

LANCASTER COUNTY ADULT DIVERSION PROGRAM ELIGIBILITY CRITERIA AND PROGRAM CONDITIONS

GENERAL CRITERIA

Applicants must be charged as an adult in County or District Court. Youthful applicants under jurisdiction of Juvenile Court are not eligible for the Program. Minimum eligibility age is 17 years of age.

Applicants must complete Constitutional Rights Questionnaire and waiver of rights.

No applicant is allowed to enter and participate in adult, pretrial diversion more than one time. Applicants who are unfavorably terminated from pretrial diversion are not eligible to enter the program at any time subsequent.

Prior Criminal Record

Applicants with a prior felony conviction are ineligible. At the discretion of the County/City Attorney, and if otherwise eligible, an applicant may be considered for the Program if he or she has received an official pardon for a previous felony conviction. Applicants with more than two misdemeanor convictions are not eligible for the Program. This would include convictions for class III and class W misdemeanors and above and comparable city ordinances. Expungement or a set aside of a prior conviction does not make a person eligible if otherwise ineligible due to prior conviction record.

Juvenile dispositions are not considered as convictions for purposes of this section.

The County/City Attorney reserves the right to reject applicants previously charged with a felony which was reduced to a misdemeanor.

Applicants charged with a felony will not be considered for Pretrial Diversion unless they apply before the matter is bound over to district court. However Juveniles may apply after their Juvenile transfer hearing.

Eligible Felony Offenses

Acquire Controlled Substance by Fraud
Arson, Third Degree
Burglary
Criminal Mischief
Delivery of a Controlled Substance (Incidental delivery)
Forgery
Fraud by use of a Computer
Insufficient Fund Checks
Insurance Fraud
Manufacturing of Marijuana (Personal use)
Possession of Controlled Substance (Including possession of marijuana weighing more than 1 pound)
Possession of forged instruments/devices
Sales Tax Violation
Theft
Unauthorized Use of Financial Transaction Devices

Ineligible Felony Offenses

Abuse of a Vulnerable Adult
All Assaults involving Officers
Arson First and Second Degree
Assault First and Second Degree
Bribery
Child Abuse
Child Pornography
Defacing a Firearm
Delivery or Possession with Intent to Deliver a Controlled Substance (Including marijuana)
Driving Under the Influence
Enticing a Child with an electronic device
Failure to Appear
False Imprisonment
Gambling
Incest

Kidnapping
Manslaughter
Manufacturing of Controlled Substances (Except for Marijuana for personal use)
Motor Vehicle Homicide
Murder
Pandering
Perjury
Possession of Deadly Weapon by a Felon
Possession of a Defaced Firearm
Possession of Short Shotgun, Machine Gun or Short Rifle
Possession of a Stolen Firearm
Refusal to Take Chemical Test
Resisting Arrest
Robbery
Sexual Assault
Stalking
Strangulation
Tamper with witness, evidence, jury
Unlawful Possession, Sale or Use of Explosives
Use of Explosives to Commit a Felony or to Kill or Injure Others
Use of a Deadly Weapon to Commit a Felony
Violation of a Protection Order
Violation of Sex Offender Registration Act

Eligible Misdemeanor and Infraction Offenses

Alter Price Tag
Altered Identification
Arson Third Degree
Conceal Merchandise
Criminal Mischief
Disturbing the Peace
Enter Motor Vehicle Without Permission
Failure to Comply
False Statement/Unemployment Benefits
Forgery
Fraud
Fraud by use of Computer
Hinder Arrest (L.M.C. \$9.08.020)
Inhaling or Drinking Certain Intoxicating Substances
Inmate Disorderly House
Insufficient Fund Check
Insurance Fraud
Maintain Disorderly House
Minor Attempt to Purchase Alcohol
Minor in Possession Alcohol
Minor Misrepresent Age
Obstruct Government Operations
Physical Contact on Licensed Premises
Possession Drug Paraphernalia
Possession of Marijuana
Possession Stolen Property
Refuse to Comply
Sell Alcohol Without License
Sell Tobacco to Minor
Steal Goods
Theft
Trespass
Unauthorized Use of Financial Transaction Device
Unauthorized Use of Motor Vehicle
Vandalism
Violation of Lottery

Eligible Misdemeanors on a Case-by-Case Basis

Assault
Carry Concealed Weapon
Child Abuse & Neglect
Contribute Delinquency of Minor
Domestic Assault
False Information
Intimidation by Phone
Sexual Assault

Ineligible Misdemeanor Offenses

Accountability & Disclosure Violations
Boating under the influence
Debauching a Minor
Driving Under the Influence
Enticing a Child into a Vehicle
Fleeing to avoid arrest
Gambling
Game Law Violations
Keeping a Place of Prostitution
Motor Vehicle Homicide
Offenses Against or Involving Animals
Pornography
Procuring Alcohol for Minors
Prostitution
Public Indecency
Refusal to Take Chemical Test
Resist Arrest (State statute and L.M.C. §9.08.030)
Traffic Offenses
Violation of Protection Order

Generally, any offense not specifically included herein as an Eligible Offense is not eligible for the Program. The County/City Attorney reserves the right to consider each case on an individual basis to determine eligibility. An offense which constitutes a conspiracy, accessory to felony, attempt, or aiding consummation of a felony where the underlying felony is not an eligible offense is not eligible for the Program.

Applicants are not eligible for Pretrial Diversion if any charges in the complaint are, for any reason, ineligible offenses.

Multiple charges are eligible only if they arise out of one incident involving one victim and all charges are otherwise eligible.

Additional Qualifications as to Offense

Offenses that constitute violations of a position of trust whether public or private are not eligible. This includes any person who stands in a fiduciary relationship to the victim, including a trustee, an attorney or a certified public accountant. Offenses that constitute a violation of a professional duty or licensing rule, regulation, or requirement are not eligible. Examples of individuals who are not eligible include: an attorney who takes from a trust account, a physician or a nurse or other health professional who, because of his/her profession, has access to controlled substances and acquires those substances illegally, a pharmacist who illegally dispenses medication, a person who engages in a profession without a license required by law or during suspension of said license, or a professional who unlawfully prescribes or provides unneeded services. The foregoing are examples of violations of a professional duty or licensing rule, regulation, or requirement and are not intended to be exhaustive of such violations. Public employees whose violation brings into question governmental integrity are not eligible. Violations which constitute consumer fraud or election fraud are not eligible.

"Incidental delivery" for the purposes of delivery of a controlled substance shall mean a delivery of a small amount of marijuana or any controlled substance prescribed to the applicant, with little or no profit to the applicant.

* Delivering the controlled substances to another for no cost is an indicator of an incidental delivery.

* The applicant's "total stock" of the controlled substance, aside from that portion delivered, shall be considered in determining if a delivery was incidental.

* No delivery of a controlled substance to a person under 18 years of age shall be considered an incidental delivery.

* No delivery of a controlled substance shall be considered "incidental" if the controlled substance contributed to the death or serious injury of the person who ingested the substance.

* The number and to whom the deliveries are made will also be considered.

Offenses, including attempts, that involve theft, damage, fraud, forgery, bad checks, criminal mischief or other losses to victims in which the total dollar amount is in excess of \$10,000 are not eligible for the Program. No statute of limitations applies to this determination.

OTHER CRITERIA RELATING TO DIVERSION

Seriousness of Offense and Established Pattern of Anti-Social Behavior

In addition to the above criteria, each felony and misdemeanor case is considered on a case-by-case basis as to the seriousness of the offense and established pattern of anti-social behavior to determine eligibility.

Factors to be considered to determine seriousness of offense and established pattern of anti-social behavior include, but are not limited to, the following:

- The number of incidents or repeat occurrences;
- Length of time over which offenses occurred;
- Number of victims involved;
- Potential or actual harm to victims even if unintentional;
- Likelihood of further offenses as a result of diversion offense;
- Monetary amount of offense;
- Whether offense involves business or consumer fraud;
- Juvenile record and continuing criminal behavior will likely eliminate an individual as a result of prior convictions;
- Number of prior arrests, citations, police and/or juvenile court referrals for criminal matters;
- Repeated prior offenses of the same nature;
- Prior institutionalization for criminal offenses;
- Length of time between diversion offense and prior offenses;
- Applicant is the subject of an on-going investigation.

Demonstrated Ties to Community

This section is interpreted liberally in favor of eligibility. The main consideration is whether the applicant is willing and able to meet the minimum reporting requirements and if the person can fulfill program requirements in the area where they reside.

No minimum length of residency in Lancaster County is required.

Felony participants may not transfer outside of direct supervision of Diversion Services during the first four months of the Program without approval.

Responsibility for offense

To be eligible for the Program, the applicant must acknowledge that the evidence available could likely result in conviction upon prosecution. An applicant's initial or subsequent plea in court is not to be considered for Program eligibility.

The applicant must accept responsibility for the offense to the extent that they agree to comply with all Program terms and conditions.

An applicant may plead not guilty and reserve the right to a trial if not accepted into the Program or if later dropped from the Program.

Ability to Pay Restitution/Program Fee

Inability to make full restitution for losses due victims or pay program fees does not eliminate an applicant from further consideration. Partial restitution may be waived.

Some or all of an applicant's program fee may be waived in the event of extreme financial hardship.

Other Eligibility Guidelines

Applicants with an outstanding warrant are not eligible for diversion.

Any and all pending charges that may effect eligibility must be resolved prior to entering the Program.

Applicants on probation from any court including juvenile court are not eligible.

PROGRAM TERMS AND CONDITIONS

Typical terms and conditions may include:

Felony Diversions

Program term of one year or more but never to exceed 30 months from the date of the offense.

Community Service of 60-100 hours.

Substance abuse evaluation if alcohol or drugs involved in offense and follow treatment recommendations.

Extended drug education program of 10 hours.

Controlled substance diversions agree to search and seizure of residence, vehicles, and person without warrant by authorized law enforcement personnel upon advance approval of County Attorney.

Written or verbal apology to victims at discretion of Program.

Controlled substance cases must submit to a urinalysis within 24 hours of request by Program and pay for testing.

There will be no extensions of the program terms without approval from the County Attorney's Office.

Misdemeanor Diversions

Six month to one year terms depending on the offense, restitution and other factors.

One year term for all crimes against the person unless waived by administrator.

Written or verbal apology to victims at discretion of Program.

Controlled substance diversions must agree to search and seizure of person, vehicles, personal property and residence without warrant by law enforcement personnel upon advance approval of County/City Attorney.

Additional community service hours may be required for individuals who are unable to pay civil damages.

Substance abuse evaluations if drugs or alcohol involved in offense and follow treatment recommendations.

Community Service of 24-100 hours depending on seriousness of offense unless waived by Program personnel.

There will be no extensions of the program terms without approval from the County/City Attorney's Office.

ADMINISTRATIVE REVIEW GUIDELINES

Applicants that are otherwise eligible who are denied the Program will be notified in writing by either the County/City Attorney, or DIVERSION SERVICES of the decision and the reasons for denial.

The applicant or his attorney must file written notice with the County/City Attorney and DIVERSION SERVICES to request an administrative review of the decision. The County/City Attorney will schedule a hearing within three weeks of the request.

Administrative reviews are heard by local attorneys in private practice who have been appointed as hearing officers by the Lincoln Bar Association and have volunteered their services.

The decision of the Hearing officer is advisory and is not binding on the County/City Attorney. The purpose of the hearing is limited to determining whether the County/City Attorney's decision was arbitrary and capricious.

Attorneys requesting hearings are asked to contact Diversion Services and request a copy of the rules of procedure for the Administrative Hearings at the same time they request an Administrative Review.

Confidentiality

Any criminal justice record information which pertains to anyone who is being screened or has been accepted into the Program or who has been in the Program at any time in the past, will be made available to the public in accordance with the Security, Privacy, and Dissemination of Criminal History Information Act found at Neb. Rev. Stat. §29-3501, et. al. This includes the following information:

- Name of Applicant
- Date of Arrest
- Intake Date
- Charges Filed in Court
- Court Disposition
- Program Recommendation to Prosecutor
- County/City Attorney's Decision and Date
- Program Outcome Status

The Program routinely provides this information to the appropriate criminal justice agencies to ensure that all criminal record information applicable to Program participants is accurate and complete.

All other information, except as provided below, that relates to the individual participant is considered to be confidential and will not be divulged to the general public unless the participant expressly authorizes release of otherwise confidential information. Information recorded on the following Program forms and reports will be considered confidential:

- Constitutional Rights Questionnaire
- Intake Form
- Acceptance/Rejection Report
- Termination/Completion Report
- Client case notes

Any person who participates in Pre-Trial Diversion waives any right to confidentiality with respect to the Program Agreement which sets forth the conditions of the Program.

Information received from participants or other persons that pertains to matters of child abuse, bodily harm or life-threatening circumstances will not be held in confidence. Also, if information becomes known to Program personnel that a participant is currently involved in criminal acts, or intends to do so at some future time, it will be reported to the County/City Attorney. All staff members are expected to report incidents of this nature to the County/City Attorney for whatever action deemed appropriate by that office.

Unfavorable Termination

The County/City Attorney shall not dismiss a case until the participant has paid all cost associated with entry into the program.

Participants may be unfavorably terminated from the Program for noncompliance with the conditions stated in individual program agreements. Participants are expected to fulfill all contract terms. Specific conditions on the program agreement may not be modified without prior approval by the Program.

Except as otherwise provided above, no one will be terminated without due process. If a participant fails to initiate action or make adequate progress on his or her contract, the counselor will schedule a Staffing with the Director for the purpose of giving formal notice to the person that he or she is being considered for unfavorable termination. No one will be terminated without a Staffing and given an opportunity to complete the Program. The only exception to this policy is when someone has been convicted of a new in-program offense committed before a Staffing can be held and does not deny the offense. Participants who do not attend the Staffing due to loss of contact also will be terminated without being present at this hearing.

At the hearing, specific conditions and deadlines will be established for the person to demonstrate that he intends to fulfill his program agreement obligations. These conditions will be provided to the person by letter within one week of the Staffing. If the person fails to adhere to the conditions specified at the Staffing, notification will be made by letter to the last known address that they are being recommended for termination.

Any Diversion Program participant who wishes to contest or dispute the reasons for their termination must request a Fact Hearing within 10 days after receipt of the notice of termination. The sole purpose of a Fact Hearing is for the person to provide evidence or other information that he or she has complied with the conditions established at the Staffing.

Any participant convicted on a new offense committed after the date of intake for the diversion offense will be automatically terminated. Furthermore, any participant who is convicted of an offense committed prior to the date of intake, will be automatically terminated if that conviction would have made them ineligible for the program.

An individual may also be terminated from the Program at the discretion of the County/City Attorney if in-program charges are pending more than 60 days or if bound over to District Court for arraignment on felony charges.

Restitution

Participants will be required to make fair restitution to all victims of their offenses whenever possible. It is recognized that in some circumstances, the defendant is unable to repay the full amount of losses incurred due to the diversion offense. No one shall be denied the Program solely on his or her inability to make financial restitution. Partial restitution may be required but payment plans shall not extend beyond the term of the program participation.

It is the responsibility of the Program counselors to determine the amount of losses and to arrange for an appropriate repayment schedule. In the event a determination cannot readily be made as to the amount of restitution due, the County/City Attorney assigned as liaison to the Program will review the available information and decide upon an amount to be repaid to satisfy the conditions of participation.

To determine the amount of restitution due, these factors will be considered: (1) the amount of loss specified in law enforcement agency reports; (2) the amount of loss provable in court or established in a civil action for damages and (3) the amounts admitted to by the defendants;

In the event of multiple defendants, each shall be required to pay equal shares, regardless of the distribution of proceeds or amount of damage done, unless the defendants mutually agree to other arrangements.

Damages sustained to property are included in restitution requirements.

Storage costs and rewards, as a general policy, will not be included in restitution amount to be paid.

The Program will solicit from victims a statement of losses incurred as a result of the diversion offense, unless the police reports clearly indicate that all property and other proceeds obtained by the defendants have been returned to the victim(s).

If losses are covered by insurance, payments will be made first to the victim for any deductible paid, and second to the insurance company that paid the claim.

The Program reserves the right to request two estimates for repairs and/or losses if, in the counselor's judgment, the amount of loss claimed is believed to be excessive or if there is a substantial disparity between the defendants and the victim(s) as to the amount of loss.

For information contact:

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