

# **PREPROSECUTION DIVERSION ACT**

**N.M.S.A. 1978, § 31-16A**

**Court, Corrections & Justice Committee**

**June 6, 2024**

# PREPROSECUTION DIVERSION ("PPD")

Purpose

Procedure

Outcomes



# **PURPOSE**

**N.M.S.A. 1978, § 31-16A-2.**

**The purposes of the Preprosecution Diversion Act are to:**

- 1. remove those persons from the criminal justice system who are most amenable to rehabilitation and least likely to commit future offenses,**
- 2. to provide those persons with services designed to assist them in avoiding future criminal activity,**
- 3. to conserve community and criminal justice resources, to provide standard guidelines and to evaluate preprosecution programs.**

**EACH DISTRICT ATTORNEY SHALL ESTABLISH A  
PREPROSECUTION DIVERSION PROGRAM IN HIS  
JUDICIAL DISTRICT IN ACCORDANCE WITH THE  
PROVISIONS OF THE PREPROSECUTION DIVERSION  
ACT TO THE EXTENT PUBLIC OR PRIVATE FUNDS  
PERMIT.**

## **Program establishment**

**N.M.S.A. 1978, § 31-16A-3.**

# **ELIGIBILITY**

**N.M.S.A. 1978, § 31-16A-4(A).**

**A defendant shall meet the following minimum criteria to be eligible for a preprosecution diversion program:**

- (1) the defendant shall have no prior felony convictions for a violent crime;**
- (2) the defendant is willing to participate in the program and submit to all program requirements;**
- (3) any additional criteria set by the district attorney.**

# ELIGIBILITY...continued

N.M.S.A. 1978, § 31-16A-4(B-C).

- A person who meets all of the PPD criteria *may* be entered into PPD; provided that the DA *may* elect not to divert a person to the PPD even though that person meets the minimum criteria.
- A decision by the DA not to divert a person to PPD is *not* subject to appeal and shall not be raised as a defense to any prosecution or habitual offender proceeding.

# RIGHT TO COUNSEL

**N.M.S.A. 1978, § 31-16A-6(A).**

Defendants enjoy a right to counsel at all stages of a criminal CASE and may be appointed a public defender if they cannot afford private counsel.

Defendants **must** have counsel present to be screened for PPD.

Screenings typically require completion of a lengthy “PPD Packet” and an in-person interview at the DA’s office.

# WAIVERS REQUIRED FOR PPD PARTICIPATION

**N.M.S.A. 1978, § 31-16A-6(A-B).**

## PRELIMINARY HEARING

“The defendant shall waive his constitutional right to a preliminary hearing.”

This waiver results in the case transferring from a lower court to the district court without a formal probable cause hearing.

This is required at the time of PPD application.

## SPEEDY TRIAL

“The defendant shall also waive his constitutional right to a speedy trial.”

This waiver allows the court to hold the case in abeyance while the defendant participates in PPD, such that the case may be prosecuted later if the defendant fails to complete the program.

This is required once the defendant is accepted into the program.

## CONFIDENTIALITY (LIMITED)

“Participating defendants shall also waive any confidentiality provided by the Arrest Record Information Act to permit scrutiny of records,” except that personal identifying information outside of the defendant’s name “shall not be a public record.”

This waiver allows the PPD coordinator to review the defendant’s record.

This is required once the defendant is accepted into the program



**UPON ENTRY OF THE SPEEDY TRIAL  
WAIVER, “THE DISTRICT ATTORNEY  
SHALL DIVERT THE DEFENDANT INTO  
THE PREPROSECUTION DIVERSION  
PROGRAM AND CRIMINAL  
PROCEEDINGS AGAINST THE  
DEFENDANT SHALL BE SUSPENDED.”**

## **Suspension of Criminal Proceeding**

**N.M.S.A. 1978, § 31-16A-6(B).**

**A DEFENDANT MAY BE DIVERTED TO PPD FOR NO LESS THAN SIX MONTHS AND NO LONGER THAN TWO YEARS.**

**A DISTRICT ATTORNEY MAY EXTEND THE DIVERSION PERIOD FOR A DEFENDANT AS A DISCIPLINARY MEASURE OR TO ALLOW ADEQUATE TIME FOR RESTITUTION; PROVIDED THAT THE EXTENSION COUPLED WITH THE ORIGINAL PERIOD DOES NOT EXCEED TWO YEARS.**

## **PROGRAM DURATION**

**N.M.S.A. 1978, § 31-16A-7(A).**

**“A DA MAY REQUIRE...THAT A DEFENDANT AGREE TO SUCH REASONABLE CONDITIONS AS THE DA DEEMS NECESSARY TO ENSURE THAT THE DEFENDANT WILL OBSERVE THE LAW....”**

**THE DA SETS THE PROGRAM REQUIREMENTS ON A CASE-BY-CASE BASIS.**

## **REASONABLE CONDITIONS**

**N.M.S.A. 1978, § 31-16A-7(B).**

# **PROGRAM FUNCTIONS & RESPONSIBILITIES**

**N.M.S.A. 1978, § 31-16A-5.**

- **individual counseling and guidance for all participants;**
- **required victim restitution where applicable to the extent practical. In addition to monetary restitution, a program may require public service restitution; and**
- **referral resources where clients may be sent for treatment and rehabilitation.**

**IF A DEFENDANT DOES NOT COMPLY WITH THE TERMS OF PPD, PARTICIPATION IN THE PROGRAM MAY BE TERMINATED, AND THE DA MAY PROCEED WITH THE SUSPENDED CRIMINAL PROSECUTION.**

**UPON TERMINATION, THE DA SHALL STATE IN WRITING THE SPECIFIC REASONS FOR THE TERMINATION, WHICH REASONS SHALL BE AVAILABLE FOR REVIEW BY THE DEFENSE.**

**SUCCESSFUL COMPLETION OF PPD RESULTS IS DISMISSAL OF THE ORIGINAL CHARGES.**

## **TERMINATION**

**N.M.S.A. 1978, § 31-16A-7(C-D).**

**EACH DA SHALL MAINTAIN AN ACCURATE  
RECORD OF EACH INDIVIDUAL ACCEPTED  
INTO PPD.**

**EACH DA SHALL BE REQUIRED TO FORWARD  
TO THE STATE POLICE ACCURATE RECORDS  
OF ACCEPTANCE, SUCCESSFUL &  
UNSUCCESSFUL TERMINATION OF  
PARTICIPANTS.**

**THE STATE POLICE SHALL BE REQUIRED TO  
MAINTAIN ACCURATE RECORDS OF ALL  
INFORMATION FORWARDED TO THEM BY  
EACH RESPECTIVE DA.**

# **RECORD KEEPING**

**N.M.S.A. 1978, § 31-16A-8.**



**THANK YOU**

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