



Orange County Pre-Arrest Diversion Program (OC-PAD)

Summary of Program: With the support and planning of Judicial District 15B District Attorney James R. Woodall, Public Defender Susan K. Seahorn, the Orange County Criminal Justice Resource Department, the Sheriff of Orange County, and the Chiefs of Police for Chapel Hill, Carrboro, Hillsborough and UNC-Chapel Hill, a new Pre-Arrest Diversion Program (OC-PAD) was initiated for certain low-level misdemeanor adult first time offenders on February 4, 2019.

The purpose of OC-PAD is to provide law enforcement officers the discretion to divert individuals who commit certain eligible low-level misdemeanor offenses from the criminal justice system and to provide these individuals with accountability, appropriate programming that addresses any therapeutic needs and to provide information about the collateral consequences of criminal justice involvement. The goal is to increase community safety and well-being by offering earlier and direct access to interventions and information that reduce the likelihood of recidivism and allow law enforcement to prioritize more pressing public safety issues. Pre-arrest diversion programs are more effective and less costly than court referrals and incarceration and have long-term economic benefits for social service and medical systems. In addition, pre-arrest diversion improves community relations with law enforcement, reduces racial disparities and improves public health outcomes.

Rather than issuing a citation or making an arrest where probable cause exists, law enforcement officers in Orange County will instead have the discretion to issue an OC-PAD referral that will initiate the pre-arrest diversionary process by directing the individual to contact the Diversion Coordinator at the Criminal Justice Resource Department. The referring officer, upon confirming eligibility for OC-PAD, will simultaneously complete an Incident Report and an OC-PAD Referral Form to forward to the Diversion Coordinator. The referred individual will be given a card with information about the OC-PAD program and will be required to contact the Diversion Coordinator within 72 hours of the incident.

The Diversion Coordinator or CJRD Director will meet with each individual to complete an intake assessment and prepare a diversion plan. Diversion plans will include programming tailored for the individual, and can include sanctions such as community service hours, mental health and substance use treatment, educational classes, and restorative justice opportunities. After a period of no more than 90 days, the Diversion Coordinator will determine if there has been successful compliance with the diversion plan terms. If there is compliance, no charges will be filed. If there has not been compliance, the Diversion Coordinator will notify the Law Enforcement Liaison that made the referral so that the filing of formal charges can be considered.

It is important to note that this program should not be used UNLESS the law enforcement officer would otherwise initiate a formal criminal process.

Eligibility

- Individual must be 18 years or older
- No adult criminal charges or criminal record (can have a juvenile record)
- No prior OC-PAD or MDP (Misdemeanor Diversion Program) referrals
- Must have committed one or more of the following eligible misdemeanor offenses:
 - Second Degree Trespass (14-159.13)**
 - Simple Assault/Affray (14-33(a))**
 - Possession of Drug Paraphernalia (90-113.22)**
 - Simple Possession of a C/S (90-95(a)(3))**
 - Open Container (Town Ordinance Violation)**
 - Resist/Delay/Obstruct (14-223)**
 - Intoxicated and Disruptive (14-444)**
 - Disorderly Conduct (14-288.4)**
 - Concealment of Merchandise in Mercantile Establishments (shoplifting) (14-72.1)**
 - Nuisance Offenses (Panhandling, Public Urination, Sleeping on Park Bench, Noise Ordinance violation)**
 - Underage Drinking Consume (18B-300)**
 - Underage Drinking Possession (18B-300)**
 - Allowing Unleashed Animal in a Park (07 NCAC 13B .1004 [G.S. 143B-135.6])**
 - Possession or Consumption of Alcoholic Beverage in a Park (07 NCAC 13B .1003 (a) [G.S. 143B-135.16])**
 - Fraudulent Identification (18B-302)**
 - Violation of an Executive Order (166A-19.30)**
- Final discretion on diversion referral remains with law enforcement officers and the District Attorney's Office¹
- Restitution, if required, must be resolved outside the OC-PAD process²

Referral Process

- Officer determines there is probable cause to arrest or issue a citation for an eligible OC-PAD criminal charge and that an arrest or citation would otherwise occur
- Officer gives the individual an OC-PAD Postcard and explains pre-arrest diversion and the requirement to contact the Misdemeanor Diversion Coordinator within 72 hours
- Officer completes an OC-PAD Referral Form and Incident Report (IR) and submits it to the Misdemeanor Diversion Coordinator within 48 working hours

¹ If a victim objects to the individual being diverted, the victim will be referred to the District Attorney's office for the final determination of eligibility.

² Restitution will not be collected by the CJRD. If a victim is requesting restitution, that information will be noted on the Incident Report and the Coordinator can speak to the victim about civil remedies and the benefits of diversion. If the restitution issue cannot be resolved quickly, the DA's Office will make the final decision regarding the individual's eligibility for OC PAD.

OC PAD Intake Process

- Misdemeanor Diversion Coordinator receives Referral Forms and IR
- Coordinator sets up appointment with referred individual within 7 days
- At the initial meeting, the intake form and interview is completed, an affidavit of indigency is completed (if needed), the Release to Opt-in is signed, a general release is signed and the Diversion Plan is entered
- The Diversion Plan may include community service, classes or other treatment or diversionary programming based on individual needs
- The Diversion Plan must be completed within 90 days of being entered
- No admission of guilt is requested or required

Collateral Consequence Information

- Direct and collateral consequences of criminal justice involvement will be reviewed with each participant by the Diversion Coordinator

Programming

- OC-PAD programming and diversion requirements may involve fees, but inability to pay will not limit participation or success in OC-PAD. Free or sliding scale fee programming will be provided for those participants who are found to be indigent or unable to afford the services
- The Misdemeanor Diversion Coordinator will recruit, develop and maintain a list of agencies and entities providing appropriate classes or programs for OC-PAD participants
- MOU's will be entered between OC-PAD and each agency or entity offering programming to participants
- Collateral consequences information and community resource information will be provided to every OC-PAD participant. Assessments can be conducted and services outside the Diversion Plan can be recommended by the Misdemeanor Diversion Coordinator and CJRD Criminal Case Assessment Specialist

Compliance

- The OC-PAD Diversion Plan compliance will be monitored by the Misdemeanor Diversion Coordinator
- Plan requirements and Information session attendance must be completed by the participant within 90 days
- Upon confirmation of compliance, the Coordinator will release the participant from OC-PAD and notify the referring law enforcement officer and agency so that the case file may be closed
- In the case of non-compliance or new charges, the law enforcement officer and agency will be notified so that the filing of formal charges can be considered
- Records of OC-PAD participants and compliance will be maintained by the Criminal Justice Resource Department and quarterly updates will be provided to the OC-PAD stakeholders
- A confidential database of OC-PAD referrals and participants will be maintained and accessible by law enforcement and OC-PAD stakeholders

UNC-Chapel Hill Students

- UNC students are eligible for OC-PAD and law enforcement agencies are strongly encouraged to divert students on eligible charges
- Due to special University conduct and notice requirements, law enforcement must indicate on the OC PAD referral form that the individual is a UNC student
- Following intake which requires the student to sign a release, the CJRD will notify the UNC Office of Student Conduct of the referral to OC-PAD for their confidential student records
- The CJRD will provide the Office of Student Conduct with the Release and notify the OSC of successful or unsuccessful compliance
- The Office of Student Conduct and UNC Wellness will share treatment and programming information about the student, as appropriate pursuant to the signed release
- UNC's Offices of Student Affairs and Student Conduct support student OC-PAD participation and will not open a disciplinary case or require additional programming and will maintain the confidentiality of the referral to OC-PAD
- UNC Student Wellness and Carpe Diem will both provide programming and assessments to OC-PAD student participants, where appropriate