



## WHITMAN COUNTY PROSECUTING ATTORNEY

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### WHITMAN COUNTY MISDEMEANOR PRE-CHARGING DIVERSION PROGRAM

#### Policy and Procedure

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A Pre-Charging Diversion program is an alternative method for holding offenders accountable for violating the law. A Pre-Charging Diversion program removes a potential criminal case from the processes and procedures of formal court proceedings. It is designed to be used for first time offenders who have committed the offenses of being a minor in possession of alcohol or marijuana. The program saves judicial, prosecutorial, and defense resources, and allows those resources to be redirected to crimes such as DUI and Assault. These resources will include the judge's time, the court clerk's time, a probation officer's time, and a public defender's time. An offender will have the opportunity to accept accountability for their actions, participate in an educational process about drugs and alcohol, and atone for their actions by providing service to the community. The benefit to the offender, if they accept responsibility for their actions and successfully complete the diversion program, is the avoidance of a criminal record, and a better understanding of the harmful effects of drugs and alcohol which will lead to fewer repeat offenders.

#### ELIGIBILITY FOR WHITMAN COUNTY PRE-CHARGING DIVERSION PROGRAM:

In order to qualify for a Pre-Charging Diversion, the offender must meet ALL of the following:

1. Face a potential criminal charge in Whitman County District Court of Minor in Possession of Alcohol (MIP), or Minor in Possession of Marijuana under 40 grams (POM) involving less than an ounce of marijuana; and
2. Have NO prior convictions for any crime (adult or juvenile); and
3. Not have any other pending criminal charges; and
4. Not be facing additional criminal charges from the same investigation that is being considered for diversion; and
5. Not have any previous dismissal of charges resulting from a "Continuance For Dismissal" or similar agreement, nor prior participation in the Whitman County Pre-Charging Diversion Program.

## THE DIVERSION PROCESS:

### Step 1 -- Law Enforcement Officer

An offender is investigated by a law enforcement officer for MIP and/or POM. The investigating law enforcement officer will complete their investigation as normal, but rather than issue the offender a citation at the scene, all charges of MIP and POM (or combination thereof) will be referred to the Prosecutor for a charging decision.

However, if the offender is also facing additional criminal charges from the same incident, such as DUI, the officer may file all charges, including the MIP and/or POM and/or DUI, directly to the court by issuing a citation as usual.

### EXAMPLES:

Offender commits MIP:	-refer to Prosecutor
Offender commits POM:	-refer to Prosecutor
Offender commits MIP and POM:	-refer to Prosecutor
Offender commits MIP and DUI:	-cite all or refer all to Prosecutor

### Step 2 -- Prosecutor

- a) The prosecutor reviews the investigation file and the offender's criminal history to determine eligibility for Diversion.
- b) If the prosecutor determines that a crime can't be proven beyond a reasonable doubt, the case will be declined for prosecution.
- c) If the case is legally sufficient but the offender is not eligible for Diversion (for instance if the offender has a criminal history), the case will be prosecuted as usual.
- d) If the offender is eligible for the Pre-Charging Diversion program, then the prosecutor will normally send the offender a letter outlining the nature of the charges faced and explanation of the Pre-Charging Diversion program, and a copy of the Pre-Charging Diversion Agreement. However, the prosecutor retains the discretion to decline to offer the Pre-Charging Diversion program if the offender was very uncooperative with the investigating officer or the prosecutor believes there are other uncharged crimes committed by the offender which should preclude the offender from the program. In that event, the offender will be charged by the prosecutor and prosecuted as usual.
- e) If the offender signs and returns a copy of the Pre-Charging Diversion Agreement

within two weeks, the prosecutor will review the documents to confirm they are complete and if the documents are acceptable, the prosecutor's office will send the offender a letter accepting the offender into the program. This letter will include a reminder of the conditions and time frames for compliance with the program, including due dates for completion of educational program, payments, and performance of community service. The prosecutor's office will also notify the investigating law enforcement agency so the agency will be informed of how the case is being processed.

- f) If the offender is sent a letter offering entry into the Pre-Charging Diversion Program and fails to return the documentation within two weeks, or if they fail to correct any deficiencies in an initial application within a subsequent two-week period, the offender will normally then be rejected for Diversion, and their case charged and prosecuted as usual.
- g) Upon acceptance of an offender into the Diversion program, the prosecutor's office will keep the file in an active status for six (6) months. The prosecutor's office will monitor compliance with the Diversion Agreement during that period of supervision. Upon the offender's successful completion of all terms of the Agreement, the prosecutor's office will then send a letter to the offender and the investigating law enforcement agency that the program was successfully completed and that the file will be closed and no formal criminal charge will be filed.
- h) If, at any time, the prosecutor's office determines that an offender has violated a term of the Diversion Agreement, the prosecutor may then proceed to file the criminal charge with the court and proceed with a typical criminal prosecution.
- i) If an offender enters the Pre-Charging Diversion Program but does not successfully complete the program, the fact of their participation and failure to successfully complete the program will not be offered by the State to prove the defendant's guilt in any subsequent prosecution.

#### TERMS OF PRE-CHARGING DIVERSION PROGRAM AGREEMENT:

##### 1. IMPACT ON COMMUNITY

The offender's crime has a negative impact on the community. To atone for this, the offender will be required to promptly perform four (4) hours of community service.

##### 2. EDUCATION

Rather than focus strictly on punishment, this program will seek to emphasize education as to the effects of alcohol and drug use in an effort to change the offender's behavior. The offender will be required to promptly complete a state-certified Alcohol Drug Information School. The offender will pay the cost of the class.

### 3. GOOD BEHAVIOR

The offender must not commit a new crime while in the Diversion program. If there is even probable cause to believe the offender has committed a new crime, they will be terminated from the program, and prosecuted on the original charge.

### 4. PAYMENT OF MONEY:

The offender will pay \$350 to the county in one lump-sum payment. A portion of this amount will pay for the costs of administering the program and monitoring compliance, and the remainder will go to the Prosecutor's Victim/Witness fund.

Payment must be made at or near the time of entering into the Diversion Agreement. All payments are non-refundable, whether the offender successfully completes the program or not.

All payments must be

- made **IN PERSON** at the office of the Whitman County Treasurer (First Floor, Whitman County Courthouse, 400 N. Main, Colfax, WA); **and**
- made in the form of a **BANK CASHIER'S CHECK OR MONEY ORDER** (NO personal checks and NO cash); **and**
- made in **ONE LUMP-SUM PAYMENT** of \$350.00 (no partial payments will be allowed);

A copy of the receipt proving payment must be provided **IN PERSON** to the Whitman County Prosecutor's Office (First Floor, Whitman County Courthouse, 400 N. Main, Colfax, WA).

The prosecutor's office will produce the detailed Pre-Charging Diversion Agreement and any other paperwork needed to implement the program.

-Denis Tracy