



Stanislaus County District Attorney Diversion Program (DVP) ELIGIBILITY & SUITABILITY PROCEDURES

ELIGIBILITY & SUITABILITY

The District Attorney will determine who is eligible and suitable for the DVP. Eligibility requirements are as follows:

1. The defendant does not have a prior felony conviction.
2. The defendant has never been committed to the California Youth Authority, or equivalent state institution.
3. The defendant has never had a grant of probation revoked without thereafter being completed.
4. The defendant is not eligible if he/she has been previously granted, failed, or currently is in diversion, or deferred judgment, either under this program or any other program. Defendants who are currently awaiting approval of an eligibility report for diversion or deferred judgment either under this program or any other are not eligible.
5. Persons charged with offenses wherein restitution or damage exceeds \$1,000.00.

DVP INELIGIBLE OFFENSES:

1. Infractions
2. Any offense not listed in the list of DVP eligible offenses
3. Those offenses which involve evidence of, or were committed with:
 - a. A degree of criminal sophistication (e.g. acting in concert, evidence of conspiracy or planning, criminal street gang), or
 - b. Other organized criminal activity whether or not the conduct is charged.
 - c. Multiple acts of the same offense, multiple offenses or multiple victims.

If the defendant meets these eligibility requirements and the DDA finds that the defendant is not in some other way unsuitable for the program, the defendant will be allowed to participate in the DVP for the following offenses only:

DVP ELIGIBLE OFFENSES:

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| 1. | Penal Code section 166(a)(4) | (Violate Court Order Non-DV) |
| 2. | Penal Code section 240 | (Assault) |
| 3. | Penal Code section 242 | (Battery) |
| 4. | Penal Code section 243(e)(1) | (Battery on person/dating relationship) |
| 5. | Penal Code section 272(a)(1) | (Contributing to the Delinquency of a Minor) |
| 6. | Penal Code section 337u | (Unlawful Gambling) |
| 7. | Penal Code section 370 | (Public Urination) |
| 8. | Penal Code section 372 | (Maintain Public Nuisance) |
| 9. | Penal Code section 374.3 | (Unlawful dumping) |
| 10. | Penal Code section 415(1) | (Challenging to Fight) |
| 11. | Penal Code section 415(2) | (Disturbing the Peace) |
| 12. | Penal Code section 415(3) | (Disturbing the Peace) |
| 52. | Penal Code section 459.5(a) | (Shoplifting) |
| 13. | Penal Code section 466 | (Possession of Burglary Tools) |
| 14. | Penal Code section 476a | (Insufficient Fund checks, both (a) &(b) if < \$1000) |
| 15. | Penal Code section 484/488 | (Petty Theft) |
| 44. | Penal Code section 496(a) | (RSP less than \$950.00) |
| 16. | Penal Code section 537(a) | (Defrauding an Innkeeper) |
| 17. | Penal Code section 555 | (Trespass on Posted Property) |
| 18. | Penal Code section 591 | (Injure Phone) |
| 19. | Penal Code section 594(a)(2) | (Vandalism < \$400 - if not gang or tagging related) |
| 20. | Penal Code section 594(a)(3) | (Vandalism- if not gang or tagging related) |
| 21. | Penal Code section 594(b)(2) | (Vandalism- if not gang or tagging related) |

22. Penal Code section 594.1(a)(1) (Non-systemic Sale of vandalism materials)
23. ~~Penal Code section 602 (Trespass on Posted Property)~~
- ~~— All 602s listed in ICJIS can be diverted~~ **suspended** by the DA 11/6/2017
24. ~~Penal Code section 647(b) (Soliciting Prostitution)~~ **suspended** by DA
25. Penal Code section 647(e) (Unlawful Lodging)
26. Penal Code section 647(f) (Public Intoxication)
27. Penal Code section 653k (Possession of a switch-blade knife)
28. Penal Code section 653m(a) (Annoying Phone Calls)
45. B&P Code section 4060 (Prescript drugs)
29. B&P Code section 4140 (Possess Syringe)
30. B&P Code section 12677 (Unlawful Possession of Fireworks)
31. B&P Code Section 22435.2 (Possess Shopping Cart)
32. B&P Code section 25658(a) or (b) (Furnish Alcohol to Minor – excluding a business or licensed alcohol retailer or employees or minor possess)
33. B&P Code section 25662 (Minor Possess Alcohol)
46. ~~H&S Code section 11350 (simple possession not otherwise restricted)~~
47. ~~H&S Code section 11357 (simple possession not otherwise restricted)~~
53. ~~H&S Code section 11375(b)(2) (possession of designated controlled substances)~~
48. ~~H&S Code section 11364 (possess narc paraphernalia)~~
34. H&S Code section 11364.7(a) (Non-commercial possession of drug paraphernalia)
49. ~~H&S Code section 11550 (Under the influence)~~
50. ~~H&S Code section 11377 (simple possession not otherwise restricted)~~
51. Vehicle Code section 4461 (Unlawful use handicap placard)
35. Vehicle Code section 4462.5 (Unlawful display of evidence of registration)

- 36. Vehicle Code section 12500 (No CDL)
- 37. Vehicle Code section 14601 (Suspended CDL – various, but not alcohol)
- 38. Vehicle Code section 14601.1 (Suspended CDL – various, but not alcohol)
- 39. Vehicle Code section 14604(a) (Use of vehicle by unlicensed driver)
- 40. Vehicle Code section 14610(a)(1) (Unlawful use of license)
- 41. Vehicle Code section 23103(a) (Reckless)
- 42. Vehicle Code section 23103(b) (Reckless Driving/Parking lot)
- 43. Vehicle Code section 23109 (Exhibition of Speed)

- Items 44- 52 added November, 2017

DVP PROCEDURE

A. Eligibility and Suitability Determination

At the time of reviewing a criminal complaint, the reviewing DDA will follow current practices for issuance and/or rejection. If the case is to be rejected, no DVP review is required. If the case is to be issued, then the DDA will determine whether the defendant is eligible under the criteria enumerated above. If the DDA finds that the defendant is eligible and the DDA also finds that the defendant is not in some other way unsuitable for the program, the DDA will offer the defendant a chance to participate in the DVP and the DDA will select the appropriate Educational Program.

B. Length of Diversion Program

The length of the DVP shall be for **90** days from the date of issuance review.

C. Terms of DVP

The defendant will be sent a letter advising him/her of eligibility into the program. He/She will be given two weeks from the date of issuance review to contact the program. A failure to contact the program within the time period allowed will be treated as a refusal to participate and the criminal case will be processed as if admission to the DVP was not allowed.

The defendant will be required to complete an Educational Program as determined by the District Attorney. This program is either a Level I or a Level II. The Educational Program classes include, but are not limited, to: (1) Anger Management, (2) Driving, (3) Drugs & Alcohol,

(4) Lifeskills: Choices, Changes and Challenges, and (5) Theft and Property Violation. [The number of Educational Programs may be reduced, increased, or changed at any time at the discretion of the District Attorney and in agreement with the DVP provider.]

The cost of said program shall be paid for by the defendant. (See **Fees** below.)

The defendant will be required to complete the program within 90 days. Failure to attend or complete the required course or to pay fees and/or restitution as agreed will result in termination from the program. Once a defendant has either completed the DVP or been terminated from the DVP the Educational provider will notify the District Attorney's Office. If the defendant completes the program successfully, the criminal case will be dismissed/rejected as the defendant completed a diversion program (and code to DOJ will reflect this fact as well). If the defendant does not complete the DVP the criminal case will be processed as if diversion were not offered.

D. Restitution

Any case in which restitution is owed shall be handled as follows:

1. The DDA will determine the amount of restitution to any victim (as defined by Penal Code section 1202.4) or other injured or damaged party. [If the amount is greater than \$1000.00 the defendant is not eligible for the DVP. This eligibility criterion has been established to create the greatest probability that the amount of restitution can be paid prior to any applicable statute of limitation running out.]
2. At the time DVP is granted, the defendant will be directed to pay restitution in full through the DVP provider prior to the scheduled termination date of the DVP.
3. The DVP cannot be successfully completed, nor can the case be dismissed, unless and until restitution has been paid in full, and all other terms and conditions of the DVP have been met.

E. Fees

The defendant will pay \$250.00 for the DVP – Level I, and \$450.00 for the DVP Program – Level II.

The defendant will pay a \$25.00 per month restitution collection fee to the program if he/she cannot pay the full amount of restitution at one time.

A \$50.00 fee to the District Attorney's Office for the cost of the program is included in the Level 1 and Level 2 class fees.

All of the above mentioned fees cannot be discounted and must be paid in full prior to the successful completion of the DVP.

F. Miscellaneous

1. A defendant who accepts DVP and commits any new criminal offense, or fails any other term or condition of the DVP, will be terminated from the program and forfeit all program fees.

G. Successful Completion

Upon successful completion of the DVP Program, the District Attorney will dismiss/reject the case. The case status in ICJIS will reflect that the defendant completed the DVP successfully and the case will be reported to DOJ the same way pursuant to Penal Code section 1001.8. The defendant will be advised pursuant to Penal Code section 1001.9:

“(a)... Upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The diverttee may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a diversion program shall not, without the diverttee's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(b) The diverttee shall be advised that, regardless of his or her successful completion of diversion, the arrest upon which the diversion was based may be disclosed by the Department of Justice in response to any peace officer application request and that, notwithstanding subdivision (a), this section does not relieve him or her of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.”