

Memo

To: All District Attorney Staff

From: Lee Cunningham, Assistant District Attorney
Sheryl Wolcott, Chief Deputy District Attorney

Date: April 1, 2015

Subject: Misdemeanor Diversion: Eligibility Criteria

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Offender Eligibility:

1. Has never been convicted of a felony (a felony that has previously been reduced to a misdemeanor based on a P. 47 petition is not considered an excluding conviction);
2. Has not been convicted of a misdemeanor within the last 5 years;
3. Has never been required to register pursuant to Penal Code section 290;
4. Has not previously been convicted for the same or similar charges as current case;
5. Does not have any other pending criminal charges in any court;
6. Is not on probation;
7. Has never failed to successfully complete probation;
8. Has not been diverted for any program, including YAD, in the last 5 years;
9. Did not exhibit criminal sophistication through his or her modus operandi, or criminal intent;
10. Did not inflict significant injury upon the victim or any other person in the commission of the crime.
11. Did not commit an act of domestic violence, driving under the influence, or a gang-related offense in the commission of the crime.

List of Possible Offenses Eligible for Diversion
Offense date must be on or after April 1, 2015

Business and Professions Code:

- 4060 Controlled Substance without prescription
- 25658(b) Minor Purchasing Alcohol
- 25661(a) Possession or Presentation of False ID
- 25662(a) Minor in Possession of Alcohol

Code of Regulations:

- 14-4312 Control of Animals in State Parks (leash law)

Health and Safety Code:

- 11357(a) Concentrated Cannabis
- 11357(c) Possession > 1 oz. Marijuana
- 11364.1 Possession of Drug Paraphernalia
- 11377 Possession (less than 3 grams)
- 11350(a) Possession (less than 3 grams) (Heroin is NOT eligible for diversion)
- 11550(a) Under the Influence/Use Controlled Substance

Penal Code:

- 148.9 False ID to an Officer
- 240 Assault, non-DV
- 242 Battery, non-DV
- 369(i) Trespass on Railroad Property
- 370/372 Public Urination
- 374.4 Littering
- 415 Disturbing the Peace
- 415(1) Challenge to Fight
- 415(2) Disturbing the Peace
- 415(3) Disturbing the Peace
- 459.5 Shoplifting (not over \$400)
- 484 Petty Theft (not over \$400)
- 485 Failure to Locate Owner of Lost Property (not over \$400)
- 490.2 Shoplifting (not over \$400)
- 496 Receiving Stolen Property (not over \$400)
- 498(b)(5) Stealing Electricity (not over \$400)
- 537(a)(1) Defrauding Innkeeper (not over \$400)
- 555 Trespass Posted Property
- 594 Vandalism (damage not over \$400, and not gang-related)
- 602 Trespass

602.8 Enter Posted Land
637.5 Illegal Cable or Phone (not over \$400)
647(e) Unlawful Lodging
647(f) Drunk in Public
647(h) Loitering

Vehicle Code:

4462.5 False Tabs
12500 Unlicensed Driver
14601.1 Driving on Suspended License (not 14601(a), 14601.5, or 14601.2)
20002 Hit and Run Property Damage
23222(b) Marijuana in Car

OTHER: Uncommon offenses which are not listed may be eligible with supervisor approval