

**From:** [Sheryl Wolcott](#)  
**To:** [Timothy Murphy](#); [Beth Raub](#); [Jennifer Cudworth](#)  
**Cc:** [Jerret Gran](#); [Lisa Muscari](#); [Eric Dobroth](#); [Dan Dow](#)  
**Subject:** FW: [EXT]Revised Misdemeanor Diversion Agreement, Process Protocol, and Guidelines Attached  
**Date:** Thursday, January 21, 2021 5:54:00 PM  
**Attachments:** [Misdemeanor Diversion Agreement 20210115.pdf](#)  
[Draft Misdemeanor Diversion Protocol 20210115.pdf](#)  
[Misdemeanor Diversion Guidelines Draft 20210115.pdf](#)

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Hi Tim, Jen, and Beth,

Please share this with your staff.

The Court Misdemeanor Diversion Program is set to start next Monday 1/25/21, but it is still a work in progress, and no doubt questions will come to light as it gets underway. This is a new program, under the new law, PC 1001.95. Attached are the most recent drafts of documents.

The diversion can be anywhere between six months and two years, but by statute no longer than two years. If successful, the case gets dismissed. This is a pre-plea diversion, thus if the defendant is not successful, we then have an open case to resolve or go to trial.

Here is the basic overview:

### **Eligibility**

The only misdemeanor charges that are not eligible by statute are: 273.5, 243(e), 646.9, and any crime that would require registration as a sex offender. Our court is also interpreting the law that DUIs are not eligible (however, that could change if an appellate court rules otherwise.)

Aside from that list, any misdemeanor may be eligible, and a court could grant it over the DA's objection. Our court has a list of presumptively eligible, and presumptively ineligible offenses. If it is presumptively eligible, it will be the DDA's burden to convince the court otherwise. If it is presumptively ineligible, it will be the defense's burden to convince the court otherwise. If a crime is not listed (e.g. 192), it will be the court's discretion on a case-by-case basis.

### **Mechanics**

The terms of Court Misdemeanor Diversion would be imposed by the court placing the defendant on O.R. conditioned on the terms. See the attached draft Guidelines document for a sense of the possible terms, which can include a stay away order, restitution (further discussion below), weapons prohibitions, search terms, etc. The defendant will sign the Misdemeanor Diversion Agreement, attached. The court will set court appearances for proof of enrollment (if applicable), progress hearings (if applicable), and proof of completion. If there is a violation of terms, the court will give notice to the defendant and set the case for a hearing on the violation. (Details of what happens if the defendant doesn't respond to the notice of violation – e.g. does the court issue a warrant -- are still being worked out.)

### **Victim Input**

The court recognizes the victim's Constitutional right to be heard, and will consider victim input when making an eligibility decision, and will put a case over to allow for the victim to be present and make a statement if the victim desires. (See p. 3 of the attached draft protocol.) Victim input can also be conveyed to the DDA, who will let the court know.

Prior to arraignment, on any case with a victim that is not statutory excluded from consideration, it would be helpful if VW could try to get victim input about the possibility of Court Misdemeanor Diversion.

### **Restorative Justice/Restorative Partners**

In the appropriate case, a condition of diversion could be a path of restorative justice through Restorative Partners. This would only be done if the defendant **and the victim** want to participate. This is still a work in progress, and we don't have all of the information on this. We would definitely have Restorative Partners provide thorough information to VW (and perhaps have a video or handout made so that victims could get information on the program if a victim was considering participation), so that VW advocates can give full information to victims.

### **Restitution**

Restitution will be ordered. However, by statute, the inability to pay restitution is not a bar to eligibility nor completion of court diversion. In most cases, the court will refer the case to the Probation Department, and they will determine the amount of restitution so that the court can order it, and also Probation will collect and distribute it to the victim (just like with a conviction.) While we cannot do a CR 110 for a restitution order that is made for pre-plea diversion, if the case is dismissed with successful completion but restitution is still outstanding, Probation will continue to try to collect and get restitution to the victim. (Unfortunately, without a CR 110, there is no order for the victim to collect like a civil judgment—we may need to seek a legislative fix for this.) If the amount of restitution is known right at the start of the case and the defendant wants to pay up front, we may be able to process payment through the DA Bad Check office like we do with civil compromise cases, but the details of this are still a work in progress.

### **Our Pre-Filing Misdemeanor Diversion Program**

We aim to keep our DA pre-filing misdemeanor diversion program going, as we believe in the quality educational component, and restitution collection the our program offers. However, there may be offenders who do not accept, or do not complete our program, who are then granted diversion by the court.

Please let me know if you have any questions.

Thanks  
-Sheryl

