSE NO. \_\_\_\_\_

STATE OF TEXAS

§  
§  
§  
§  
§

IN THE COUNTY

VS.  
  
\_\_\_\_\_

COURT AT LAW NO. \_\_\_\_

COMAL COUNTY, TEXAS

**COMAL COUNTY CRIMINAL DISTRICT ATTORNEY DIVERSION PROGRAM  
ADMONITIONS AND WAIVER OF RIGHTS**

I, \_\_\_\_\_, hereby acknowledge that 1) proceeding *pro se* or 2) having been advised by my attorney of said rights, I have carefully and thoroughly reviewed this document, I understand this document completely, and I am aware of my Constitutional and statutory rights as follows:

1. The right to jury trial or trial by the Court.
2. The right to be presumed innocent until proven guilty beyond a reasonable doubt, being advised further that at my trial it would be the burden of the prosecution to prove me guilty beyond a reasonable doubt.
3. The right to confront and question witnesses against me and the right to have subpoenas issued by the Court requiring the attendance of witnesses in Court whom I may desire to testify in my favor.
4. The right to remain silent or testify at my trial should I choose to have a trial and the right to have no inferences drawn which are adverse to me in the event I choose not to testify.
5. The right to a speedy trial, right to have this case presented to a grand jury, Texas Code of Criminal Procedure Article 32.01, and statute of limitations.
6. The right to appeal.

Until such time as the Criminal District Attorney should decide to proceed with the prosecution of the above described offense in accordance with the terms and conditions of this agreement, I waive my rights above.

**EXCLUSIVE REMEDIES PROVISION:** In the event that the Diversion Program 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 me in any way in any subsequent trial of the offense or offenses covered by the Diversion Program Agreement and any statements made by me in applying to this program shall not be used against me, except for the purposes of impeachment in the event that I testify at a subsequent proceeding. In the event that I am terminated from the Diversion Program, I shall have the right to a trial by jury, to enter a plea of not guilty, and to assert any defenses available to me prior to entering into the agreement. In the event that I am terminated from the Diversion Program, I further agree that the State of Texas, through its Criminal District Attorney, shall have the right to prosecute me for the offense or offenses covered by the Diversion Program Agreement because I have executed a waiver of my right to a speedy trial and a waiver of any statute of limitations. Pursuant to this Diversion Program Agreement, termination from the Program is in the sole discretion of the Criminal District Attorney, I expressly waive any right to seek, by any means, judicial review of the Criminal District Attorney's exercise of said discretion. I further specifically waive any and all right to seek the enforcement of the Diversion Program Agreement through specific performance.



With full knowledge and understanding of my rights, the effect of my waiver of those rights, and the above terms and conditions, I, the undersigned Defendant, agree to participate in the Diversion Program.

\_\_\_\_\_

Defendant

\_\_\_\_\_

Date

I have consulted with my client; advised him/her of his/her rights; believe him/her to be mentally competent. I am satisfied that he/she completely understands the waivers and the consequences of signing this waiver. I join in the waivers and agreement set forth above.

\_\_\_\_\_

Defendant's Attorney

\_\_\_\_\_

Date

\_\_\_\_\_

State's Attorney

\_\_\_\_\_

Date

CAUSE NO. \_\_\_\_\_

STATE OF TEXAS	§	IN THE COUNTY COURT
	§	
VS.	§	AT LAW
	§	
_____	§	COMAL COUNTY, TEXAS

**COMAL COUNTY DIVERSION PROGRAM AGREEMENT – MISDEMEANOR OFFENSE**

**DEFENDANT’S AGREEMENT**

I, \_\_\_\_\_, (Defendant) have received the following information from the Comal County Criminal District Attorney before entry into the Diversion Program. I also understand that if I am accepted into the Diversion Program, I will be supervised by the Comal Division of the Caldwell, Comal, and Hays Community Supervision and Corrections Department (“CSCD”) for up to one year for a misdemeanor offense and up to two years for a felony offense. During the period of supervision, I must abide by all conditions established by the Comal County Criminal District Attorney at the time of my admission into the Diversion Program as well as conditions assessed by the CSCD. By signing below, I acknowledge that I have carefully and thoroughly reviewed this document, that I understand this information, and that (if represented by counsel) I have discussed this information with my attorney:

1. I am charged with the offense of \_\_\_\_\_.
2. Prior to being admitted to the Diversion Program, I have the right to refuse participation in the program and have this offense prosecuted.
3. I have been counseled by my attorney regarding, or if proceeding *pro se* I am aware of, the penalty range for this offense.
4. If I am admitted to the Diversion Program, I must remain in the Program until I successfully complete the Program or I am unsuccessfully discharged from the Program by the CSCD and/or Criminal District Attorney. **By agreeing to participate in the Diversion Program, I waive any right to voluntarily withdraw from the Program.**
5. If I am unsuccessfully discharged from the Diversion Program, or otherwise fail to successfully complete the Diversion Program, my case will be fully prosecuted. I understand that I am not entitled and will not receive a hearing to determine whether I should be terminated from the Diversion Program. I understand that termination from the Diversion Program is in the sole discretion of the Criminal District Attorney.
6. **EXCLUSIVE REMEDIES PROVISION:** 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, this agreement shall not be used as evidence against me in any way in any subsequent trial of the offense or offenses set out in Provision 1 above and any statements made by me in applying to this program shall not be used against me, except for the purposes of impeachment in the event that I testify at a subsequent proceeding. In the event that I am unsuccessfully discharged from this Diversion Program, I shall have the right to a trial by jury, to enter a plea of not

guilty, and to assert any defenses available to me prior to entering into this agreement. In the event that I am unsuccessfully discharged from this Diversion Program, I further agree that the State of Texas, through its Criminal District Attorney, shall have the right to prosecute me for the offense or offenses set out in Provision 1 above because I have executed a waiver of my right to a speedy trial and a waiver of any statute of limitations. Pursuant to Provision 5 above, termination from the Diversion Program is in the sole discretion of the Criminal District Attorney, I expressly waive any right to seek, by any means, judicial review of the Criminal District Attorney's exercise of said discretion. I further specifically waive any and all right to seek the enforcement of this Diversion Program Agreement through specific performance.

7. I understand that this is a Diversion Program providing me 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).

8. I agree to pay the **\$100** Diversion Program fee for felony offenses and **\$50** Diversion Program fee for misdemeanor offenses to the Comal County Diversion Program, which must be paid in full before admittance into the Diversion Program. I understand that if the Criminal District Attorney has determined me to be indigent, the program fee may be reduced or waived. In addition, I agree to pay the CSCD a supervision fee of **\$60.00** per month payable before the 10<sup>th</sup> day of each month for the Diversion Program. This CSCD fee may be reduced or waived, if deemed appropriate. I agree to pay all restitution as determined by the Criminal District Attorney; said amount of restitution or property must be paid in full before

admittance into the Diversion Program. It is my attorney's responsibility to obtain the correct restitution amount from the Criminal District Attorney. I also understand that the final restitution amount will be confirmed in the email notification regarding tentative approval.

9. I have been counseled by my attorney, or if proceeding *pro se* am aware of, and **waive any of the following rights** I may have in order to participate in the Diversion Program:
  - a. If this case is a felony, my **right to have this case presented to a grand jury** and to be prosecuted by a grand jury indictment, and I agree that the case may proceed, if it is prosecuted, upon accusation by affidavit and information;
  - b. Any right I have under Texas Code of Criminal Procedure Article 32.01, statute of limitations, or any other law regarding the presentment of this case to the grand jury **within any prescribed time limits**;
  - c. Any right I may have under the U.S. Constitution or Texas Constitution to a **speedy trial**, and any right I may have **to proceed to trial** of this case during my participation in the Diversion Program;
  - d. Any right to **confidentiality of drug treatment records** and information for use by the Court, the Criminal District Attorney, the Diversion Program Community Partners, CSCD, and my attorney, for the purpose of determining progress and participation in the program;
  - e. I agree results of any drug test may be used in determining any sanction against me, up to and including an unsuccessful discharge from the program. I waive any right to **confront and cross-examine any witnesses** concerning results of any confirmed drug test.
  
10. I agree to the following mandatory conditions of supervision:
  - a. Commit no further criminal violations;
  - b. Report to a Supervision Officer as directed;
  - c. Report any change in address or change of employment to the Supervision Officer within 48 hours;
  - d. Truthfully answer all questions asked by Supervision Officers;
  - e. Report to the Supervision Officer all contact with police/law enforcement within 24 hours;
  - f. Abstain from the use of alcohol, marijuana, dangerous drugs, or any substance prohibited by the Texas Controlled Substances Act;
  - g. Do not possess any firearms or illegal weapons;
  - h. Remain within the supervising county (and contiguous counties) unless permitted to depart by the Supervision Officer;
  - i. Pay a (\$100.00 Felony/ \$50.00 Misdemeanor) Diversion Program Fee to the Comal County Criminal District Attorney's Office before admittance into the Diversion Program, unless reduced or waived in accordance with this agreement;
  - j. Pay restitution amount in full before admittance into the Diversion Program, unless approved for a payment plan specified in the conditions of supervision;
  - k. Pay \$60 per month supervision fee to CSCD, unless reduced or waived in accordance with this agreement;
  - l. Maintain steady, full-time employment (part-time with approval) insofar as possible; if a student, then remain in school;

- m. Perform community service work (60 hours for misdemeanor offenses and 100 hours for felony offenses) at a rate of no less than 10 hours per month unless approved otherwise and/or directed by the Supervision Officer;
  - n. Submit to urine specimen collection for the testing of the use of alcohol and/or illicit substances as directed by the supervision officer and pay a one-time fee of \$100.00 for felonies and \$50.00 for misdemeanors for said testing throughout the period of the Diversion Program. If directed by the Supervision Officer, call a designated number daily to determine the days that you shall submit a sample to determine the use of illicit substances or alcohol;
  - o. Drive only with a valid Driver License or valid Occupational Driver License and at all times with Liability Insurance.
11. I agree that other conditions may be assessed as deemed necessary by the CSCD.
- a. Should there be a violation of this agreement during the community supervision period; the defendant agrees to appear in court on written notice.
12. I consent to communication between CSCD and the Diversion Program's Community Partners, and other potential mentors or employers. With this consent, I understand that the Comal County Criminal District Attorney's Office and our Community Partners shall provide each other with the necessary information (progress reports, assessment information, case information, etc.) to ensure compliance with the terms, conditions, and contract items of the Diversion Program. This authorization will be in force through the termination of my participation in the Diversion Program, unless revoked by my written notice.
13. If further prosecution results, there will be no refund or credit for any fees paid, community service hours performed, or programs attended.
14. I understand that the State of Texas agrees that, upon my successful completion of the Diversion Program and compliance with all the conditions set forth above, the State of Texas will file to dismiss with prejudice the charges detailed in Provision 1 above and subject to this agreement.

**I hereby WAIVE, RELEASE, forever DISCHARGE, and HOLD HARMLESS the State of Texas, County of Comal, any and all complaining witnesses, participating or affiliated agencies, offices, departments and their respective agents, employees, officers, and representatives, as well as, each of their respective heirs, successors, executors, administrators, and assigns from any and all claims of any kind or nature whatsoever, CIVIL or CRIMINAL, whether in law or in equity as a result of either NEGLIGENCE or RECKLESSNESS, arising out of my arrest, participation in, or termination from the Diversion Program.**

I acknowledge that I have received a copy of this Agreement and the conditions of supervision set out therein and fully understand the same. I acknowledge that the foregoing conditions of supervision have been explained to me in full by my attorney. I understand all the waivers and conditions included in this Agreement; and by the signature below, I voluntarily enter into this Agreement and to participate in the Diversion Program and agree to all terms contained in this document.

\_\_\_\_\_  
Defendant's Printed Name

\_\_\_\_\_  
Defendant's Signature

\_\_\_\_\_  
Date

**APPROVAL BY DEFENDANT'S ATTORNEY**

In representing the defendant, I have read this agreement and have also explained it to the defendant. I have also explained to the defendant the nature and consequences of entering into this agreement. The defendant understands the conditions set forth for the Diversion Program. The defendant is competent and completely understands all of the above. I join in the waivers and agreement set forth above.

\_\_\_\_\_  
Attorney for Defense Printed Name

\_\_\_\_\_  
Attorney's Signature

\_\_\_\_\_  
Date

**STATE'S AGREEMENT**

If the defendant follows the terms of this agreement and the rules of community supervision, the State will file to dismiss this case.

\_\_\_\_\_  
Attorney for State's Printed Name

\_\_\_\_\_  
Attorney for State's Signature

\_\_\_\_\_  
Date

**PRE TRIAL DIVERSION PERSONAL DATA SHEET \*\* PLEASE PRINT \*\***

Name: \_\_\_\_\_

Sex: M - F Height: \_\_\_\_\_ Weight: \_\_\_\_\_ Hair: \_\_\_\_\_ Eyes: \_\_\_\_\_

Ethnicity (circle one): WHITE BLACK HISPANIC PACIFIC ISLANDER OTHER: \_\_\_\_\_

Birthdate: \_\_\_\_\_ Driver's License: \_\_\_\_\_ SSN: \_\_\_\_\_

Place of Birth: \_\_\_\_\_

City, State

Country

U.S. Citizen: Y - N **If NO**, Citizen Status: \_\_\_\_\_

Physical Address: \_\_\_\_\_

Street

City, State

Zip

Mailing Address: \_\_\_\_\_

(if different from above)

Street

City, State

Zip

County of Residence: \_\_\_\_\_ Email Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Home

Cell

Marital Status: \_\_\_\_\_ #Of Children: \_\_\_\_\_

Occupation: \_\_\_\_\_

Status (circle one): FULL TIME PART TIME STUDENT UNEMPLOYED RETIRED DISABLED

Employer: \_\_\_\_\_ Start Date: \_\_\_\_\_

Address: \_\_\_\_\_

Street

City, State

Zip

Supervisor: \_\_\_\_\_ Phone: \_\_\_\_\_ Salary: \_\_\_\_\_ per \_\_\_\_\_

If unemployed what is your source of income and amount: \_\_\_\_\_

Highest Grade Completed: \_\_\_\_\_ Do you have (circle one): H.S. Diploma GED Neither

Highest Degree Held: \_\_\_\_\_ Years of College/Technical School Attended: \_\_\_\_\_

Military Service: Y - N Branch: \_\_\_\_\_ Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_

**INFO ON PARENTS & A PERSON WHO WILL ALWAYS KNOW WHERE YOU ARE:**

\_\_\_\_\_  
MOTHER PHONE ADDRESS

\_\_\_\_\_  
FATHER PHONE ADDRESS

\_\_\_\_\_  
FRIEND PHONE ADDRESS

Defendant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**(FOR PROBATION STAFF USE)**

SID/DPS# \_\_\_\_\_ FBI#: \_\_\_\_\_ TRN/TRS: \_\_\_\_\_ / \_\_\_\_\_

Offense \_\_\_\_\_ Degree: \_\_\_\_\_ DOO: \_\_\_\_\_ / DOA: \_\_\_\_\_