



ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL DEFERRED PROSECUTION GUIDELINES

November 17, 2011

GENERAL

Pursuant to A.R.S. § 11-362(A) the following guidelines for the conduct of deferred prosecution programs ("Program") within the State of Arizona are hereby promulgated. The guidelines are intended to provide *minimum* standards for the conduct of the Programs. Nothing contained herein should be interpreted so as to prevent any individual county attorney from adding provisions which make the Program in that county more or less restrictive.

The overall objectives and goals of the Deferred Prosecution Program are to:

1. Remove from the traditional system of adversarial trial those accused of criminal acts who do not contest their guilt and are likely to benefit from an effective community-based program of rehabilitation;
2. Enable courts to give more prompt and efficient attention to cases which must be tried and to defendants whose presence in the community pose a serious threat by diverting cases qualifying cases;
3. Eliminate a criminal conviction for defendants who are able to demonstrate the desire and willingness to participate in a rehabilitation program, thus better equipping them to remain contributing members of society;
4. Curtail the substantial time delay between apprehension and treatment for certain situational defendants, as occurs with cases processed through the court system; and
5. Diminish the high costs of prosecuting a defendant through the traditional criminal justice process by channeling non-violent and targeted defendants who are unlikely to reoffend through a diversion process.

PROGRAM STANDARDS

A. CRITERIA FOR IDENTIFYING PARTICIPANTS

Defendants targeted for felony diversion are those persons charged with a felony offense whose suspected offense does not present a "continuing pattern of anti-legal behavior."

While the Program is basically a rehabilitation endeavor, the primary and overriding concern of the Program is public safety. Individuals charged with having committed the following offenses are automatically excluded from acceptance into the Deferred Prosecution Program, pursuant to A.R.S. § 11-361.

CRIMES INVOLVING KNOWING OR INTENTIONAL INFLICTION
OF SERIOUS PHYSICAL INJURY OR DEATH

A.R.S. § 13-1103(A) (2)-(5)	Manslaughter
13-1104	Second degree murder
13-1105	First degree murder
13-1204(A)(1),(3),(7)	Aggravated assault
13-1206	Dangerous or deadly assault by prisoner
13-1304(A)(3)	Kidnapping
13-1406	Sexual assault
13-1410	Molestation of child
13-2308(A)(2)	Participating in or assisting a criminal syndicate
13-2321(A)(2)	Participating in or assisting a criminal street gang
13-2504	First degree escape
13-2903	Riot
13-3623(A)(1)	Child or vulnerable adult abuse
28-622.01	Felony flight if serious injury involved

CRIMES INVOLVING USE OR EXHIBITION OF A
DEADLY WEAPON OR DANGEROUS INSTRUMENT

A.R.S. § 13-1102	Negligent homicide
13-1103	Manslaughter
13-1104	Second degree murder
13-1105	First degree murder
13-1201	Endangerment
13-1204	Aggravated Assault
13-1206	Dangerous or deadly assault by prisoner
13-1209	Drive-by shooting
13-1211	Discharging a firearm at a structure
13-1304	Kidnapping
13-1508	First degree burglary
13-1702	Reckless burning
13-1704	Arson of an occupied structure
13-1904	Armed robbery
13-2308.01	Terrorism
13-2504	First degree escape
13-2505	Promoting prison contraband (class 2 felony)
13-2514	Promoting secure care facility contraband (class 2 felony)
13-2906(A)(6)	Disorderly Conduct Involving Weapons
13-3102	Misconduct involving weapons
13-3104	Depositing explosives
13-3107	Unlawful discharge of firearms
13-3117(A)(2)	Use of a remote stun gun
13-3119	Misconduct involving weapons in an airport
28-622.01	Felony flight if serious injury involved

28-661(B)	Accidents involving death or personal injuries
28-672	Causing serious physical injury or death by a moving violation
28-675	Causing death by use of a vehicle
28-676	Causing serious physical injury by use of a vehicle

In addition to the foregoing automatic exclusions, no person who has been previously convicted of a felony shall be admitted to a Program; nor shall any person who has previously been admitted to a Program, whether completed successfully or unsuccessfully, be again admitted to such program. All Programs shall be operated in conformance with Rule 38 of the Arizona Rules of Criminal Procedure as promulgated by the Arizona Supreme Court.

B. SUGGESTED PROGRAM CONTENT

The structure and scope of each county's Program will be governed by the financial and community resources available.

Every effort should be made to provide the following components in each program:

1. Supervision: A participant should be seen by a counselor or Program supervisor on a regular basis for the first three months of the Program. In addition, each defendant should be re-assessed on a quarterly basis to determine the type of supervision necessary.
2. Referral to Manpower Services: Any participant in need of employment assistance or education should be referred to an appropriate community employment or job-training program.
3. Restitution: Part of any Program should be the payment of restitution equal to the victim's loss. Payment of restitution in full before successful termination from the Program should be a requirement of each participant.
4. Victim-Defendant Meeting: If the victim requests, and only if the victim agrees, a meeting should be set for the victim to meet the participant and address issues surrounding the offense.
5. Community Service Work: All participants should be expected to perform a minimum of forty (40) hours of voluntary community service work.
6. Utilization of Existing Community Resources: The diversion staff should develop contacts with related social service agencies and make appropriate referrals to mental health, welfare, financial, alcohol or employment agencies.

C. SCREENING GUIDELINES

1. All recommendations for the Deferred Prosecution Program shall originate in the County Attorney's Office;
2. Referrals will be made only when the County Attorney believes that the facts of the case are sufficient to secure a conviction;

3. A complete record check, including ACIC and NCIC, will be made on all potential participants to ensure eligibility consistent with these guidelines;
4. Prior to commencement of the Program, staff must evaluate each potential participant to determine:
 - a. Culpability in the charged offense;
 - b. Extent of involvement in illegal behavior;
 - c. Risk of re-arrest;
 - d. Personal, social, and welfare needs;
 - e. Likely benefits from participating in a community-based rehabilitation program;
 - f. Availability of the resources needed to address the particular participant, and
 - g. A proposed treatment plan.
5. The victim, if any, will be notified that the case will be referred to a Deferred Prosecution Program;

D. COURTESY SUPERVISION

1. For participants residing in a county other than the county with jurisdiction, which also has a Deferred Prosecution Program, courtesy supervision may be arranged by mutual agreement.
2. The originating county will maintain jurisdiction over the case.
3. Full disclosure through a bi-lateral release of confidential information will be made between the cooperating counties.
4. Changes in treatment plans will be made through consultation between the cooperating programs.
5. The supervising county will make appropriate referrals to community agencies to meet the conditions and obligations of participation.
6. The supervising county will monitor the defendant's progress and will report quarterly to the originating county.

E. SUSPENSION OF PROSECUTION

Pursuant to Rule 38, the defendant, upon advice of counsel, shall complete Consent to Participate in Diversion and Waiver of Speedy Trial forms when referred to the Deferred Prosecution Program. The forms and a Motion for Suspension of Prosecution will be submitted

by the County Attorney to the Superior Court as notice of the suspension of prosecution for a period of up to two (2) years. The court may set periodic appearances to obtain reports on the status of the case.

F. TERMINATION PROCEDURES

1. **Successful Termination:** Upon the participant's completion of the terms and obligations of the treatment plan, including restitution (if any), the County Attorney will file a Motion to Dismiss with Prejudice.
2. **Unsuccessful Termination:**
 - a. The County Attorney may terminate a participant from the Program upon:
 - i. Lack of acceptance into a prescribed treatment plan program;
 - ii. Withdrawal from the treatment plan after the suspension of prosecution;
 - iii. Arrested for a new offense or;
 - iv. Failure to substantially complete the terms and conditions of the program within twenty-one (21) months of the order suspending prosecution.
 - b. In the event a program supervisor reports to the County Attorney that a participant has not complied with the conditions and obligations of the treatment plan, the participant shall be notified and given the opportunity to respond before the County Attorney terminates the Program. Failure to respond within 14 days in the event the County Attorney may unsuccessfully terminate the participant from the program.
 - c. If unsuccessfully terminated, the County Attorney will file a Motion to Vacate Suspended Prosecution in Superior Court and notify the defendant and his attorney of his action. Prosecution will resume at the point of suspension.

G. REPORTING

"The County Attorney of any County that has established a program shall establish and maintain statistical records pertaining to the program and shall annually submit an evaluation of the program to the President of the Senate and Speaker of the House of Representatives." A.R.S. § 11-362.

Evaluations shall be forwarded to the Arizona Prosecuting Attorneys' Advisory Council annually and shall include:

- A. The number of cases considered for the Program and the type of crime involved, age of defendant, employment status and victim impact (i.e. amount of restitution);
- B. The number of cases terminated for success, the number of cases terminated for failure;
- C. Description of the Program in that jurisdiction;
- D. Assessment of the impact of the Program on criminal justice resources, administration of justice and public safety.