

LEE COUNTY DISTRICT ATTORNEY'S 37TH JUDICIAL CIRCUIT

PRETRIAL DIVERSION PROGRAM

ELIGIBILITY REQUIREMENTS AND PROGRAM GUIDELINES

The Lee County District Attorney's Pretrial Diversion Program (PTD) has been developed to allow non-violent, offenders with no prior felonies, a second chance. The program works towards reducing criminal activity, easing the impact of crime on our community, as well as reducing the number of repeat offenders.

Once a participant has successfully completed the PTD program, the District Attorney's Office will dismiss the pending charges with prejudice. However, if the defendant fails to complete the program, sentence will be immediately imposed.

The Lee County District Attorney's Pretrial Diversion Program operates in compliance with the Pretrial Diversion Program Laws as set forth in §12-17-226 et. al. No potential Pretrial Diversion Program applicant shall be refused access to a program based on race, ethnic background, religion, gender, disability, marital status, or economic status. No person who is protected by applicable federal or state laws against discrimination should be otherwise subjected to discrimination for eligibility purposes.

ELIGIBILITY

Any adult, charged with an eligible criminal offense in Lee County, who does not have prior felony convictions, may apply for admittance into the Lee County District Attorney's Pretrial Diversion Program. However, prior convictions for DUI, Possession of Marijuana, and other misdemeanor or traffic convictions may be grounds for denial. Defendants who have previously been enrolled in a PTD, First Offenders, or similar diversion program, will not be eligible for acceptance, regardless of whether they successfully completed the prior program. Defendants with **any** other pending charges must have those charges cleared before applying to Pretrial Diversion. Defendants must not be on probation at the time of application. Defendants owing more than \$2,500 to an individual or small business (20 employees or less) or more than \$5,000 to a business with 21 or more employees will be required to pay a portion of the restitution (amount determined by the District Attorney) at the time of plea. Cases with restitution amounts over \$15,000 will not be approved without a minimum of 80% of the restitution payable at the time of entry of plea. The defendant voluntarily waives his/her right to apply for Youthful Offender, if eligible, if defendant is reinstated to the trial docket after termination from the program.

The following offenses are *eligible* for consideration for the Pretrial Diversion Program:

- (1) A traffic offense;
- (2) DUIs;
- (3) A property offense;
- (4) An offense wherein the victim did not receive serious physical injury;
- (5) A drug offense, excluding Unlawful Distribution, Trafficking, and Manufacturing, First Degree;
- (6) A misdemeanor unless specifically excluded in this section;
- (7) A violation classified under the Code of Alabama 1975.

The following offenses are *ineligible* for consideration for the Pretrial Diversion Program:

- (1) Any offense in which the victim was a child under 14 years of age, a law enforcement officer, a school official, a correctional officer, active duty personnel of the U.S. Military, or a person over the age of 65;
- (2) Any offense involving an attempt to elude a law enforcement officer, fighting with law enforcement or emergency personnel, lying to law enforcement about your identity or filing a false police report;
- (3) Any sex offense involving force or incapacity;
- (4) Any class A felony and capital murder;

- (5) Any offense involving serious injury or death to a person;
- (6) Any offense involving a deadly weapon or dangerous instrument;
- (7) Any traffic offense wherein the Defendant possessed a Commercial Driver's License (CDL); operated a commercial motor vehicle, or possessed a Commercial Driver's Learner's Permit;
- (8) DUIs where a child less than 16 years old was a passenger in the vehicle at the time of the offense;
- (9) DUIs involving a wreck with another vehicle;
- (10) Any offense involving cruelty to animals;
- (11) Any offense prohibited by the Pretrial Diversion Law, §12-17-226.2 of the Code of Alabama;
- (12) Any offense listed in §12-25-32 of the Code of Alabama;
- (13) Any person deemed by the District Attorney to be a threat to the safety or well-being of the community;
- (14) Identity Theft;
- (15) Defendant has a prior FTA in the case they are applying for Pretrial Diversion on.

APPLICATION

- Completed, TRUTHFUL, Applications must be filed with the Lee County Circuit Clerk. Applicants must pay a **non-refundable** application assessment fee of \$100 at the time of filing. The amount of the assessment for participation in the program shall be in addition to any program supervision fees, court costs and assessments for drug, alcohol, or anger management treatments required by law, the District Attorney, or the court, and are in addition to costs of supervision, treatment, and restitution for which the Defendant may be responsible. Pretrial Diversion Program fees may be waived or reduced due to indigence or reduced ability to pay or other just cause at the discretion of the District Attorney. The District Attorney may also elect to allow the Defendant additional time to satisfy the payment of fees. The determination of indigence of the Defendant, for the purpose of Pretrial Diversion admission, fee waiver, or reduction shall be made by the District Attorney.
- Applicants must agree to a complete background check;
- The District Attorney may waive any of the standards listed above if justice or special circumstances dictate.

WHEN TO APPLY

- A Defendant shall make application to the Pretrial Diversion Program **no later than 30 days** after arraignment. In the case of misdemeanors, violations, and traffic citations, application shall be made **within 15 days** of the initial court appearance. The time provision of this section may be waived for good cause shown.
- The most serious charge will control the timing of the application.

REVIEW BY THE DISTRICT ATTORNEY

- The District Attorney retains full discretionary authority, as allowed by law. PTD shall be under the direct supervision and control of the District Attorney.
- The District Attorney may contract with any agency, person, or corporation for services related to this program.

PROGRAM COMPLETION REQUIREMENTS

A Defendant who enters into Pretrial Diversion shall satisfy each of the following requirements:

- (1) Complete a written plea agreement and plead guilty before the court of jurisdiction;
- (2) Voluntarily waive his or her right to a speedy trial, as well as trial by jury;
- (3) Agree to the tolling of periods of limitations established by statutes or rules of court;
- (4) Agree to the conditions of the Pretrial Diversion Program established by the District Attorney.
- (5) Agree to pay restitution, if any, within a specified period of time and in an amount to be determined by the District Attorney.

(6) Consent to all items (property, currency, firearms, contraband, etc.) seized in connection with this case being condemned and forfeited to the State of Alabama and/or investigating agency for proper disposal, destruction or to be used for law enforcement purposes.

(7) Maximum program duration is **18 months** from the date the Agreement is signed for felony offenses and **12 months** for misdemeanor offenses. Failure to timely complete the program will result in dismissal from the program and immediate sentencing pursuant to the Plea Agreement.

CONFIDENTIALITY AND RECORDS RETENTION

- The District Attorney's Pretrial Diversion Program records, including admission records, are confidential and shall not be admissible in subsequent proceedings, criminal or civil. Communications between the Pretrial Diversion Program Coordinator and Defendants shall be privileged unless a court of competent jurisdiction determines there is a compelling public interest that the communications be submitted to the court for an in camera review.
- The records of the Defendant maintained as part of the Pretrial Diversion Program shall be destroyed in a timely manner after the program has been successfully completed by the Defendant. However, the District Attorney may keep the contract signed by the Defendant in order to maintain an accurate record of Pretrial Diversion Program participation.

FEES

- Prior to admission, the District Attorney's Office will charge a non-refundable application assessment fee of one hundred dollars (\$100).
- The following administrative fees shall be applied to applicants accepted into the pretrial diversion program:
 - Felony offenses up to One Thousand Dollars (\$1,000);
 - Misdemeanor offenses, excluding traffic offenses, up to six hundred dollars (\$600);
 - DUI offenses, One Thousand Dollars (\$1,000);
 - Traffic offenses, excluding DUIs, up to Two Hundred Fifty Dollars (\$250);
 - One Hundred Dollars (\$100) for all drug, or alcohol offenses, allocated to the Department of Forensic Sciences Trust Fund. Ten dollars (\$10) for all traffic related offenses.
- A schedule of payments for any of the required fees and costs may be established by the District Attorney.

PROGRAM VIOLATIONS

- The Lee County District Attorney's Pretrial Diversion Program is a deferred sentencing program. The Defendant shall waive their right to trial and enter into a plea agreement before the court prior to being accepted into the program. If the Defendant fails to successfully complete the program's requirements, the sentence will be immediately placed into effect.
- If the Defendant violates any condition of the Pretrial Diversion Program as agreed, the District Attorney may terminate the Defendant's participation in Pretrial Diversion and actively pursue the prosecution of the Defendant for the crime or crimes charged.
- The Defendant shall be given written notice of the intent to terminate him or her from the Pretrial Diversion Program, including the reason for the termination.
- Upon removal from the program, the Defendant will be deemed to forfeit any fees paid for the admission into the Pretrial Diversion Program.
- The District Attorney may waive a violation for good cause shown to allow the Defendant to stay in the Pretrial Diversion Program.