



## ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL DEFERRED PROSECUTION GUIDELINES

October 10, 2024

### GENERAL

Pursuant to A.R.S. § 11-362(A) the following guidelines for the conduct of any deferred prosecution program as defined in A.R.S. § 11-361 (“Program”) within the State of Arizona are hereby promulgated. Programs shall comply with Arizona Revised Statutes Title 11, Chapter 2, Article 11 (A.R.S. §11-361 et seq.) The guidelines are intended to provide *minimum* standards for conducting a Program. Nothing contained herein should be interpreted so as to prevent any individual prosecutor or prosecuting agency from adding provisions which make the Program in that jurisdiction more restrictive. While municipalities are not bound by the requirements of section 11-362, these guidelines represent best practices and municipalities are encouraged to follow these guidelines.

### PROGRAM STANDARDS

#### A. CRITERIA FOR IDENTIFYING PARTICIPANTS

Pursuant to A.R.S. § 11-361, all defendants are eligible for diversion. County Attorneys have the sole discretion regarding which offenders or offenses may be diverted. APAAC recommends that defendants charged with the following offenses not be diverted:

1. A serious offense, as defined in A.R.S. § 13-706;
2. A felony offense for which sex offender registration is mandated pursuant to A.R.S. 13-3821.
3. A dangerous crime against children, as defined in A.R.S. § 13-705;

The prosecutor will confer with the victim, if any, about the potential resolution of the case through the Program. Additionally, all Programs involving defendants that have been formally charged shall be operated in conformance with Rule 38 of the Arizona Rules of Criminal Procedure.

## B. SUGGESTED PROGRAM CONTENT

The structure and scope of each jurisdiction's Program will be governed by the financial and community resources available. With that limitation in mind, every effort should be made to provide the following suggested components in each Program, within the discretion of the prosecutor or prosecuting agency:

1. Screening Guidelines: Each case should be thoroughly reviewed to determine:
  - a. Culpability in the charged offense and there is a reasonable likelihood of conviction for the offense being diverted;
  - b. Extent of prior involvement in illegal behavior;
  - c. Risk of re-arrest;
  - d. Criminogenic risks or needs;
  - e. Social determinates of health;
  - f. Likely benefits from connection to appropriate services;
  - g. Availability of the resources needed to address the individualized needs of the defendant.
2. Supervision: Each jurisdiction shall establish reporting requirements for diversion participants based upon the results of the screening or assessment. In addition, each defendant's case should be reviewed on a quarterly basis to ensure the appropriate level of supervision.
3. Referral to Social Services: Any defendant in need of wraparound services, such as employment or education should be referred to an appropriate community program.
4. Restitution: Before successful completion of the Program can be accomplished, payment in full of the victim's loss should be made.
5. Utilization of Existing Community Resources: The Program staff should develop and maintain contacts with related social service agencies and make appropriate referrals to mental health, welfare, financial, substance abuse treatment or employment agencies.

## C. COURTESY SUPERVISION

1. For defendants residing in a county other than the county with jurisdiction, but which also has a Deferred Prosecution Program, courtesy supervision may be arranged by mutual agreement between the programs.
2. The originating county will maintain jurisdiction over the deferred prosecution. Full disclosure through a bi-lateral release of confidential information will be made between the cooperating Programs. Defendant shall execute any releases necessary to accomplish such disclosure. Changes in treatment plans will be

made through consultation between the cooperating Programs.

3. The supervising Program will make appropriate referrals to community agencies to meet the conditions and obligations of participation.
4. The supervising Program will monitor the defendant's progress through regular status reports and will provide copies of such reports to the originating Program within ten days of each status conference.
5. Any costs resulting from the courtesy supervision shall be paid by defendant.

#### D. SUSPENSION OF PROSECUTION

Pursuant to Rule 38 of the Rules of Criminal Procedure, the defendant, and counsel, if any, shall sign Consent to Participate in Diversion form when referred to the Program. The form and a Motion for Suspension of Prosecution will be submitted by the prosecutor to the court as notice of the suspension of prosecution for a period of up to two years.

This does not apply to “pre-file” programs where prosecution has not been initiated.

#### TERMINATION PROCEDURES

1. Satisfactorily Completed: Upon the defendant’s satisfactory completion of the terms and obligations imposed by the Program, including payment of restitution, if any, the prosecutor will file with the court a Motion to Dismiss, if applicable.
2. Unsuccessful Termination:
  - a. The prosecutor may terminate a defendant from the Program if defendant:
    - i. Is not accepted into an agreed upon treatment plan program;
    - ii. Withdraws from a treatment plan program before completion of treatment;
    - iii. Is arrested for or charged with a new offense;
    - iv. Fails to complete the terms and conditions of the Program within the agreed upon time frame; or,
    - v. Violates any of the terms of the Program.
  - b. In the event a Program supervisor reports to the prosecutor that a defendant has not complied with the conditions and obligations of the program, the prosecutor may file a Notice to Resume Prosecution and serve it on the defendant pursuant to Rule 38.2 of the Rules of Criminal Procedure. Prosecution will resume at the time the suspension of prosecution is vacated by the court.

- c. For “pre-file” programs, formal prosecution may be commenced upon notice that the defendant has not complied with program requirements as stated above.

E. FEES.

Program fees may be established to defray or cover the expense of the Program services for which the fee is assessed.

F. MANDATED REPORTING

Pursuant to A.R.S. § 11-362, each county attorney operating a Program will maintain statistical records related to that Program, which must include, at a minimum, the following:

1. The number of persons who were enrolled in the Program during the previous fiscal year
2. The number of persons who successfully completed the Program in the previous fiscal year
3. If available, the number of persons who were enrolled in the Program during the previous fiscal year and who were subsequently convicted of a new felony offense.

By August 1 of each year, each county attorney will provide the above statistical information along with an evaluation of the Program to the Arizona Prosecuting Attorneys' Advisory Council (APAAC).

Each prosecuting agency will submit an evaluation of the program, including the above statistical information, to the President of the Senate, the Speaker of the House, and the Joint Legislative Budget Committee by September 15 of each year for the previous fiscal year.