



**OFFICE OF THE DISTRICT ATTORNEY
SECOND JUDICIAL DISTRICT
STATE OF NEW MEXICO**

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DISTRICT ATTORNEY**

Pre-Prosecution Diversion (PPD) General Guidelines and Instructions

General Guidelines:

I. Prior Criminal History: An applicant may be eligible if the instant offense alleged to have been committed is non-violent in nature and does not involve a firearm. Applicants shall have no prior felony convictions for a violent crime, but may be eligible if the prior conviction was non-violent and the instant offense is non-violent. Defendants with priors will be considered on a case by case basis.

II. Admissions & Waivers: Pre-Prosecution Diversion requires an admission statement setting forth all elements of each crime committed by the defendant and all waivers needed to allow the case to be re-filed without a probable cause proceeding. If Defendant is admitted and has a non-violent prior, the Defendant will also be required to make an admission to Defendant's prior convictions. If the Defendant is admitted into PPD for a sole count of Possession of a Controlled Substance and Defendant does not have any priors, the Defendant will not be required to make an admission to the PCS; however, if the Defendant has priors or is charged with offenses in addition to the PCS, the Defendant shall be required to make admissions for all charges and priors. If Defendant is also charged with misdemeanors, Defendant shall be required to admit to the misdemeanors charged.

III. Fees: There are no program fees for individuals who have an income of 200% or below of the federal poverty line. Individuals with a monthly income above that will be subject to program fees up to \$85.00 per month determined by the sliding scale below. There may be associated costs related to treatment for which Defendant shall be responsible, unless there is an exception.

IV. Term: An applicant may be diverted into Pre-Prosecution Diversion for a term of no longer than a period of 6-24 months, the length of which will be determined by the Pre-Prosecution Diversion Program. Typically, a participant completes the program within 18 months.

V. Victim Involvement: All victims of crimes will be contacted for the purpose of informing them of diversion and for the purpose of acquiring additional information regarding losses and possible restitution. If the case is deemed appropriate, PPD will inquire with the victim regarding the desire for a Restorative Justice circle as a component of PPD.

VI. Victim Restitution: Each participant will be required to make restitution to the victim according to their ability to pay. If the case is deemed appropriate, PPD will inquire with the victim regarding the desire for a Restorative Justice circle as a component of PPD.

VII. Pre-Prosecution Diversion Contract: Each participant will be required to agree to the terms of the Pre-Prosecution Diversion Contract

Application Procedure

A. Defendant, through Defense counsel, will, in most cases, be notified shortly after Felony First Appearance that Defendant may be eligible for PPD. If Defendant desires to enter PPD, Defendant, through counsel of record, will execute and file the Metropolitan Court document: **“Waiver of Preliminary Hearing”**. Within two weeks of filing of Waiver of Preliminary Hearing, Defendant will schedule an intake meeting with PPD staff,

B. Defendant and attorney for defendant will execute but NOT FILE the District Court document: **“Waiver of Preliminary Hearing and Presentation to a Grand Jury/Waiver of Time Limit for Filing Criminal Information or Indictment / Waiver of Time Limit for Arraignment”** (District Court waiver of rights). Prosecutor will sign this document after Defendant is admitted into PPD. This document will be retained by the DA’s Office. If the defendant is accepted into and then terminated from PPD, this document will be filed in District Court where the prosecution process will continue. With exception of DWIs cases, which must be filed in District Court and then stayed, the intent of PPD is to divert charges at the Metropolitan Court without necessitating the need to file a Criminal Information.

C. Within two (2) weeks following the signing of the **“Waiver of Time Limit for Preliminary Hearing,”** the attorney for the defendant must schedule and complete a PPD intake, and submit an application to the PPD staff using the forms provided by the Office of the District Attorney. Failure to complete the PPD intake and submit application within this time limit shall result in defendant's rejection from PPD and a Criminal Information being filed.

D. The PPD application includes these documents, completed and signed in blue or black ink by defendant and attorney for defendant. Incomplete applications or documents will delay a decision regarding defendant’s participation in PPD and may result in defendant’s rejection from PPD.

1. Application Cover Sheet
2. Terms and Conditions
3. Admission Statement

4. Release of Information
5. Social History

E. If the defendant's application is accepted into PPD, the District Attorney will not file the Criminal Information, with exception of DWIs, unless Defendant is unsuccessful with PPD.

Acceptance into PPD

- A. Approval from victim(s) is required for the defendant to participate in PPD.
- B. If the defendant is deemed suitable for PPD, the **PPD Contract** will be sent to the attorney for the defendant. In addition to the requirements of the **Terms & Conditions**, the **PPD Contract** will specify the amount of restitution due and a payment schedule, the amount of the PPD monthly fee and any special conditions.
- C. Within two weeks from Waiver of Preliminary Hearing, Defendant and attorney for defendant must schedule an intake appointment with PPD, and must each sign the PPD Contract and return it to the PPD staff. Defendant will then be officially accepted into PPD upon completion of the intake interview. Failure to return the signed PPD Contract will result in defendant's rejection from PPD.
- D. Upon acceptance into PPD, the defendant will be notified in writing of the acceptance date. Notice will also be provided to the attorney for the defendant and the district attorney.
- E. After acceptance into PPD, the criminal complaint will be dismissed if waived prior to a preliminary hearing, or criminal information will not be filed in District Court, except in unusual circumstances.

Termination from PPD

- A. If a defendant is deemed unsuitable for PPD, the defendant will be rejected from PPD. Notice of rejection will be provided in writing to the attorney for the defendant and the district attorney. Notice may also be provided to the defendant, the law enforcement agency and the victim.
- B. If terminated or rejected from PPD, the defendant may not be reinstated and may not apply to PPD again.
- C. The prosecution process shall continue as normal.

PPD Intake Instructions:

Instructions For Statement:

With the exception of defendants charged with possession of a controlled substance for the first time, this program requires a specific kind of admission to the offense. Even though some form of statement may have been given previously, a statement meeting Pre-Prosecution Diversion requirements is necessary.

The requirements for an admission statement for Pre-Prosecution Diversion are as follows:

1. If more than one crime is involved, then each crime must be set forth separately within the statement.
2. For each crime the statement must include factual admission of each essential element of the crime, including intent to commit the act, and the date, time and place, city and state or country.
3. Keep the statement brief and to the point.
4. Extenuating circumstances and matters in the nature of a defense are inappropriate in a statement because this program does not handle cases in which culpability is not clear.
5. Pre-Prosecution Diversion is a first offender's program. All statements are made with the complete advice and concurrence of the applicant's defense attorney. No coercion, threat, or promise of acceptance is made. Therefore, beginning a statement with such a phrase as, "For the purpose of consideration in the Pre-Prosecution Diversion Program," etc., will not be acceptable.
6. Applicant and attorney shall sign a Waiver of Fifth Amendment Rights.
7. Finally, the statement should be signed and dated by the Applicant and notarized.

EXAMPLE: I, (Defendant name), hereby admit to the following charges:

COUNT 1: SHOPLIFTING (OVER \$500 BUT NOT MORE THAN \$2,500)

That on or about the 1st day of January, 2014 in Bernalillo County, New Mexico, the above-named defendant (*altered a label, price tag or marking on/transferred from the container in or on which it was displayed to another container, took possession of and/or concealed merchandise*), (*Describe Merchandise*) belonging to (*Owners Name*), which had a market value over \$500 but not more than \$2,500, with the intent to convert it to defendant's own use without paying for it, contrary to §30-16-20(A), NMSA 1978.

COUNT 2: POSSESSION OF A CONTROLLED SUBSTANCE (FELONY-NARCOTIC DRUG)

That on or about the 1st day of January, 2014, in Bernalillo County, New Mexico, the above-named defendant intentionally had (*Name Substance*), a narcotic drug which is a Schedule I or II controlled substance, in defendant's possession knowing or believing it to be (*Name Substance*) or believing it to be

some drug or other substance the possession of which is regulated or prohibited by law, contrary to §30-31-23, NMSA 1978.

Notary Public

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20 ____.

My Commission Expires: _____

ADDITIONAL DOCUMENTS REQUIRED:

These documents are required to initiate the PPD application process. These will need to be filled out with your attorney.

1. Waiver of Preliminary Hearing and Presentation to a Grand Jury

(Metropolitan Court form)

- a. Execute this document and file with the court.
- b. Give this document to the prosecutor or the PPD staff.
- c. Defendant must successfully complete the PPD intake process within 30 days of Waiver of Preliminary Hearing or a Criminal Information will be filed in District Court.

2. Waiver of Preliminary Hearing and Waiver of Time Limits for Filing Criminal Information, Waiver of Time Limits for Arraignment

(District Court form - do not put a Metropolitan Court number on this document)

- a. Execute this document but DO NOT file with the court.
- b. Give this document to the prosecutor or the PPD staff.
- c. This document is used when the defendant is accepted into and then terminated from PPD.

3. PPD Application Packet:

After completing the above documents, the next step is to complete the PPD application packet, using the standard PPD forms provided by the District Attorney's Office.

The PPD application packet includes:

1. Application Cover Sheet
2. Terms and Conditions
3. Admission Statement
4. Release of Information
5. Social History

The completed packet must be submitted to the PPD staff within two weeks following the signing of the Metropolitan "Waiver of Time Limit for Preliminary Hearing."

If you have any questions or need forms, please contact the PPD staff, 505-222-1099.