

Frequently Asked Questions

What is the name of the program?

Harris County District Attorney's DIVERT program

Direct **I**ntervention using **V**oluntary **E**ducation **R**estitution & **T**reatment

What is its purpose?

The **HCDA's DIVERT** program is intended as an addition to the exceptional efforts already underway in our community to reduce the incidents of Driving While Intoxicated and the devastating loss of lives of innocent members of our community as a result of the automobile crashes that are occurring at an alarming rate.

HCDA's DIVERT is the postponement of prosecution in 1st offender Class B Misdemeanor DWI cases. Upon any person qualified as being eligible for the program, subject to the respective conditions imposed based upon the evaluation of the Defendant. The time period of supervision shall not exceed two years.

Are illegal aliens going to be eligible for diversion? Only open to US Citizens and Legal Permanent Resident Aliens.

What if someone cannot afford the costs associated with the program? There are funds for those who, after an appropriate hearing and documentation review are found to be indigent.

Aren't you penalizing them with a longer recommended sentence? The minimum recommendation on all 1st offender DWIs will be 30 days confinement in HCJ and a fine of \$750.00. That will be for those entering the HCDA's DIVERT program, wanting to go to jail, or requesting regular probation.

What if someone has felony priors, but this is their first DWI? Only open to first-time offenders defined as those having no Juvenile record or arrests, probations, convictions, diversions, or interventions for Class B or A Misdemeanors as well as any level Felony offense.

What about accident cases? They will be considered. No case that is in the DA's opinion to be contrary to the best interest of the community or the intent of HCDA's DIVERT will be considered.

Will diversion be offered even if someone's BAC is greater than .25? They will be considered. The keystones of this program are Education, Restitution, and Treatment. Treatment is determined after a thorough battery of tests to determine pertinent matters including: alcohol/drug dependency; co-occurring mental health or other condition(s) for which appropriate treatment is not available through the resources of the Harris County Community Supervision and Corrections Dept.; and Risk Assessment. Therefore the BAC may indicate a need for treatment including inpatient residential care; home BAC monitoring; interlock device on automobile; random urine analysis; weekly office visits with supervision officer, and more. Again, no case that is in the DA's opinion to be contrary to the best interest of the community or the intent of HCDA's DIVERT will be considered.

What if someone is intoxicated by illegal drugs? Considered only if possession of the drug is a misdemeanor.

Still offer diversion? They will be considered. The keystones of this program are Education, Restitution, and Treatment. Treatment is determined after a thorough battery of tests to determine pertinent matters including: alcohol/drug dependency; Co-occurring mental health or other condition for which treatment is not available through the resources of the Harris County Community Supervision and Corrections Dept.; and Risk Assessment. Therefore the BAC may indicate a need for treatment including inpatient residential care; home BAC monitoring; interlock device on automobile; random urine analysis; weekly office visits with supervision officer, and more. No case that is in the DA's opinion to be contrary to the best interest of the community or the intent of HCDA's DIVERT will be considered

What if someone has a prior conviction out of state or county? No, only true 1st offenders are considered.

People have criticized this program as circumventing the legislature.

Actually the legislature authorizes it:

Texas Government Code Sec. 76.011. PRETRIAL SERVICES. (a) The department may operate programs for the supervision and rehabilitation of persons in pretrial intervention programs. Programs may include testing for controlled substances. A person in a pretrial intervention program may be supervised for a period not to exceed two years.

Moreover, article 102.012 of the Code of Criminal Procedure authorizes a department to assess a fee equal to its actual costs for supervising or providing programs to a defendant. *See id.* Art. 102.012 (Vernon 2003). Actual costs include the department's administrative costs. Section 76.015(c), in authorizing a "reasonable administrative fee," Tex. Gov't Code Ann. § 76.015(c) (Vernon 1998), appears to permit a department to assess a fee for its administrative costs.

I also have personally visited with key members of the Houston delegation to the Texas Legislature and reviewed this program with them before it is being implemented.

What about someone with mental health issues? The program is limited by resources. We will have to exclude anyone where a co-occurring disorder is recognized as a significant factor in reducing the success of a person on supervision as well as Co-occurring mental health condition for which treatment is not available through the resources of the Harris County Community Supervision and Corrections Dept.

Who will supervise this program? Harris County Community Supervision and Corrections Dept.

How will this be recorded, so that a person doesn't get more than one PTD? The record of Diversion will remain on a person's criminal history until they file a petition in civil district court and have a hearing before a judge for an expunction. It is not an automatic process. Also, they will not be able to file their petition until 2 years have passed from the day they completed the program. DPS driving records are not criminal records and so they are not subject to expunction.

Does a prosecutor have to offer someone PTD if they are eligible even if they don't want to? No they don't. Among the basis for not offering the program is the District Attorney believing that to proceed with DIVERT would be contrary to the best interest of the community and intent of HCDA's DIVERT.

Doesn't this take away from a prosecutor's discretion? It is all about the prosecutor's discretion...

The National Prosecution Standards state, in part:

Section 44.1 Prosecutorial Discretion:

The Decision to divert cases from the criminal justice system should be the responsibility of the prosecutor. The prosecutor should, within the exercise of his discretion, determine whether diversion of an offender to a treatment alternative best serves the interest of justice. . . .

Section 44.2 Alternative Diversion Programs:

As a central figure in the diversion process, the prosecutor should be award informed of the scope and availability of all alternative diversion programs. It is recommended that all programs which may be non-criminal disposition alternatives maintain close liaison and the fullest flow of information with the prosecutor's office.

.

Section 44.4 Factors to Consider:

The prosecutor should exercise discretion to divert individuals from the criminal justice system when he considers it to be in the interest of justice and beneficial to both the community and the individual.

Factors which may be considered in this decision include:

- a. The nature and severity of the offense;
- b. Any special characteristics or difficulties of the offender;
- c. Whether the defendant is a first-time offender;
- d. Whether there is a probability that the defendant will cooperate with and benefit from the diversion program;
- e. Whether an available program is appropriate to the needs of the offender;
- f. The impact of diversion upon the community;
- g. Recommendations of the involved law enforcement agency;
- h. Whether the defendant is like to recidivate;
- i. Consideration of the opinion of the victim;
- j. Provisions for restitution; and
- k. Any mitigating circumstances.

What happens if someone tests positive for alcohol while on diversion? The program is zero tolerance.

Can a defendant still plead without an agreed recommendation to the judge? Yes

Do you anticipate any problems with judges circumventing this program by offering pleas without an agreement at 3days/credit 2days and a \$100.00 fine? I believe all the judges will keep an open mind to the full range of punishment and their belief of what is in the best interests of society.

Roger Bridgwater, Bureau Chief
Professional Development, Community
Protection, and Ethics Bureau
Harris County District Attorney's Office
1201 Franklin, 6th floor
Houston, Tx., 77002
Wk: 713-755-3796
Fax: 713-755-6865