



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

February 10, 2023

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS  
FROM: THE DEPUTY ATTORNEY GENERAL  
SUBJECT: Pretrial Diversion

*Cesar Munoz*

On December 16, 2022, the Attorney General issued updated guidance on decisions regarding charging, plea agreements, and sentencing recommendations. That guidance reiterates the Department's longstanding view that, in appropriate cases, pretrial diversion may serve as an alternative to criminal prosecution, and it advises every U.S. Attorney's Office to develop "an appropriate pretrial diversion policy." This memorandum provides additional guidance.

Pretrial diversion programs are an important tool that prosecutors may use 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. These programs divert certain offenders from traditional criminal justice processing into systems of supervision and services administered by U.S. Probation and Pretrial Services and/or by District Courts, thereby enabling the Department to focus resources on the most serious cases.

Many U.S. Attorney's Offices currently participate in diversion programs, with the specific details of these programs varying to meet the needs of the District. Depending on its nature, a pretrial diversion program may provide participants with necessary services, including treatment for substance use disorders and mental health challenges, while benefitting long-term public safety. A program also may focus on a particular population of defendants, such as veterans or young offenders.

Consistent with the Attorney General's guidance, the Justice Manual will be revised to reflect that each U.S. Attorney's Office shall develop a policy on the use of pretrial diversion that is appropriate for the District. The Justice Manual's criteria for pretrial diversion (JM 9-22.100) will also be updated. These revised sections of the Justice Manual will emphasize that each U.S. Attorney has the discretion to determine the contours of the Office's pretrial diversion policy and any associated programs, as well as the eligibility of a particular individual for a pretrial diversion program. The revisions will also underscore that in designing and implementing diversion programs, prosecutors must be mindful of their obligations to victims under applicable statutes, including the Victims' Rights and Restitution Act, 34 U.S.C. § 20141, and the Crime Victims' Rights Act, 18 U.S.C. § 3771, and Department policy, such as the Attorney General Guidelines for Victim and Witness Assistance.

As a further resource, the Executive Office for United States Attorneys (EOUSA) has developed a toolkit of pretrial diversion materials. The toolkit includes examples of policies and procedures in various Districts that have implemented pretrial diversion programs, contact information for individuals affiliated with existing programs, and other items that will be of assistance to your Office as you consider whether to adopt a pretrial diversion program or expand an existing program. EOUSA will be distributing these materials and making them available on the intranet.

Thank you for the important work you do every day to keep our communities safe and to ensure that justice is done.