

USAO MISDEMEANOR DIVERSION INFORMATION SHEET

Note: The diversion options summarized briefly below are intended to maximize public safety, reduce recidivism and enhance a fair and efficient criminal justice system. This information does not contain complete policies and procedures utilized for diversion cases by the U.S. Attorney's Office for the District of Columbia (USAO), as each case is subject to individualized review for appropriate disposition determinations to further these goals. The information articulated here may change at any time without prior notice. None of this information creates any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal. Nor does this information place any limitations whatsoever on the otherwise lawful exercise of the prerogatives of the USAO. This information applies only to misdemeanor cases brought by the USAO in D.C. Superior Court's Criminal Division.

General Eligibility

Generally, a defendant may be eligible for diversion program if they have not been convicted of or served probation, parole, or supervised release for any firearms- related offense, any sex offense (with the exception of solicitation of prostitution), child abuse, or violent felony offense within the past ten years. Certain serious arrests and convictions will disqualify a defendant for diversion regardless of the age of the criminal conduct (e.g., homicide and rape convictions). Additionally, the defendant cannot be on probation, parole, or supervised release for a "dangerous crime," as defined by D.C. Code § 23-1331 or be held without bond. A defendant must be and remain in compliance with their court-ordered release conditions prior to and for the duration of the diversion agreement. With the exception of Drug Court and Mental Health Community Court, a defendant must test negative at the initial drug test or consecutively test negative two times, and remain negative by the first status hearing.

Community Service Deferred Prosecution Agreement (DPA)

Eligibility: For defendants with three or fewer prior convictions within the past ten years. The defendant cannot be currently charged with Possession of PCP, K2, or synthetic drugs. For drug possession cases, there cannot be indicia of sale. The defendant may receive a DPA for a Simple Assault, Threats or Assault on a Police Officer charge, but only with USAO supervisory approval. The defendant may not receive a DPA for domestic violence-related charges.

Requirements: A DPA lasts for four months. During that time period, the defendant must perform 32 hours of community service, and comply with other conditions (i.e., curfew, restitution, stay away).

Community Service Deferred Sentencing Agreement (DSA)

Eligibility: For defendants with a maximum of five prior convictions within the past ten years. The defendant cannot be currently charged with Possession of PCP, K2, or synthetic drugs. For drug possession cases, there cannot be indicia of sale. The defendant may receive a DSA for a Simple Assault, Threats or Assault on a Police Officer charge, but only with USAO supervisory approval.

Requirements: A DSA lasts for six months. During that time period, the defendant must perform 48 hours of community service, and comply with other conditions (i.e. curfew, restitution, stay away). The defendant must plead guilty to his or her charge(s) to receive a DSA. The defendant will be allowed to withdraw the guilty plea upon successful completion of the DSA.

DSAs in domestic violence misdemeanor (DVM) cases typically last nine months. Generally, a defendant is NOT eligible for deferred sentencing where: the defendant has any prior felony conviction for a crime of violence or a felony gun conviction where the period of supervision or probation ended less than 10 years ago; the defendant has any prior misdemeanor domestic violence conviction for assaultive or destructive behavior where the incarceration or period of probation ended less than 5 years ago; the defendant has had the benefit of a prior deferred sentencing agreement in a domestic case in the last 5 years; there is a significant history of violence against the victim or other person, including arrests that did not result in a conviction; the defendant used or threatened the use of a firearm in the current case; the defendant committed the offense in the current case while on pre-trial release, probation or supervised release in another criminal case, or while subject to a TPO or CPO (if the current case involves offenses in addition to TPO or CPO violation); the defendant inflicted serious injuries upon the victim; or the charged offense involves any type of sexual abuse or child physical abuse.

DSAs in DVM cases typically include some or all of the following conditions: participation in the Domestic Violence Intervention Program or Anger Management course (as appropriate); participation in substance abuse and/or mental health treatment; community service; a stay-away/no-contact order or an order not to harass, assault, threaten, or stalk the victim; restitution; continued payment of child support; and any other conditions that may be appropriate. If the defendant satisfies the DSA requirements, the defendant will be allowed to withdraw their guilty plea and the charges will be dismissed. Restorative Justice (RJ) is also available for DVM cases and follows similar criteria to the above.

Mental Health Community Court (MHCC)

- Eligibility:** Defendants who are competent and have a verified mental illness, irrespective of drug testing history.
- The defendant may not be charged with a firearms-related offense. Defendant must be competent and not incarcerated. Generally, a defendant may be eligible with no more than five pending misdemeanors. PSA must screen and approve a defendant for supervision by PSA's Specialized Supervision Team and MHCC. If approved by PSA or upon the USAO's receipt of information documenting a mental health issue pending PSA screening, the USAO will screen the case for admission to MHCC.
- Requirements:** The defendant must enter into a MHCC DPA or DSA. Among other conditions, the defendant must participate in mental health treatment and, if necessary, drug testing and treatment at the direction of PSA.
- Defendants with pending domestic violence misdemeanor (DVM) cases may be eligible for MHCC, but must be willing to enter a MHCC-DSA as MHCC-DPAs are not offered in DVM cases. Defendants must be competent and not incarcerated.

Superior Court Drug Intervention Program (Drug Court)

- Eligibility:** Defendants who have a verified substance abuse or dependence problem defined by a current substance abuse assessment and one of the following: at least three positive (+) drug tests within the past 12 months; verified history of receiving drug treatment within the past 12 months; or, a positive (+) drug test for a controlled substance on the day of arrest, initial appearance or random spot check. PSA and the USAO screen defendants for Drug Court eligibility based on these criteria and other factors.
- Requirements:** The defendant must enter into a Drug Court Contract (similar to a DPA). Among other conditions, the defendant must participate in drug testing, counseling and treatment at the direction of PSA.

Stet Docket

- Eligibility:** Defendants may be eligible for stet agreements in cases involving unlawful entry, theft, destruction of property, and certain drug-possession offenses or cases in which there is no or minimal injury and the victim is amenable to disposition with an agreement that the defendant stay away from the victim for the length of the agreement. A defendant's criminal history is also a factor in assessing stet eligibility.
- Requirements:** Stet-eligible individuals enter into an agreement to stay away from a location or person designated by the USAO for six months and to comply with other conditions, such as a curfew, stay away order, and/or restitution to the victim. At the successful conclusion of the agreement, the charges will be dismissed.