


GENERAL OFFICE MEMORANDUM 18-002

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: JOHN K. SPILLANE 
Chief Deputy District Attorney

SUBJECT: TWO CURRENT ISSUES RELATED TO COURT-ORDERED
DIVERSION

DATE: JANUARY 2, 2018

This memo advises deputies of two current developments regarding court-ordered diversion:

1. The misdemeanor diversion pilot program authorized by Penal Code section 1001.94, *et seq.*, will expire on January 1, 2018; and
2. A recently published case clarifies that courts may only order diversion where specifically authorized by statute.

Deferred Entry of Sentencing Pursuant to P.C. 1001.94, *et seq.*

A pilot program providing for deferred entry of sentencing in certain misdemeanor cases was established by the California Legislature, only in Los Angeles County, pursuant to P.C. § 1001.94, *et seq.* (See [GOM 14-114](#).) No legislation has passed extending that program, and the program will expire according to its own terms on January 1, 2018. (P.C. § 1001.99.)

Beginning January 1, 2018, deputies should object to any effort by a court to defer sentencing under this program.

Courts May Only Order Diversion When Specifically Authorized by Statute

Courts may only divert or defer entry of judgment and/or sentencing where specifically authorized by statute. The recently published case of *People v. Jacob Marroquin* (LA Superior Court Appellate Division, August 18, 2017), 2017 Cal. App. LEXIS 824, reaffirms that courts have no inherent authority to grant informal diversion.

In addition to P.C. 1001.94, *et seq.*, there are a number of statutes that provide for diversion, or for deferred entry of judgment, in specific circumstances. They include the following:

- Mental health diversion and several alternative sentencing courts including women's re-entry court, established pursuant to P.C. § 1001.50 *et seq.* (See [Special Directive 17-08](#));
- Diversion for developmentally disabled misdemeanor defendants, pursuant to P.C. § 1001.21 *et seq.* (See [Special Directive 16-09](#));

- Deferred entry of judgment for defendants accused of certain narcotics-related offenses, pursuant to Penal Code §§ 1000-1000.6;
- Diversion for members of the U.S. military who may be suffering from service-related mental health issues, pursuant to P.C. § 1001.80; and

Each program has specific statutory requirements that must be met before a court can divert a defendant or order deferred entry of judgment. If a defendant meets the eligibility requirements, the court does not need the approval of the District Attorney's office to divert that individual. (*People v. Superior Court (On Tai Ho)* (1974) 11 Cal.3d 59, 68.) However, some courts desire to divert defendants even when they do not meet the requirements of any program. Such was the case in *Marroquin*.

In *Marroquin*, the defendant was charged, inter alia, with possession of nunchaku in violation of P.C. § 22010. A judge in the Long Beach Courthouse desired to grant the defendant diversion and dismiss the case if the defendant stayed out of trouble for a year. The defendant was not eligible for deferred entry of sentencing pursuant to P.C. § 1001.94 *et seq.*, or any other statutory diversion program. The court nonetheless asserted a general authority to grant diversion to the defendant under its powers to impose sentence and render judgment. Over the prosecutor's objection, the court accepted a guilty plea and subsequently dismissed the case on its own motion pursuant to P.C. § 1385. The Appellate Division of the Superior Court has now ruled that the court had no authority to grant diversion and dismiss the case.

The court in *Marroquin* reaffirmed the holding of the California Court of Appeal in *People v. Municipal Court (Gelardi)* (1978) 84 Cal.App.3d 692. In that case, the trial court continued the case prior to the entry of a guilty plea, promising dismissal if the defendant stayed out of trouble. The Court of Appeal held that the trial court had no authority to divert the defendant in that manner.

Deputies should familiarize themselves with the requirements of the several diversionary programs authorized by statute. If a judge desires to grant diversion or defer entry of judgment and/or sentencing in a situation that is not covered by one of the enumerated programs, our deputy in court should cite the *Marroquin* and *Gelardi* cases where appropriate and clearly object on the record so as to preserve our rights. Appropriate cases should then be referred to the Appellate Division for consideration of further action.

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