



Diversion and Special Procedures

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Central Misdemeanor Unit

PRE-FILING DIVERSION

- RF case number
- Run by Pretrial Services
 - \$40 processing fee
- Issuing DDAs make the referral

PRE-FILING DIVERSION

Three Broad Prerequisites

1. A person was arrested or cited for violation of one or more of the enumerated misdemeanor charges
2. For persons eligible under the first condition, their criminal histories must reflect the following
3. In rare cases, the ODA may not recommend the Community Accountability Program if the investigation reveals aggravating factors that make diversion contrary to the interests of public safety

PRE-FILING DIVERSION

- Defrauding an Innkeeper (Penal Code Section 537);
- Disturbing the Peace (Penal Code Section 415);
- False Registration (Vehicle Code Sections 4463 and 4462.5)*;
- Hit and Run Causing Property Damage (Vehicle Code Section 20002(a))*;
- Littering (Penal Code Section 374.4);
- Minor in Possession of Alcohol (Business and Professions Code Section 25662)*;
- Possession of Marijuana in a Vehicle (Vehicle Code Section 23222)*;
- Possession/Use of False ID (Business and Professions Code Section 25661/Vehicle Code Section 14610)*;
- Providing Tobacco to a Minor (Penal Code Section 308(A)(1))*;
- Public Intoxication (Penal Code Section 647(F))*;
- Reckless Driving (Vehicle Code Section 23103)*;
- Petty Theft and Shoplifting (Penal Code Sections 459.5, 484-488, 490.1, 490.5);
- Public Defecation (Penal Code Section 370/372);
- Receiving Stolen Property (Penal Code Section 496);
- Trespassing (Penal Code Sections 602(a), (b), (c), (d), (e), (g), (h), (i), (j), (l), (m), (n), (o), (p), (q), (r), (s), (t), (w), (y); 602.5, 602.8);
- Vandalism (Penal Code Section 594(2)(A).

PRE-FILING DIVERSION

2. For persons eligible under the first condition, their criminal histories must reflect the following:
 - There are no prior convictions for the same crime;
 - The person is not on probation, court or formal;
 - The person has not failed probation in the past;
 - The person has been free of any criminal convictions for the past five years;
 - The presenting misdemeanor is not accompanied by an act of violence or an offense that does not qualify for diversion;
 - The person has not participated in County of Santa Clara diversion in the past.

PRE-FILING DIVERSION

1. 16 hours of CS (reimplemented 1/3/22)
2. Cognitive Behavior Theory class (now by Zoom, 90 minutes class used to be a 2 hours class, Health Right 360) – provided by re-entry services, contracted Asian American Recovery Service
3. Obey all laws for 4 months from date of referral
4. Victim restitution – amount paid in full

PRE-FILING DIVERSION

- Weekly reports
 - Referred
 - Enrolled
 - Failed
 - Successful

SEX WORKER CASES

- Sex Workers
 - VALOR → no longer available
 - SAO The Blade
- “Johns”
 - FOPP → <https://courseforprostitution.com/>
 - SAO The Blade

Decoy Operations with SJPD

MILITARY DIVERSION

1001.80

Factors

a. Defendant's danger to the community;

b. Seriousness of the present offense (sexual battery; DUI cases with collision, very dangerous driving or priors; and many domestic violence cases will be examples of serious misdemeanors where we should object to Military Diversion). The fact that a present offense is priorable (like a first time DUI) does not necessarily mean that we should object to Military Diversion but it should be part of our thinking with these other factors in determining whether or not to object;

c. Defendant's past criminal conduct;

d. The relationship between the disorders related to military service and the crime (while the statute is not explicit on this, the program is really predicated on a nexus between the disorder and the crime in order to be effective, so we should object when there is no nexus);

e. Past diversion participation, completion or failure of any kind;

f. The ability to obtain appropriate conditions as part of Military Diversion including restraining orders and appropriate counseling;

COMMENT: The best practice would be for the original criminal court judge to issue restraining orders and order the appropriate counseling and then send the case to Department 61 (Veteran's Court) for further proceedings for diversion. This makes the court that has the case originally the one to determine (as it is in the best position to do so) what the right restraining orders and counseling to order is, and then gives the case to Department 61 to make that happen appropriately. For example: Before the case is sent to Department 61 for Military Diversion, the regular criminal court orders a stay away order, drug treatment, and treatment for the defendant's PTSD. This makes the diversion supervision department the one supervising a plan rather than creating one. Of course, the Veteran's Court team will change the plan as necessary for effective treatment of the defendant. This may be something to state explicitly in the order as well.

g. The fact of current cases being supervised in Department 61 (Veteran's Court) or elsewhere;

COMMENT: If the defendant is currently obtaining services through Veteran's Court and those services have not worked such that there is a new law violation, the best practice would be to have the defendant plead to the current offense and then send the case for probation reviews in Department 61 with the defendant's other case or cases. That way, the defendant continues to get mental health treatment, in addition to new treatment at the Veteran's Administration if appropriate. It also will avoid the inconsistency of diversion on one case and probation on another, but both being supervised in the same Veteran's Courtroom.

h. The defendant's willingness and amenability to treatment and compliance with diversion orders.

JUDICIAL DIVERSION

PC 1001.95 (AB1950)

- No criteria that the court must consider in deciding whether to grant or deny.
- No more than 24 months.
- No limit on how many times a D can be granted JD.

JUDICIAL DIVERSION

PC 1001.95 (AB1950)

- Excluded offenses:
 - Any offense requiring registration as sex offender pursuant to PC 290
 - 273.5 (domestic violence – corporal injury resulting in traumatic condition)
 - 243(e) (domestic violence battery)
 - 646.9 (stalking)

JUDICIAL DIVERSION

PC 1001.95 (AB1950)

Statute	Title	Notes
PC § 243(e)	DV – Battery	Enumerated in statute as Ineligible
PC § 273.5	DV - Inflicting Corporal Injury	Enumerated in statute as Ineligible
PC § 646.9	Stalking	Enumerated in statute as Ineligible
PC §§ 243.4(a)-(d)	Sexual Battery	Mandatory 290 registration
PC § 314	Indecent Exposure	Mandatory 290 registration
PC § 647.6	Annoy/Molest Child	Mandatory 290 registration
PC § 311.11(a)	Possession of Child Pornography	Mandatory 290 registration
PC 288.2(a)(1) or (a)(2)	Distributing Harmful Matter to a Child	Mandatory 290 registration
PC 288.4(a)	Arranging to Meet with Minor for Sex Acts	Mandatory 290 registration

JUDICIAL DIVERSION

PC 1001.95 (AB1950)

- Diversion Program
 - Complete all conditions ordered by the court;
 - Make full restitution
 - A Ds inability to pay restitution due to indigence shall not be grounds for either the denial or diversion or a finding that D has failed to comply
 - Comply with court ordered protective order, stay-away order, or order prohibiting firearm possession (if applicable)

JUDICIAL DIVERSION

PC 1001.95 (AB1950)

- Successful completion = dismissal
- Non-compliance
 - Court to notice D and hold a hearing to determine whether criminal proceedings should be reinstated

JUDICIAL DIVERSION MISDEMEANOR GUIDELINES

- Statutorily Ineligible Offenses
- **Red** – Always Object – High Risk of Danger to Public Safety
- **Yellow** – Object Under Certain Conditions: Significant Risk of Danger of Public Safety or Disqualification
- **Green** – Object Less Frequently – Lowest Risk to Public Safety

JUDICIAL DIVERSION

- Know the office's position
- Know your why
 - Why are you objecting/not objecting
 - What facts of the crime support your position
 - If photos, show the Court
- If you are not objecting or the Court is granting over your objection
 - What terms are you seeking?
 - Why?

SELECT THE
APPROPRIATE FLAG
AND ENTER A NOTE

Case Notes View

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Santa Clara County District Attorney's Office

Welcome: Hernandez, Deborah

Home Preferences Sign Out

Search DA File # GO Advanced Search

V. 8.1.201205.1

My Home

Search

Search Results

Case Intake

RF-2112-14578

Reports

Crystal Reports

Batch Document Generation

Batch Processing

Custom Batch Processing

Case Utilities

System Maintenance

Case AT-A-Glance Case Charge Disposition Case Charges Warrant Case Info

Document Generation Documents/Attachments Events Incidents Notes Restitution

Service Subpoena/Warrant Ticklers

Case Notes: 1 Expand All Collapse All

Text Search

Note Topic Filter <Select>

Text Search Clear Get PDF

Create Date	Create User	Note Topic	Note Text	Draft	Edit	Delete
01/19/2022	Hernandez, Deborah	CASE NOTE	Email to DDA Goston to set up case for TNW JT 2/28	Draft	Edit	Delete
01/19/2022	Dick, Steven	CASE NOTE	Judge Hanley Chew. PDs Paulina Beckerson, Caterin Miralda, Jory Zaluna. NG, TNW 2/23/2022 Readines....		Edit	Delete
01/17/2022	Dick, Steven	Offer	20 SWP/1CP/\$100/ SAO/ Restitution		Edit	Delete
12/16/2021	Hamilton, Clarissa J.	CASE FACT	D steals from Macys and is caught with purse and top. She has prior thefts of various things so no p....		Edit	Delete

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Note Details

Create Date 01/19/2022 Create User Hernandez, Deborah

Update Date 01/19/2022 Update User Hernandez, Deborah

Note Topic * Case Disposition - Serious/Violent Felony Case Disposition - Sexual Assault/Sex Reg Case Disposition - Truancy CASE FACT CASE NOTE CONW Court Events Criminal History Exhibits FMI NOTE Follow up Investigation Communication Further Investigation Required High Profile Authorization INV CODESECTION INV FLAG

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DIVERSION STATUTES

- PC 1001 SERIES
 - Military
 - Mental Health
 - Judicial