

Placer County District Attorney's Office

16.00 DEFERRAL PROGRAMS

16.01 BACKGROUND

In May of 1996, this office finalized an agreement with Pacific Educational Services to administer a deferral program⁷ for misdemeanor offenses. It is hoped that the program will serve to alleviate problems associated with a burgeoning misdemeanor caseload.

Two distinct programs have been created: Deferral of Charges (DOC), and Deferred Entry of Judgment (DEJ). DOC is a precomplaint program which results in a greater savings of time and effort in that a DDA's involvement ends at intake. DEJ is a post complaint program which entails three additional steps: the filing of a complaint, arraignment/entry of guilty plea, and then withdrawal of plea/dismissal.

Successful implementation of these programs will require that charging deputies approach their task with a different perspective. DOC and DEJ are to be viewed as workload management devices. Although we must continue to be aggressive in the prosecution of misdemeanor cases, we must acknowledge that our resources are limited. Deferral of low level cases will permit DDA's to concentrate their effort on serious offenders facing significant penalties upon conviction. With this objective in mind, charging deputies must develop an instinct for those cases which suggest that a rehabilitative effort is more appropriate than punishment and deterrence.

A DOC offender should be entitled to claim the benefit of PC 1001.55 (The arrest is deemed not to have occurred. The offender need disclose it only in an application for employment as a peace officer made within five years of the arrest.) However, DA Deferral is distinct from diversion pursuant to a PC Chapter 2.7 program, and may therefor exist outside the scope of PC 1001.55.

⁷ The authority for this deferral program derives from the power which the Constitution vests in the executive branch of government to prosecute criminal cases. The program is distinct from statutory diversion programs set forth in PC 1000 et seq. See, for example, PC 1001: "It is the intent of the legislature that neither this Chapter... nor any other provision of law be construed to preempt other [precomplaint or post-trial diversion programs.]" The program does, however, incorporate many of the features of statutory diversion programs.

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16.02 DOC AND DEJ

DOC offenders are required to complete a level I counseling program (1 Day/6 hours) at a cost of \$150. This is a "precomplaint" deferral program designed for low risk offenders.

DEJ offenders are required to complete a level II program (2 days/12 hours) at a cost of \$250. Counseling programs at this level entail a greater commitment of time and money. This is a deferral program with judicial intervention. Both level I and II programs deal with subjects such as theft education, alcohol and substance abuse, anger control, and parenting skills.

16.03 DEFERRAL ELIGIBILITY

The charging deputy first determines whether a case merits filing, and only then whether the offender should be deferred. Please remember: a decline is still a decline. The deferral program is not an option when the charging deputy is uncertain whether a report establishes the elements of a misdemeanor offense. In that event, a case should either be declined or returned for further investigation. It should not be deferred.

A misdemeanor offender is eligible for deferral if:

1. The primary offense is a straight misdemeanor and not a wobbler. Thus, for example, a person charged under PC 273.5 is not deferrable.
 2. The offender has never been convicted of a felony, and has not been convicted of a misdemeanor within 5 years.
 3. The offender has not been diverted or deferred within the past 5 years.
 4. The offender did not commit a narcotics offense divertable under PC 1000.
 5. The case does not involve a driving offense. (e.g. CVC 23152, 14601, 23103, 20002, etc.)
 6. The offense does not carry a mandatory jail term. (e.g. PC 417 (a).)
- Cases involving violations of the Fish and Game Code present a unique problem. That agency depends heavily upon convictions and fines for revenue. Deferral deprives it of that source of

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funding and is therefore disfavored. As a general rule, Fish and Game cases will not be deferred. Exceptions should be coordinated with the investigating officer.

16.04 DEFERRAL BASED ON CASE-BY-CASE EVALUATION

Beyond the bright line eligibility standard set forth above, the following criteria should be considered:

1. The level of sophistication displayed in the commission of the offense.
2. Whether there is an aggrieved victim whose plight calls for aggressive prosecution.
3. Whether the offender has been a chronic problem for law enforcement agencies.
4. Whether it appears from the "limited" background information available in a police report that the offender is someone with potential for rehabilitation. (e.g. the offender confessed, expressed remorse, has strong family support and/or community ties, is gainfully employed, etc.)

16.05 DOC VS DEJ

Once the charging deputy has determined that a report established the commission of an offense and that the offender is eligible for deferral, the question becomes whether DOC or DEJ is appropriate. This, too, must be decided on a case-by-case basis. The following general guidelines apply:

1. DOC is preferable as a workload reduction device because the DDA's involvement ends with review of the police report. However, DOC is suitable only for the lowest risk offenders with the strongest potential for rehabilitation.
2. DEJ is appropriate in the following circumstances:
 - When the deferral eligibility determination is close, i.e. when the nature of the offense and/or offender are such that the prospects for rehabilitation are poor. If the offender fails to complete the level II program, a sentence previously stayed is executed.

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- When the offense is priorable, as with petty theft, and proof of guilt can be established. (again, if the offender fails to complete the program, sentence is executed and we gain a priorable conviction with no additional effort.)
- When a citation for a deferrable offense (e.g. 647f) was filed by a police agency directly with the court. Since these cases are already in a post-complaint mode, DEJ is the appropriate program.

16.06 DOC AND DEJ PROCEDURES

Procedures common to both programs:

1. The misdemeanor charging deputy reviews the report to determine if the case should be declined, FI'd or filed.
2. If case is one that should be filed, then deferral eligibility must be considered.
3. If the offender is eligible for deferral, the charging deputy notes in the file that either DOC or DEJ is appropriate. If restitution is at issue, the misdemeanor unit sends restitution forms to the victim and holds the file until the victim responds or fails to do so within a reasonable time. It is imperative that a restitution amount be determined prior to deferral of a case. If agreement as to restitution cannot be reached with an offender, then deferral is no longer a viable disposition; given the constitutional status of a victim's right to restitution, it cannot be compromised for the sake of deferral.

16.07 PROCEDURES UNIQUE TO DOC

1. When the charging deputy has determined that the offender is eligible for DOC, a complaint will not be filed.
2. If the offender Bailed to Appear for arraignment on a given date, a decline form must be filed with the court advising that DOC has been determined to be appropriate, and that the arraignment date should therefore be vacated.
3. If restitution is at issue, the misdemeanor unit secretary must send a restitution form to the victim, and pend the file for a reasonable amount of time. If the victim does not

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respond, the file should be routed back to the charging deputy. If the victim does respond with a requested restitution amount, the secretary must write the dollar amount requested on the docket sheet and log the case out to Pacific Educational Services (PES).

4. PES logs the case in and does the following:

- Reviews records to insure that the offender has not previously been diverted or deferred in the past 5 years.
- Performs second-level review as to other aspects of the offender's suitability for DOC program, and if suitable.
- Mails DOC instruction sheet and offer and acceptance of DOC to the offender. The offender is notified of the restitution amount, if any.
- If the offender signed a PTA, every effort should be made to mail the DOC paperwork prior to the PTA date and advise the offender that the PTA date can be disregarded if deferral is accepted.⁸
- The offender must respond within 5 calendar days. If the offender executes required forms and thereby agrees to DOC, the offender is enrolled in level I program which he must complete within 90 days. Restitution is collected by PES and forwarded to the victim.
- Upon expiration of the 90 day deferral period, PES documents the results and logs the case back to the misdemeanor unit.

5. If the program was successfully completed, the secretary notifies the enforcement agency that prosecution is declined because of that fact. Also, if a DOC offender was booked initially, a JUS FORM 8715 (disposition of arrest) should be completed and submitted to DOJ.

⁸ By memo dated 6/24/96, the Municipal Court announced that it would accept PTA forms only in direct file cases. Otherwise, the court will calendar cases for arraignment only upon filing by the DA of a citation or complaint. Hence, where an offender who signed a PTA is deferred under the DOC program, it is not necessary to inform the court that the PTA date should be vacated.

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6. If the DOC program was not completed, the charging deputy may file a misdemeanor complaint.

16.08 PROCEDURES UNIQUE TO DEJ

1. The charging deputy is responsible for determining whether the offender is eligible for DEJ. The charging deputy should clearly indicate on the docket sheet that DEJ is being offered. The sentencing recommendation should be noted on the docket sheet.
2. If restitution is at issue, the misdemeanor secretary must send a restitution form to the victim, and pend the file for a reasonable time for a response. If a response is received, the secretary must note the exact amount requested on the docket sheet.
3. A misdemeanor complaint must be prepared and the case logged out to PES. The complaint is not filed with the court.
4. PES logs the case in and does the following:
 - Reviews records to insure defendant has not been diverted or deferred in the past 5 years.
 - Performs second-level review as to other aspects of defendant's suitability for DEJ program, and if suitable:
 - Selects a notice to appear date, then files complaint/Notice To Appear and sends the following documents to defendant:
 - NTA
 - DEJ program instruction sheet
 - Acceptance of DEJ/waiver of rights form
 - If defendant bailed to appear or promises to appear for a particular date, and a citation or complaint is filed prior thereto, an Notice To Appear is unnecessary. Therefore, PES should check the file and contact the court, if necessary, to ascertain whether an arraignment date has already been set.
5. PES returns the file to the secretary for the arraignment.

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6. The misdemeanor secretary must pull the file for the arraignment calendar.
7. At the arraignment:
 - The DDA informs the court that a DEJ offer and sentence indication have been made to defendant. The deputy may request the arraignment be continued (up to two weeks) so the defendant can consult an attorney regarding the advisability of accepting the DEJ offer. The attorney handling the case in court should direct the defense attorney/defendant to contact the DEJ program coordinator for further instructions. The Public Defender will be appointed as appropriate and may be able to advise the defendant at the initial arraignment. Court states its approval on the record.
 - Defendant accepts or rejects offer.
 - If DEJ offer is accepted, the court takes defendant's guilty plea, files acceptance of DEJ/waiver of rights form, and imposes sentence but stays execution. Case is then calendared for deferral review 90 days later. Defendant is ordered to enroll in and complete PES level II program by next court date. Defendant is also ordered to pay any restitution through PES. PES retains DA file. PES documents defendant's progress and pulls file for calendar on date set for court review. At that review:
 - If defendant has completed the program and paid any restitution due, defendant's motion to withdraw his guilty plea is granted as is the DA's motion to dismiss. PES then logs the case back to misdemeanor unit. The secretary notifies law enforcement agency that case was dismissed pursuant to the deferral program.
 - If defendant has not completed the program, court executes sentence previously imposed but stayed. PES logs case back to misdemeanor unit and the secretary notifies the appropriate agency of disposition.
 - If DEJ offer is rejected, defendant enters not guilty plea and conference and trial dates are set.

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8. If DEJ is not offered initially, a DDA remains free to make the offer at a later date. For example, during conference of the case, difficulties of proof may become apparent. In that situation, DEJ might be viewed by both parties as a "strategic retreat."

16.09 DOC/DEJ DEFERRAL PROGRAMS AND NSF CHECK CASES

Finally, PC 476 cases (NSF checks) are not eligible for the PES program. The simple reason is that by the time we see a PC 476 case, the offender has already spurned a generous DOC style offer. We have a blanket pre-complaint deferral policy with respect to such cases. The DA check diversion program was "outsourced" to Computer Support Services (CSS) in February, 1996. Merchants and law enforcement agencies now send bad check reports directly to CSS, and that company attempts civil resolution of all such cases by collecting restitution for the victims. A case is forwarded to us only when that effort fails.

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16.10 ELIGIBILITY STANDARDS IN CHILD ABUSE CASES

The ultimate responsibility for the decision to seek deferred entry of judgment in child abuse cases rests with the District Attorney. Consistent with Penal Code Section 1000.12(a), nothing in these eligibility standards shall deprive a prosecuting attorney of the ability to prosecute any person who is suspected of committing any crime in which a minor is a victim of an act of molestation, abuse, or neglect to the fullest extent of the law, if the prosecuting attorney so chooses.

Pursuant to Penal Code Section 1000.12(c)(3) *repealed* the Placer County District Attorney's Office promulgates the following eligibility standards for deferred entry of judgment and treatment of defendants:

1. Deferred entry of judgment for the defendant is in the best interests of the minor victim.
2. Rehabilitation of the defendant is feasible in a recognized treatment program, as defined in Penal Code Section 1203.066, designed to deal with child molestation, abuse, or neglect, as specifically related to the charges made.
3. There is no threat of harm to the minor victim if entry of judgment is deferred.
4. No person shall be deemed eligible for deferred entry of judgment under these eligibility standards unless he or she pleads guilty to all charges and enhancements.
5. Deferred entry of judgment shall not apply to any person who is charged under subdivision (b) of Section 288, or any sexual offense involving force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the minor victim or another person.
6. Any person who is eligible for deferred entry of judgment under these eligibility standards shall also meet all of the requirements for the counseling program delineated under Section 1000.13 as follows:

(A) The person is a family member of the victim. For the purposes of these eligibility standards "family member" means a parent, step-parent, sibling, aunt, uncle, cousin, grandparent, or a member of the victim's household who has developed a family relationship with the victim.

(B) The person's criminal record does not indicate that diversion has been terminated, or probation or parole has been revoked, without thereafter being completed within the previous 10 years.

(C) The person has not been referred for counseling or other services pursuant to Penal Code Sections 1000.12 or 1000.13 prior to the commission of the present alleged offense. *repealed*

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(D) The person has no prior conviction for any felony sexual offense or any offense in which a minor is a victim of sexual abuse, and has no conviction for any felony offense involving violence against another person during the previous 10 years in which the suspected person remained free of prison custody.

In addition to the statutory provisions, the following circumstances will automatically preclude the defendant from consideration for deferred entry of judgment:

1. The use of force, violence, threats of violence, or intimidation to the victim in the present offense(s).
2. The commission of substantial sexual conduct (penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object, oral copulation, or masturbation of either the victim or the offender).
3. An allegation of continual sexual abuse of a child within the meaning of Penal Code Section 288.5.
4. The existence of multiple victims.
5. Infliction of bodily injury on the child victim.
6. The existence of any aggravating circumstance specified in Penal Code Section 667.61
7. The existence of any prior convictions or adjudications that qualify as "strikes" under Penal Code Sections 667(d) and (e) and 1170.12.

Additional factors which shall not automatically preclude deferred entry of judgment, but which are to be considered and evaluated by the prosecuting attorney are as follows:

1. The needs and best interests of the child victim.
2. The existence of any additional uncharged victims of sexual or non-sexual misconduct.
3. The duration and frequency of the misconduct.
4. The attitude(s) of the victim and supporting parent toward prosecution.
5. The necessity of prosecution in terms of the successful treatment of the victim.
6. The desirability and practicality, if any, of reunification of the family at a future date.
7. The quality and nature of counseling services and programs available to the defendant.

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Nothing in these eligibility standards is intended in any way to limit or restrict the prosecuting attorney's decision to fully prosecute to the letter of the law any person suspected of committing child abuse.

Nothing in these eligibility guidelines is intended to influence or restrict any treatment program in determining an individual's suitability for acceptance into that program, as there may exist additional treatment criteria not addressed in this prosecutor's eligibility standards.