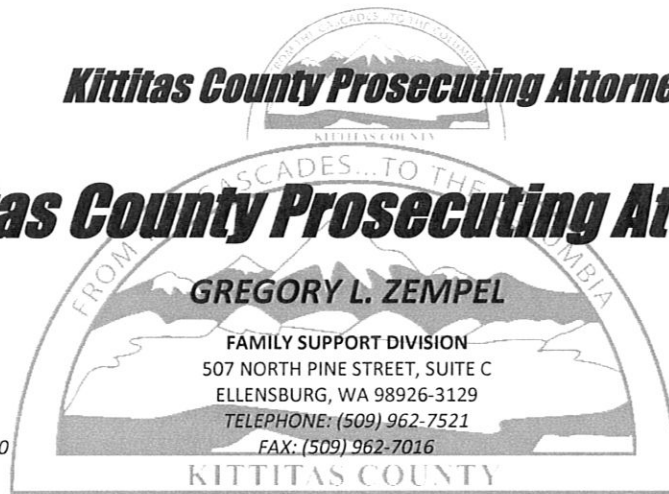


Kittitas County Prosecuting Attorney

Kittitas County Prosecuting Attorney

KITTITAS COUNTY COURTHOUSE
205 WEST FIFTH, ROOM 213
ELLENSBURG, WA 98926-3129
TELEPHONE: (509) 962-7520
FAX: (509) 962-7022 / SCAN: 962-7520



CIVIL DIVISION
205 WEST FIFTH, ROOM 213
ELLENSBURG, WA 98926-3129
TELEPHONE: (509) 962-7664
FAX: (509) 962-7060

KITTITAS COUNTY PROSECUTING ATTORNEY ADULT MISDEMEANOR PRE-CHARGING DIVERSION PROGRAM 2012 Version

A Pre-Charging Diversion program is an alternative method for holding offenders accountable for violating the law. A Pre-Charging Diversion program removes a criminal case from the processes and procedures of formal court proceedings. It is designed to be used for first time offenders who have committed minor offenses with the intention of saving judicial, prosecutorial, and defense resources. The program is also intended to give an offender the opportunity to accept accountability for their actions, participate in an evaluation process to determine if there are other issues of concern to be addressed, and to provide the offender with an opportunity to atone for their actions by providing service to the community. The benefit to the offender, if they accept responsibility for their actions and successfully complete the diversion program, is the avoidance of a criminal record. This program is similar to the program initially started in January, 2011, but with some modifications.

ELIGIBILITY FOR KITTITAS COUNTY PRE-CHARGING DIVERSION PROGRAM:

In order to qualify for a Pre-Charge Diversion, the offender must meet **ALL** of the following criteria:

- Facing a potential charge of Minor in Possession of Alcohol (MIP), Possession of Marijuana < 40 grams (POM<40), or Use of Drug Paraphernalia (misdemeanor level, marijuana related) (UODP). Other crimes are not eligible for the diversion program.
- Must not have obstructed or resisted the investigating officer during the investigation of the crime or treated the officer in a disrespectful manner
- **NO** prior convictions for any criminal offense, adult or juvenile.
- **NOT** have any pending criminal charges
- **NOT** be facing additional criminal charges from the same criminal investigation
- **NO** previous dismissal of charges resulting from a “Stay of Proceedings”, similar pretrial agreement, or prior participation in the Kittitas County Pre-Charging Diversion Program.

THE DIVERSION PROCESS:

The investigating law enforcement agency will complete its investigation as normal, but rather than issue the offender a citation to be filed with the Court, **all** charges of MIP, POM and/or UODP (or combination thereof) will be referred to the Prosecutor for charging. **IF THE OFFENDER IS ALSO FACING ADDITIONAL CRIMINAL CHARGES AS A RESULT OF THE CRIMINAL INVESTIGATION, SUCH AS A DUI, THE OFFICER SHALL FILE ALL CHARGES DIRECTLY TO THE COURT BY CITATION.**

EXAMPLES:

- LE investigation leads to PC for MIP – refer to Prosecutor
- LE investigation leads to PC for POM – refer to Prosecutor
- LE investigation leads to PC for POM and UODP – refer to Prosecutor
- LE investigation leads to PC for MIP and POM and/or UODP – refer to Prosecutor

- LE investigation leads to PC for MIP and DUI – LE cites both charges to court
- LE investigation leads to PC for POM and trespassing – LE cites both charges to court
- LE investigation leads to PC for POM and obstructing – LE cites both charges to court

Upon receipt of a law enforcement report on eligible cases/charges, the legal secretary will review the offender’s criminal history in order to determine eligibility.

If the offender is not eligible based upon criminal history review, the prosecutor will review the case for probable cause and legal sufficiency and a charging decision will be made.

If the offender is eligible for the Pre-Charging Diversion program, then the prosecutor will review the case to assure probable cause and legal sufficiency and then will send the offender a letter outlining the nature of the charges faced, an explanation of the Pre-Charging Diversion program, a copy of the Pre-Charging Diversion Agreement, and the Voluntary Witness Statement admitting to the elements of the offense and indicating where the alcohol and/or drugs were obtained.

If the offender signs and returns a copy of the Pre-Charging Diversion Agreement and the Voluntary Witness Statement within two weeks, the deputy prosecutor will review the documents to confirm sufficiently completed, and if sufficient, the deputy prosecutor and/or legal secretary will send the offender a letter indicating acceptance into the program, a reminder of the conditions and time frames for compliance with the program and specifying how and by when the required non-refundable payments are to be made for the program.

Simultaneously with submitting the acceptance letter to the offender, the deputy prosecutor and/or legal secretary shall send electronically copies of the police reports, Pre-Charging Diversion Agreement, Voluntary Statement and all correspondence to the investigating law enforcement agency records custodian.

If the offender completes the documentation but makes an error or alters the terms in any fashion, they will be given one opportunity to correct the deficiencies. This will be accomplished by the deputy prosecutor and/or legal secretary sending the offender a letter stating what was wrong with the original application, what

they must do to correct the deficiency, along with the required documents, and providing an additional two weeks to complete and re-submit the documents. If the offender corrects the problem within that two week period, the case will be processed accordingly, and at that time all documentation will be sent to law enforcement to complete their records.

If an offender is sent a letter offering entry into the Pre-Charging Diversion Program and fails to return the documentation within two weeks, or if they fail to correct any deficiencies in an initial application within the subsequent two week period, the deputy prosecuting attorney shall make a charging decision and work with the legal secretary to prepare the appropriate charging documents to bring the offender to court to commence processing their case through the criminal justice system.

Upon acceptance of an offender into the program, the Prosecuting Attorney's Office will keep the file in an active status for six (6) months. The Prosecuting Attorney's Office shall monitor compliance with the Agreement during the period of supervision. The Prosecuting Attorney's Office, upon successful completion of the terms and conditions of the Agreement and upon the expiration of the six (6) month supervisory period, shall then process the case into closed status with a letter to the offender that they have successfully completed the program and their case has been closed and that charges will not be filed.

During the period of supervision of the Agreement, if the Prosecuting Attorney's Office determines, in its discretion, that a violation of the Agreement has occurred, the deputy prosecutor and/or legal secretary will notify the offender of the violation and intent to revoke the Agreement with the filing of criminal charges in the district court, including with the notification a copy of the charging document and summons to appear in court. Copies of all such documentation shall be electronically submitted to the responsible law enforcement agencies records custodian.

The arraignment on the criminal charges shall be set upon the calendar in the respective courts following the usual procedure for newly charged cases.

An individual who has entered into a Pre-Charging Diversion Agreement, and failed to complete the program, shall not be eligible, upon the filing of charges, for a "Stay of Proceedings." An offender who was eligible for the Pre-Charging Diversion Program, but who failed to return the agreement as specified above and had charges filed against them, will be eligible for a "Stay of Proceedings", but charges will not be dismissed after filing in order to enter the program.

PRE-CHARGING DIVERSION PROGRAM REQUIREMENTS AND CONDITIONS:

FINES AND FEES:

All fines and fees are to be paid to the Kittitas County Prosecuting Attorney's Office in the form of a certified cashier's check or money order, with a total of two checks being drawn:

One in the amount of \$400.00 in favor of the Kittitas County Prosecuting Attorney. (Of this amount, \$250 is for administrative costs as previously determined when the diversion program initially began on January, 2011; \$100 is for 6 months of record check supervision, which is consistent with the cost assessed by Misdemeanor Probation for the same service; and \$50 is for costs related to monitoring

participant's completion of community service hours and compliance with getting the alcohol/drug evaluation and completing any required follow-up);

One in the amount of \$100.00 in favor of the investigating law enforcement agency's diversion program fund as indicated on the Diversion Agreement.

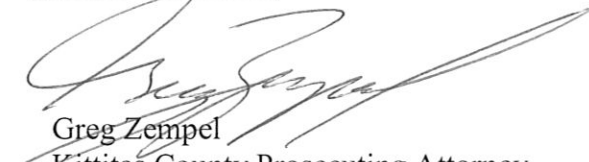
Payment of fines and fees must be made at the time of entering into the Diversion Agreement.

OTHER REQUIREMENTS OF THE AGREEMENT:

1. A sworn statement signed under penalty of perjury admitting to the elements of the offense and identifying the supplier of the alcohol and/or drugs;
2. Proof of completing an alcohol/drug evaluation from a certified treatment agency and recommended follow-up;
3. Proof of completing 24 hours of probation-approved community service hours

The offender must also agree not to commit any new crimes. A mere arrest for a new criminal offense counts as a violation of the agreement.

Adopted this the 12th day of December, 2011.


Greg Zempel
Kittitas County Prosecuting Attorney