

EXHIBIT 1

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9-22.000 - PRETRIAL DIVERSION PROGRAM

- [9-22.010](#) Introduction
- [9-22.100](#) Selection Criteria

9-22.010 - INTRODUCTION

Pretrial diversion (PTD) programs divert certain offenders from traditional criminal justice processing into alternative systems of supervision and services. PTD programs provide prosecutors with another tool – in addition to the traditional criminal justice process – to ensure accountability for criminal conduct, protect the public by reducing rates of recidivism, conserve prosecutive and judicial resources, and provide opportunities for treatment, rehabilitation, and community correction. PTD programs vary by district and may involve U.S. Probation and Pretrial Services, the district court, the federal public defender’s office, treatment or service providers, and other participant organizations. Individuals who successfully complete a PTD program may qualify for a range of case outcomes, including the declination of charges, dismissal or reduction of charges, or a more favorable recommendation at sentencing. Unsuccessful participants may be charged or, for participants who have already been charged, may be returned to or remain in the traditional criminal justice process.

The major objectives of pretrial diversion are:

- To prevent future criminal activity and promote rehabilitation among certain offenders by diverting them from traditional processing into community supervision and services, including, as appropriate, mental health and substance abuse treatment.
- To conserve prosecutive and judicial resources.
- To provide, where appropriate, a vehicle for restitution to affected communities and victims of crime.

Each U.S. Attorney’s Office shall develop and implement a policy on the use of pretrial diversion appropriate for the Office’s district.

[updated February 2023]

9-22.100 - SELECTION CRITERIA

The U.S. Attorney, in his/her discretion and with delegation to supervisory prosecutors as may be warranted, may divert certain individuals against whom a prosecutable case exists. In identifying individuals for diversion, the U.S. Attorney, in his/her discretion, may formally or informally prioritize young offenders, those with substance abuse or mental health challenges, veterans, and others. In designing and implementing diversion programs, prosecutors shall be mindful of their obligations to victims under the Victims’ Rights and Restitution Act, 34 U.S.C. § 20141, the Crime Victims’ Rights Act, 18 U.S.C. § 3771, and other applicable statutes. Prosecutors also must follow applicable Department policy such as the Attorney General’s Policies Regarding Charging, Pleas, and Sentencing and the Attorney General Guidelines for Victim and Witness Assistance. Consistent with [JM 9-8.110](#), no investigation or prosecution against a juvenile offender may be resolved through diversion unless the certification in [JM 9-8.110](#) is made.

Absent approval by the Office of the Deputy Attorney General, any pretrial diversion program created by a U.S. Attorney’s Office shall exclude any individual who is:

1. Accused of an offense related to child exploitation or child pornography, or an offense involving sexual abuse or sexual assault;
2. Accused of an offense resulting in serious bodily injury or death;
3. Accused of an offense involving brandishing or use of a firearm or other deadly weapon;
4. A public official or former public official accused of an offense arising out of an alleged violation of a public trust;
5. Accused of an offense related to national security, including terrorism offenses, or foreign affairs; or
6. Accused of an offense in connection with which the individual held a significant managerial role in a large-scale criminal organization or in a violent gang.

In all events, prosecutors may not agree to divert an individual—including through a program created outside the U.S. Attorney’s Office—who falls within the above-listed criteria absent approval from the U.S. Attorney and consultation with the victim(s) of an offense. Nor shall any prosecutor agree to divert an individual where doing so would, in the judgment of the U.S. Attorney’s Office, pose a danger to the community.

If the approval of, or consultation with, an Assistant Attorney General would be required to charge an offense, individuals may not be diverted without the corresponding approval of, or consultation with, the appropriate Assistant Attorney General.

The U.S. Attorney, in his/her discretion, may enter into a pretrial diversion program in which admissions decisions are made by the district court or a group in which the U.S. Attorney is represented. However, if the U.S. Attorney has not pre-cleared an individual for admission to a pretrial diversion program, the U.S. Attorney must approve any dismissal or reduction of charges upon successful completion of the program.

Nothing in this provision should be read to supersede existing Department or office charging guidelines. Prosecutors should not take cases solely for the purposes of diversion that, under existing Department guidelines, should be deferred to State, local, Tribal, and territorial jurisdictions for prosecution, or that, based on the sufficiency of the evidence, prosecutors would not further pursue criminally.

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[9-21.000 - Witness Security](#) [UP](#) [9-23.000 - Witness Immunity](#)