# ATHENS-CLARKE COUNTY PRE-ARREST DIVERSION PROGRAM: POLICIES AND PROCEDURES

# I. INTRODUCTION

***a.*** The Athens-Clarke County Pre-Arrest Diversion Program (hereinafter referred to as "PAD") is an initiative intended to reduce the number of criminal arrests for certain misdemeanor offenses while addressing behavioral accountability. PAD seeks to meet this initiative through collaboration between various community agencies and stakeholders. A person otherwise eligible for PAD will not be denied access to the program based on race, ethnicity, gender, religion, or indigent status. PAD involves the issuance of a notice to an eligible participant who has been cited for certain violations, informing them of the opportunity to avoid a permanent arrest record and further prosecution by completing the Arrest Diversion Program. The notice informs the potential participant that if they are eligible and complete PAD successfully, criminal charges against them will not be documented in court records, entered in their arrest history, or prosecuted. The notice also instructs the participant to report to the Athens-Clarke County Probation Office within the amount of time designated on the notice to receive information on program compliance requirements. Upon satisfaction of their requirements, PAD participants' cases are closed without the arrest being documented in their criminal history record and without prosecution. A successful PAD participant will complete the program without ever having the arrest documented, added to their arrest record history, and without having been convicted of a misdemeanor offense.

***b.*** The goals of the PAD Program are to:

i. Reduce the number of criminal arrests for certain misdemeanor offenses;
ii. Keep adults who pose no threat to public safety out of the criminal justice system;
iii. Reduce incidents of recidivism, particularly with regard to youthful offenders and individuals with mental health diagnoses, by specifically targeting and addressing the reason for their contact with law enforcement;
iv. Reduce incarceration costs for less serious misdemeanor offenders;
v. Reduce the recidivism rate for those who complete the PAD program compared to offenders processed through the traditional criminal justice system;
vi. Provide the participants connections to community resources;
vii. Provide the Criminal Justice System with an alternative to arrest and prosecution for certain non-violent offenses;
viii. Free up limited criminal justice resources to focus on more serious and violent offenders;
ix. Improve public safety.

# II. PAD PROCEDURE

***a. Initial Eligibility Determination***

i. Eligibility information for PAD cases:
   1. Individual must be at least 17 years of age;

2. In general, individuals with felony convictions are not eligible for PAD. However, individuals with previous convictions for certain non-violent felonies (forgery, possession of cocaine, etc.) may be allowed into the PAD program;
3. In general, individuals with pending criminal charges are not eligible for PAD except when the Solicitor-General and the Chief of Police agree the circumstances of the case warrant inclusion;
4. In general, individuals with active arrest warrants are not eligible for PAD except when the Solicitor-General and the Chief of Police agree the circumstances of the case warrant inclusion;
5. Violent crimes against persons are not eligible for PAD;
6. Officer must have probable cause that the person committed an arrestable offense.

ii. Misdemeanor offenses eligible for PAD are:
1. Underage possession of alcohol,
2. Possession of marijuana,
3. Criminal trespass, and
4. Theft by shoplifting.

***b. Law Enforcement Encounter***

i. It is currently ACCPD policy to record all encounters with citizens using department issued body cameras. The PAD program will not affect this policy.

ii. The PAD Program begins with a police encounter where there is probable cause to believe that one of the qualifying misdemeanor offenses has been committed.

iii. Nothing in this policy is meant to take discretion away from officers to charge individuals and pursue prosecution in cases where facts, circumstances or reasonable concern exists that the person charged is not a viable candidate for the PAD program.

iv. After identifying the person, the officer will perform a warrant check. If the person does not have any outstanding warrants and is otherwise potentially eligible, the officer may present the subject with two options: (1) proceed with formal arrest; or (2) present an opportunity to be considered for entry into PAD. An individual must be able to provide informed consent for consideration of entry into the program. If the individual poses a risk to self or others, the individual shall not be diverted for PAD consideration at this time.

v. If the individual is interested in being considered for PAD, the officer will issue them a Notice/Referral form (see "Sec. IX FORMS) along with a citation for the offense. The Notice/Referral form will require the potential participant to call or report to the Clarke County Probation Office at a specified date and time to confirm their eligibility status.

vi. The officer shall request photo identification from the individual in order to complete the Notice/Referral form. If the individual does not have photo identification, the officer may employ other means in an attempt to identify the individual. However, if the officer is unable to confirm an individual's identity, the officer may arrest the person to alleviate any identity issues.

vii. The potential participant receives a carbon copy of the Notice/Referral form and a copy of the citation. The officer then delivers the original Notice/Referral form and citation with the remaining carbon copies of each to the Athens-Clarke County Police Department. The original copy of the Notice/Referral form and the citation stays with the police department and the remaining copies will be made available for pick up by a representative of the Solicitor-General's Office.

viii. If the individual is also being cited but not arrested for a misdemeanor traffic offense, the citations will travel together with the PAD referral form.

ix. Officers shall write incident reports on their interactions with potential PAD participants, just as they would in any other investigation.

x. Any evidence related to the offenses that formed the basis for the encounter shall be processed and retained as normal evidence by the Athens-Clarke County Police Department. Retention of the evidence is in anticipation of potential future prosecution. Upon successful completion of PAD or completion of prosecution, the evidence will be processed in accordance with ACCPD procedure.

c. ***Case Review***

i. <u>Notice Distribution</u>

1. The Solicitor-General's Office will place each Notice/Referral form on a shared drive, providing access to the Probation Office.

ii. <u>Eligibility Evaluation</u>

1. A prosecutor in the Solicitor-General's Office will evaluate an individual's criminal history for PAD eligibility. Previous participation in PAD or prior misdemeanor convictions will not be automatic disqualifiers for PAD participation. If an individual has previously participated in PAD or has been convicted of a misdemeanor, an evaluation of the circumstances of their history and the facts of the current case will be conducted.
2. If an individual has previously been charged with an offense of the type for which they are being considered for PAD, this fact will weigh against placing them into the program a second time. If the individual is declared ineligible for PAD, their case may still be considered for the Pretrial Diversion Program.
3. A person currently on probation or parole will not be eligible for PAD.

4. In no case shall a person be allowed access to the PAD program for a third time without the concurrence of both the Solicitor-General and the Chief of Police.

iii. Victim Consultation

1. The prosecuting attorney will make reasonable attempts to contact the alleged victim to discuss PAD treatment of the case and gather their input. An alleged victim's objection to PAD will not be automatic cause for exclusion but may factor into the participation decision. The prosecuting attorney will document this contact.

iv. Determination of Program Requirements

1. Each PAD case will be evaluated by the prosecuting attorney on a case-by-case basis for program requirements, including but not limited to:
   a. Community service;
   b. Restitution;
   c. Substance abuse evaluation and treatment;
   d. Random drug/alcohol screens;
   e. Obtaining a high school diploma or educational equivalent;
   f. Finding and maintaining full-time employment;
   g. Mental health treatment or continued mental health treatment, or
   h. Other programs approved by the PAD Policy Advisory Committee.
2. In determining which requirements to use in each case, the prosecuting attorney will look at various factors including the severity of the facts and circumstances of the case, the criminal history or lack thereof, the individual's age, or any other factor relevant to formulating the requirements for the particular case.
3. The goal of setting requirements is to address and correct behavior that caused the law enforcement interaction in a manner that will reduce the chances of recidivism.
4. The Solicitor's Office and the Probation Office will work together to tailor program requirements to each individual. Examples of general program requirements for different charges are located in Section V. of this policy.

***d. Program Participation and Supervision***

i. Eligible PAD Participants

1. Each participant shall appear at the Clarke County Probation Office on the date and time included on the Notice/Referral form. If the participant is unable to appear at the listed date and time, they must contact the Clarke County Probation Office.
2. All participants will be given a five-day grace period for reporting to the Probation Office. If the participant has not appeared within

five days of the scheduled date, the Probation Office shall notify the Solicitor-General's Office by email. The Solicitor's Office will then commence formal criminal prosecution by filing the citation with the clerk of court and moving forward with the prosecution.

3. Upon arrival, the participant will meet with a representative of the Probation Office to review the requirements of PAD participation as determined by the Solicitor-General's Office.
4. If the participant agrees to the terms, they shall sign a PAD Participation Agreement form (see "Sec. IX FORMS). The Probation Office representative and the prosecuting attorney from the Solicitor's Office shall also sign the form. The PAD Program effectively begins on the date the participant signs the PAD Participation Agreement form.
5. If an individual agrees to PAD but would like to modify the terms, the probation officer will contact the Solicitor's Office for further review and approval. If additional time is needed to consider the modification, the probation officer will give the individual a notice with a new date to report back to the Probation Office.
6. Once an individual has agreed to participation, they will report monthly or as directed by the probation officer. Whether a participant reports in person or by phone/email will be left in the discretion of the Probation Office.
7. In the course of supervising PAD participants, the supervising officer will be responsible for the following:
    a. Monitoring the participant's compliance with the agreed upon PAD requirements;
    b. Keeping and maintaining a complete file documenting the progress of each PAD participant; and
    c. Providing updates on compliance to the Solicitor-General's Office as necessary.
8. After a participant successfully completes the requirements of PAD, the supervising officer will fill out a PAD Program Completion form (see "Sec. IX FORMS). The supervising officer will then notify the Solicitor-General's Office and the Athens-Clarke County Police Department by emailing each agency a copy of the form. The supervising officer will also give a copy of the PAD Completion form to the participant.

ii. <u>Participants' Failure to Comply</u>

1. In the event a participant violates a condition of the PAD Participation Agreement, the supervising officer will notify the participant via phone, email, or in person that the violation(s) will be reviewed by the Solicitor-General's Office for potential removal from the program.

2. If the Solicitor-General's office decides to remove a participant from PAD, the prosecutor will notify the supervising officer of the decision in writing. The supervising officer will then use the PAD Program Removal form (see "Sec. IX FORMS) to notify the participant that they have been removed from the program.

iii. Referrals Not Eligible for PAD

1. If the Solicitor-General's Office determines an individual to be ineligible for PAD, the Probation Office will direct the person to appear in court on the date provided on the citation and provide them with a written explanation as to why they were ineligible.

***e. Cases Involving Mental Health Disorders***

i. Nothing in these Policies and Procedures is meant to interfere with the important work the Crisis Response Team and the Athens-Clarke County officers are doing to divert individuals experiencing a mental health crisis from the jail into treatment.

ii. In cases where an individual is experiencing a mental health crisis, if an officer has probable cause to make an arrest but chooses to divert the individual into treatment, that individual can participate in PAD, with the following minor modifications from the standard PAD policies:

1. It is not necessary for a citation to be issued when the individual is being diverted into treatment. However, the referral form should be completed, even if the participant is unable to sign it.
2. A limited release of information needs to be signed by the participant. If possible, this may be done by the officer in the field. If not, the intake officer should make an attempt to obtain it.
3. Failure to appear for the intake appointment or to comply with the requirements of the program will only result in the resumption of criminal charges when there are continued encounters with law enforcement or when it is necessary to ensure the safety of the community and the individual.
4. Cases diverted from arrest due to a mental health crisis will not be limited to those enumerated in Section II(a)(ii) of these Policies and Procedures.

***f. Closing a PAD Case***

i. If a participant successfully completes the PAD program, the Solicitor-General's Office will document their own internal files that the charges associated with PAD participation will not be pursued. Once notified of a successful completion, the Athens-Clarke County Police Department will supplement the original report with a notation that the case is closed through exceptional clearance/PAD completion.

ii. If a participant is not eligible or is removed from PAD, the Solicitor-General's Office will initiate formal prosecution of the existing charge(s).

*g. Formal Prosecution*

i. If an individual fails to successfully complete the PAD program, the Athens-Clarke County Solicitor-General's Office will initiate formal prosecution of their case by filing a direct accusation. The case will then be prosecuted as a misdemeanor offense in the State Court or Municipal Court of Athens-Clarke County.

ii. The Solicitor-General's Office will directly accuse the cases of all individuals declared ineligible for PAD for which sufficient evidence exists to prosecute the case.

iii. If an individual charged by direct accusation in the State Court of Athens-Clarke County fails to appear for court, the Solicitor-General's Office will file an affidavit seeking the arrest of the individual.

## III. MONITORING THE PAD PROGRAM

*a. PAD Policy Advisory Committee*

i. The PAD Policy Advisory Committee is made up of community stakeholders, policymakers, former PAD participants (once available) and other subject-matter experts. This Policy Advisory Committee will initially be responsible for assisting with the development and implementation of PAD policies and procedures. Thereafter, the Policy Advisory Committee will meet every six months to provide policy guidance and evaluate the PAD Program's operation.

*b. PAD Program Database*

i. The Athens-Clarke County Solicitor-General's Office will maintain and operate a PAD Program database. The database will store participants' biographical and case information as well as their PAD Program participation history. The Athens-Clarke County Police Department and Athens-Clarke County Probation Office will have collaborative access to the database in order to facilitate information sharing.

## IV. FORMS

*a. PAD Forms*

i. Notice/Referral Form
ii. PAD Participation Agreement
iii. PAD Program Removal Form
iv. PAD Program Completion Form

*b. PAD Health Forms*

i. PAD Health Referral/Consent Form
ii. PAD Health Participation Agreement
iii. PAD Health Program Removal Form
iv. PAD Health Program Completion Form

## V. CASE EXAMPLES OF PAD PROGRAM REQUIREMENTS

### *a. Possession of Marijuana*

i. If the participant is 21 years of age or older with no criminal history of drug offenses, the program will last for three months. The participant will be screened by the Probation Office and sent to a 3 hour education course based on principals of Moral Reconation Therapy. The program will end upon providing proof of completion of the course to the supervising officer. As an alternative to the 3 hour course, the participant can choose to complete 8 hours of community service at a location approved by the Clarke County Probation Office.

ii. If the participant is under 21 but at least 17 years of age with no criminal history of drug offenses, the program will last for 6 months. The participant will be screened by the Probation Office and sent to an appropriate educational course based on Moral Reconation Therapy and be subject to random drug and alcohol screens. Depending on the circumstance, other conditions could include completing the End School to Prison Pipeline Program, finishing high school or obtaining an educational equivalent, or participating in Peer Review Court.

### *b. Theft by Shoplifting*

i. The program will last for 6 months. During that time, the participant will complete 20 hours community service at a location approved by the supervising officer and find or maintain full time employment. Restitution shall be paid when requested by the victim. Random drug and alcohol screens may also be required if the circumstances of the case indicated the theft is related to substance abuse issues. The participant will also be barred from the location of the theft.

ii. If the participant is under 21 but at least 17 years of age, other requirements may be implemented, such as completing Peer Review Court, Youth Serve, and/or the End School to Prison Pipeline Program instead of performing a set number of community service hours. The under 21 participant may also be required to finish high school or obtain an educational equivalent instead of finding or maintaining full time employment.

### *c. Underage Possession of Alcohol*

i. If the participant has no prior history, the program will last for 6 months. The participant will be screened by the Probation Office and sent to an appropriate educational course based on Moral Reconation Therapy and be subject to random drug and alcohol screens. The participant may also be barred from the location where the incident occurred.

**MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding is made the 25 day of February, 2020

**BETWEEN:** **The Office of the Solicitor-General of Athens-Clarke County**

**AND:** **The Athens-Clarke County Police Department**

**AND:** **The Athens-Clarke County Probation Services**

**Whereas all parties have endeavoured, in concert with community partners and officials, to craft policies and procedures for a Pre-Arrest Diversion Program, is it now the intent of the parties to put this Program into effect in accordance with said policies and procedures as attached, to begin on March 1st, 2020.**

**EXECUTED** as a Memorandum of Understanding

Carroll R. Chisholm, Jr. — 2/25/20
Carroll R. Chisholm, Jr.
Solicitor-General of Athens-Clarke County
Date

Cleveland Spruill — 3-9-20
Cleveland Spruill
Chief of Police, Athens-Clarke County
Date

Dale Allen — 2/25/20
Dale Allen
Chief Probation Officer, Athens-Clarke County
Date