



## APPLICATION FORM

All applications must include the following information. Separate applications must be submitted for each eligible program. **Deadline: June 1, 2020.** Please include this application form with electronic entry. If you do not receive an email confirming receipt of your entry within 3 days of submission, please contact [Gage Harter](#).

### PROGRAM INFORMATION

County: County of Augusta

Program Title: Pre-Charge Diversion and Litter Control Program

Program Category: Criminal Justice | Environmental | Community Development

### CONTACT INFORMATION

Name: Caleb Kramer

Title: Assistant Commonwealth's Attorney

Department: Commonwealth's Attorney's Office

Telephone: 540.245.5313

Website: <https://www.co.augusta.va.us/government/commonwealth-s-attorney-s-office>

Email: ckramer@co.augusta.va.us

### SIGNATURE OF COUNTY ADMINISTRATOR OR DEPUTY/ASSISTANT COUNTY ADMINISTRATOR

Name: Timothy Fitzgerald

Title: County Administrator

Signature: 

# Pre-Charge Diversion and Litter Control Program



Virginia Association of Counties  
Achievement Award Submission  
Criminal Justice | Environmental  
Community Development

## County of Augusta

Caleb Kramer,  
Assistant Commonwealth's Attorney  
ckramer@co.augusta.va.us

540.245.5313  
6 East Johnson Street  
Staunton, VA 24401



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# EXECUTIVE SUMMARY

## Pre-charge Diversion and Litter Control Program

The Augusta County Commonwealth's Attorney developed the Pre-Charge Diversion and Litter Control Program in January 2018 to increase the quality of outcomes within the criminal justice system. It targets low-level, first time offenders of certain non-violent criminal offenses as candidates most likely to self-correct and not recidivate into criminal activity if diverted away from traditional criminal prosecution.

Instead of being charged, these persons are given the opportunity to volunteer for the Augusta County Litter Control Program for a specified number of hours. If they successfully complete this community service and remain charge-free for 6 months, they are not criminally charged.

This process achieves three goals:

1. It saves these low-level offenders exposure to the criminal justice system and its attendant costs. Significant research has shown that if these persons are exposed to these costs, they are more likely to re-offend, and more likely to commit more serious crimes.
2. It increases government efficiency immediately in terms of reduced time spent by courts, law enforcement, and attorneys for low-level offenses, which usually have predictable outcomes. This time can be more efficiently allocated to more serious matters.
3. It improves the environmental health of Augusta County by removing the litter polluting the area.



# BRIEF OVERVIEW

The litter control program is a community service program run directly out of the Augusta County Commonwealth's Attorney's Office. Unlike established community service programs, this program does not just work with court ordered community service workers. In a first-in-Virginia effort, the litter control program gives non-violent, first-time offenders a chance to perform community service before they have been arrested. If these first-time offenders complete their community service, they will not be arrested or charged.

This one-time offer gives these offenders a chance to correct their mistake while performing a vital community service. It also saves time and money for law enforcement and the courts. It is available only for offenders with no prior criminal history. This program represents a significant cost savings for citizens and also benefits citizens in a number of ways:

- It cleans up the county.
- It increases public awareness about the ongoing litter issue.
- It provides the opportunity for the offenders to give back to the community.

## THE PROBLEM

[The Pre-Charge Diversion and Litter Control Program](#) was designed to address the confluence of several disruptive trends in criminal justice administration. First, there was a wave of research in evidence-based decision making and related criminal justice areas. These studies show that there exists a category of low-risk, first-time offenders for whom normal procedural contact with the criminal justice system does not reduce recidivism. In fact, these studies show that contact with the system may increase the risk that these low-level offenders will re-offend in a more serious manner. Moreover, the studies show that introducing these offenders to diversion programs designed around education and restitution induces them to “self-correct” into more pro-social behavior. The reality is that treating this category of offenders in the traditional fashion through the criminal justice system is counterproductive to the efficient administration of criminal justice.

Second, the data also show that there is a disparate impact on certain categories of first-time offenders who go through the criminal justice system. For more privileged persons, the consequences of a low-level misdemeanor conviction can be mitigated through the

expenditure of significant resources. For the less privileged, undergoing the process can be devastating. Even if the offender does not face active jail time, the outcome of a guilty disposition has a number of knock-on effects that can lead to further involvement in the system. Court costs and attorney's fees can drain their accounts. Failure to pay court costs results in a driver's license suspension. Often, a conviction of simple possession of marijuana or misdemeanor traffic offenses also result in a license suspension. Further, the appearance of a misdemeanor conviction, or even a charge, can result in long-term negative employment consequences. All these effects can last much longer than traditional court sanctions. The result, again, is an increase in recidivism brought on by a disparate impact of the court's normal operation.

Third, there is an increasing strain on the criminal justice system brought on by an increasing caseload and flat or declining budgets. Active court time places a particular strain on stakeholder resources. Each active case in court requires the time of the judge, clerk, bailiff, prosecuting and defense attorneys, law enforcement, and any other witnesses. Further, any active sentence in jail requires the expenditure of even more resources. Often, these resources are not available. Many jails in Virginia are over capacity. In contrast with this significant expenditure of resources, the outcome of low-level, first time offenses is often quite predictable. After crowding the docket and taking up valuable time, court sanctions are usually regular and predictable to all participants. For many first-time offenders criminal justice procedures can seem arcane and inscrutable. They may know the outcome because they are told by their attorney, but otherwise they have no basis of knowledge to appreciate the pro forma proceedings. Rather than increasing respect for and understanding of the rule of law, this contact with the system often serves to heighten confusion and resentment.

## THE PROGRAM

### Pre-charge Diversion

The pre-charge diversion program gives Sheriff's deputies another tool to deal with low-level criminal suspects. Deputies will have the option of deploying this tool when they encounter a person they suspect of committing the following offenses:

- Driving Suspended in violation of VA Code § 46.2-301

- Possession of Marijuana in violation of VA Code § 18.2-250.1
- Underage Possession of Alcohol in violation of VA Code § 4.1-305
- Littering in violation of VA Code § 33.1-346

When a Deputy encounters a suspect in any of the above cases, and upon interview determines **they have no prior criminal convictions**, then the Deputy **may**, in their discretion, choose to divert the suspect rather than issuing criminal charges. The Deputies will use the following procedure in implementing this program:

#### PROCEDURE FOR LAW ENFORCEMENT:

1. **Encounter:** The Deputies follow normal department procedure in investigating, apprehending, and interviewing persons suspected of the above listed offenses.
2. **Interview:** During the interview, the Deputies ascertain whether or not the suspect has any prior criminal convictions.
3. **Questions:** Although not mandatory, there are three questions the Deputies may ask which will help them gauge the potential risk the suspect has of re-offending in the near future. The questions are scored for the answers as follows:

<b>Current Age:</b> _____	(16-25) = 2 (26-35) = 1 (36+) = 0 Score <input type="checkbox"/>
<b>Age of First Arrest: *Per incident not charge</b> In your <b>LIFETIME</b> -Include arrests, summons, and warrant for any <b>criminal offense</b> include criminal traffic, juvenile _____	(0-17) = 2 (18-21) = 1 (22+) = 0 Score <input type="checkbox"/>
<b>Number of Prior Arrests: *Per incident not charge</b> As an <b>ADULT</b> only - Arrests, summons, warrant for any <b>criminal offense</b> , this includes ordinance violations that would otherwise be a criminal offense _____	(0-1) = 0 (2-4) = 1 (5+) = 2 Score <input type="checkbox"/>

A total score above a “4” indicates high risk. The Deputies should not divert anyone above a “4” without a compelling reason.

The Deputies are not required to fill out this form. However, the Deputies are familiar with the questions on the form and the risk categories associated with each answer. This proxy tool, first developed and deployed in Eau-Claire, Wisconsin, is highly

predictive regarding the risk the suspect poses in committing another crime. This does not mean the Deputies substitute the proxy results for their own judgement.

4. Assess: If the suspect has no prior criminal convictions, the Deputies must determine, by their own judgment of the person and their demeanor, if the suspect will likely be a successful candidate in the program.
5. Offer: If the Deputies deem the suspect a good candidate, they will explain the diversion program to them and offer participation in lieu of immediate criminal charges.
6. Referral: If the suspect accepts the offer, the Deputies fill out a form with referral information on it. If the suspect declines, the Deputies will proceed as usual with issuing criminal charges.
7. Document: The Deputies record all relevant facts of the encounter in an incident report.
  - a. Upon submission it is recorded “prosecution declined”. It remains that way, until and unless the Commonwealth’s Attorney requests the Deputy to follow up with a charge.
8. Diversion: The suspect has now been diverted. The Deputies have no further involvement in the case unless the suspect has failed to meet program requirements.
9. Failure: Should the Commonwealth’s Attorney’s office indicate that the suspect has failed to meet program requirements, the Deputies will appear before a magistrate and seek a warrant based on the facts documented in step 7. Criminal prosecution will then proceed as normal.

One priority Deputies keep in mind in administering this program is only referring candidates who will successfully complete all the program requirements. This reduces the fail rate and decrease Deputy time spent on charging those who fail. To accomplish this goal, the Deputies rely primarily on their judgement of the suspect and the suspect’s demeanor at time of contact.

Additional referrals come from pre-trial diversion cases through the court system as well as [Blue Ridge Court Services](#).



## PROGRAM REQUIREMENTS:

Once diverted, the suspects are required to perform a specified amount of community service depending on their potential charges, in the form of litter pickup. They also must remain crime-free for 6 months after initial enrollment in the program. There may also be a remedial class or other requirements imposed. Any failure to comply with program requirements will result in the initiation of criminal charges.

### The Litter Control Program

*“Clean streets and clean records.”*

Once referred to the litter control program, an offender has 72 hours to initiate contact with the coordinator and create a work schedule. Timely communications regarding scheduled work dates are required.

Safety is a primary concern when collecting litter and education regarding safety guidelines is mandatory, including watching the Virginia Department of Transportation’s safety video. Safety vests, gloves, pickers, VDOT roadside safety signs, water, first-aid kits, etc. are provided.

Normal work hours are 9am- 5pm on Fridays and Saturdays, though other times and days may be scheduled as availability allows. Offenders meet at a common pick-up point, usually a local parking lot, and the program van takes them to the planned job site. Safety signs and van safety lights are used and safety reminders are issued and then the job goals and plans for accomplishing the tasks are discussed. The group begins picking up along a 2-mile stretch. Typically, the coordinator, an assistant Commonwealth’s attorney, performs the tasks alongside of the offenders, providing motivation for them and often helping to gain their respect.

The work crew takes breaks for lunch and water as needed. Work hours, street/ routes, start/stop points, and miles completed are documented. The coordinator submits a VDOT work request to have the trash and materials picked up and items in the following categories are counted:

- Regular trash - a count of orange bags
- Recycled trash - a count of all clear bags

- Tires
- Miscellaneous items

The coordinator documents hours worked by each offender in the master log, along with any notes about behavior and performance. After an offender on probation has satisfied all the required community service hours, the referral is returned to the supervising probation officer. The referral is also returned to the probation officer if the offender is determined to be a safety concern or a non-satisfactory participant in the program. The coordinator enters all the information from the day's work for data collection and tracking information.

### **CITIZEN PARTICIPATION:**

Citizens are called upon to report litter through a phone call, email, [the program's Facebook page](#), or through a [quick online form](#). This is an important aspect of the program as the citizens are the primary beneficiaries of the program. When a citizen reports litter, contact is made discussing the location and details of the report. An effort is made to give the reporter a time-frame in which the job will be addressed. Citizen concerns are all recorded and citizens are contacted once the job is complete to ensure satisfaction. Citizens can also donate to the program directly and sponsor a "Keep Augusta Beautiful" sign for \$120.

Other non-profit organizations are invited to participate in the program and the program makes an effort to participate in community activities (County Earth Day and tree plantings with soil and water conservation groups, for example).

### **The Results**

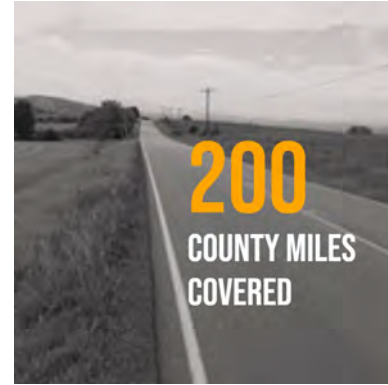
Several metrics are used to assess the impact, depending on the goal. The number of pre-charge participants and the recidivism rate are tracked. The estimated number of hours saved in the justice system are calculated. Hours completed, miles of road covered, and estimated pounds of trash picked up are measured for the Litter Control Program.

With 41 pre-charge participants, 205 man-hours saved for the justice system are estimated. The recidivism rate is 9%, well under average criminal recidivism.

A lower-than-average recidivism rate also represents additional savings for the criminal justice system, but the data is too new to make this calculation yet.

In 2019, 3400 man-hours were completed through the litter control program. A highly conservative estimate is 36,000 pounds of trash picked-up and 200 miles of road in the county covered. These numbers are increased significantly from 2018: 12,000 pounds removed, a little over 800 man-hours, and 90 miles of road covered.

In 2019:



## FUNDING

When the program started, the initial funding came as a line item and appropriation from the Augusta County yearly budget. The program's current operating budget is \$13,000 and the funding sources are as follows:

Community Foundation for Central Blue Ridge Grant:	46%
Augusta County budget line item:	34%
Virginia Department of Environmental Quality Competitive Grant:	20%

Moving forward, regular stakeholder support across jurisdictional boundaries is anticipated. The county bus garage maintains upkeep of the program's van.

# THE AWARDS CRITERIA

## An Innovative Model

As the first jurisdiction to implement such a program in Virginia, the program is ploughing new ground. Many of the lessons learned and best practices which result from the formation of this program will easily translate into other jurisdictions in Virginia. The program will make its (anonymized) data available to any interested stakeholders in other jurisdictions. It will also provide policy and best practice models and will assist in setting up similar programs. The Commonwealth's Attorney's Office is particularly well positioned to spread this model throughout the Commonwealth. At some point in the Program's maturity, the Augusta Commonwealth's Attorney's Office will present the Program to all Commonwealth's Attorneys at the annual Spring Institute conference. This will increase awareness among all prosecutors in the state and increase the chance of their interest at the local level. Due to the flexibility of the program's model, there will be few formal barriers to state-wide implementation. Institutional resistance and inertia will be a more significant barrier. The program's anticipated strong results and clear benefits will help in overcoming this inertia.

## Collaboration

This program would not be feasible without widespread community commitment. The Blue Ridge Criminal Justice Board, the regions' statutorily created community criminal justice board, formally approved the implementation of this program. This Board is comprised of representatives from local governments, courts, prosecution and public defender's offices, local and state probation and the regional jail. In addition to this formal approval, the program requires direct participation from a number of stakeholders.

The cooperation of local law enforcement agencies is critical, as their officers are the ones who make the decision to divert. Blue Ridge Court Services provides critical support through use of facilities and identification of low-risk referrals.

The program has also leveraged the efforts of interested citizens and other government stakeholders for the purposes of advice, guidance, and implementation of small parts of the program. For example, the community development department helps with grant writing and

VDOT offers use of supplies and signs and picks up the bags and materials collected by the offenders.

Community outreach and engagement was a significant effort during the formation of this program, and remains so now. This includes meeting with community service and fraternal organizations, social media engagement, and appearance in mainstream news outlets. All feedback so far has been positive.

Individual community members are encouraged to participate by reporting trash. Opportunities to volunteer and donate to the program offer ways for any citizen to get involved.

Currently, the local Community Foundation for Central Blue Ridge funds the program through a grant. The program also receives funds from the Virginia Department of Environmental Quality. The support of these organizations demonstrates the level of community value the program has gained.