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**Montgomery County District Attorney's Office**  
**Pre-Trial Diversion Procedures & FAQs**

**GENERAL POLICY STATEMENT**

Pre-trial diversions are granted at the discretion of the Montgomery County District Attorney's office and are considered an *extraordinary remedy* to resolve criminal cases. If granted a pre-trial diversion, a defendant's full compliance and cooperation with the Montgomery County District Attorney's office and the Montgomery County Department of Community Supervision and Corrections (probation) is expected. Failure to comply with a pre-trial diversion contract will result in the revocation of a defendant's personal recognizance bond and the prosecution of the underlying case. Pre-trial diversions are not to be taken lightly and are considered a remedy for individuals with compelling circumstances. Not every defendant is entitled to consideration for a pre-trial diversion.

**PTD PACKET REQUIREMENTS**

1. A letter from the defendant which includes a clear and articulable admission of guilt, an apology, and elaboration on any extenuating circumstances.
2. At least 3 letters of character reference that show the individual making the character reference has knowledge of the offense that was committed by the defendant.
3. A letter from the defense lawyer indicating that the subject is capable of participation in the program.
4. Copies (not originals) of other relevant documents, such as proof of defendant's participation in a drug/alcohol rehabilitation program, the defendant's resume, transcripts, or other records identifying community involvement and exceptional character.
5. Absolutely NO binding or plastic page covers! Please staple in the corner.

**SUBMISSION / REVIEW PROCEDURE**

A completed PTD packet should be hand delivered to the Montgomery County District Attorney's Office so that the Diversion Court Chief, Michael Shirley, can review the packet and make a recommendation to the Misdemeanor Division Chief in Misdemeanor cases, or the Trial Bureau Chief can in felony cases. The defense attorney will be notified once a decision on the PTD is made.

**ANSWERS TO FAQs**

1. Pre-Trial Diversion is a statutory punishment provision provided for by the Code of Criminal Procedure in addition to incarceration, probation, and deferred punishments. Although this punishment provision is provided for by statute, it is an extraordinary remedy that is rarely approved.
2. Any negative factor in a case will most likely result in the denial of a Pre-Trial Diversion. In general, negative factors include, but are not limited to:
  - ✓ The severity of the case,
  - ✓ The existence of a victim in the case,
  - ✓ Being under the influence of narcotics, whether legal or illegal,
  - ✓ A material false statement to a police officer or a general lack of cooperation,
  - ✓ Any prior criminal conduct, whether dismissed or convicted,
  - ✓ Any significant traffic violation history, especially moving violations, and
  - ✓ Waiting until the case is set for trial to apply for the PTD.
3. A pre-trial diversion contract typically lasts for one year from the date of signing the contract.
4. A pre-trial diversion contract typically requires a *minimum* of 40 hours of community service.

5. A pre-trial diversion contract's fees can total over \$1000.00.
6. A pre-trial diversion contract requires a defendant to remain within the State of Texas and not travel without the approval of the Probation Department.
7. A pre-trial diversion contract requires frequent drug testing.
8. A pre-trial diversion contract may require a defendant to attend certain educational classes and lectures.
9. A pre-trial diversion contract requires a defendant to maintain suitable employment and/or to be enrolled full time at an institution of higher learning.
10. A pre-trial diversion contract requires a defendant to be placed on personal recognizance bond with ancillary conditions of bond.
11. If granted, the defendant must agree to sign any and all documents associated with the execution of the PTD contract.
12. Failure to strictly abide by these conditions will be considered a breach of contract resulting in the trial of the case and the admission of the statement of the defendant.

#### **ADDITIONAL INFORMATION FOR DRIVING WHILE INTOXICATED OFFENSES**

1. A pre-trial diversion contract for DWI includes *at least* a weekend (three days) jail time in the Montgomery County Jail. This condition will not be waived and **CAN NOT** be served at home under "house arrest."
2. A pre-trial diversion contract for DWI includes a video type ignition interlock device on any vehicle driven for the duration of the contract. Individuals that do not own a vehicle must obtain an in-home alcohol monitoring device.
3. An individual will not be eligible for a PTD if their case involves any of the following factors:
  - ✓ A refusal to provide a breath or blood sample,
  - ✓ Any refusal to cooperate with law enforcement or mistreatment of law enforcement officials, first responders, or medical personnel involved in the case.
  - ✓ A crash, no matter how minor,
  - ✓ Any victim that was injured in or as a result of the DWI,
  - ✓ A high breath or blood test, typically 0.25 or more,
  - ✓ Any history of prior alcohol or drug abuse including MIP and PI cases.

#### **ADDITIONAL INFORMATION FOR POSSESSION OF MARIJUANA OFFENSES**

1. The term of a pre-trial diversion contract for POM will last a minimum of six months.
2. Among other conditions and fees, a pre-trial diversion contract for POM will typically require at least 25 hours of community service and completion of a 12 week Moral Recognition Therapy (MRT) class.