

Kern County
Misdemeanor
Domestic Violence
Court Program

Policies and Procedures

MISSION STATEMENT

To break the cycle of Intimate Partner Violence (IPV) by offering those individuals charged in misdemeanor IPV-related cases the opportunity to participate in a diversion program. The diversion program will allow defendants to address the issues underlying the purported violence, become clean and sober, and improve their lives, as well as provide for improved public safety.

PROGRAM OVERVIEW

The Kern County Domestic Violence Diversion Program (DVDP) will utilize judicial monitoring, batterer's intervention programs, and substance abuse education/treatment to provide defendants the opportunity to modify their behavior, while still being held accountable for the harm they have inflicted.

The Kern County DVDP is directed by a collaborative steering team comprised of a Superior Court Judge, the Court Administrator, the District Attorney, the Public Defender, the Chief Probation Officer (or their designees), and other service providers as needed.

Day-to-day operations of DVDP are conducted by the Kern County DVDP team. All members of the team work together offering services to support the defendant's completion of the DVDP.

The Kern County DVDP is a court-ordered, pre-plea program for those individuals charged with qualifying family violence offenses. The program's focus is early intervention by monitoring defendant's compliance with terms and conditions of the diversion program while remaining cognizant of the victim's safety.

PROGRAM STRUCTURE

Target Population:

Kern County's target population for Kern County Domestic Violence Diversion Program includes defendants who have committed family violence as defined in Penal Code section 13700, Family Code section 6203 and Family Code section 6211 who have been charged with misdemeanor violations of the crimes listed in Appendix A.

Length of Program:

Defendants are required to participate in the Domestic Violence Diversion Program (DVDP) for one year, during which time each Defendant must complete an approved 12-week batterer's intervention program and substance abuse treatment as directed based on the needs of the defendant and issues related to his or her case. The DVDP

may be extended at the discretion of the DVDP team to allow the defendant more time to complete the program (see requirements under "Program Violations" below). The Court will oversee placement and continued participation in the program based on input from the DVDP team members.

Domestic Violence Diversion Admission Process:

At the time the Kern County District Attorney files a misdemeanor criminal complaint alleging a misdemeanor violation listed in Appendix A, the KCDA will also inform the court whether or not the defendant is suitable for acceptance into the DVDP.

The defendant will be notified at arraignment as to his or her suitability. The defendant will be required to waive his or her speedy trial right for one year. After the arraignment, a defendant, or his counsel, may request admission into the DVDP. That request shall be made to the District Attorney, and must be made prior to setting the case for Jury Trial unless the District Attorney consents. The case will be set on the next available date of the DVDP Court Calendar.

- 1) If a defendant chooses to opt out of the DVDP, his/her time waiver will be modified as follows:
 - a) If the defendant is out of custody, the time waiver will be modified to forty-five days from the date the defendant opts out of the program.
 - b) If the defendant is in custody, the time waiver will be modified to thirty days from the date the defendant opts out of the program.

Eligibility:

A defendant is eligible for the Domestic Violence Diversion Program if the defendant is charged with a misdemeanor violation of one of the crimes listed in Appendix A.

Suitability:

If the defendant is eligible for DVDP, the Kern County District Attorney's Office will determine if the defendant is also suitable for the Domestic Violence Diversion Program by reviewing:

- 1) The facts of the case to determine if allowing the defendant to enter the DVDP would jeopardize the victim's safety.
 - a) The KCDA will use an internal threat assessment tool to determine if the victim's safety would be jeopardized by allowing the defendant to participate in the DVDP.
- 2) The defendant's record to determine if the defendant has previously completed the DVDP.

- 3) The defendant's record (both adult and juvenile) of domestic violence related charges and convictions. If the defendant has previously been convicted of prior domestic violence charges, the defendant may not be found suitable for DVDP.
- 4) The defendant's record (both adult and juvenile) to determine if he or she has a conviction for a prior strike offense as defined in Penal Code sections 667.5(c) and 1192.7 (c). If the defendant has a prior strike offense, the KCDA will consider the age of the strike and the defendant's record since that conviction in determining if the defendant is suitable for DVDP.
- 5) The KCDA will consider the defendant's complete record (both adult and juvenile) of convictions in determining if the defendant is suitable.
- 6) If the KCDA recommends that the defendant is not a suitable candidate for DVDP at the time of filing, the defendant may individually apply to the DVDP.
 - a) The defendant shall request his case be set on the DVDP calendar for review. The defendant may apply for release on his own recognizance. The standard for this hearing shall be the same as a bail review hearing. The judge will determine if the defendant's own recognizance release will be granted after the hearing.
 - b) The defendant may submit any documents or evidence that he or she deems relevant to a finding of suitability.
 - c) As the KCDA ultimately dismisses the criminal complaint, the KCDA must agree, after review of information submitted by the defendant, to allow the defendant to enter the DVDP.

Domestic Violence Diversion Program Requirements:

These program requirements are designed to assist the defendant in stopping the cycle of violence early and to maintain the victim's safety.

- 1) A defendant shall be required to complete a 12-week batterer's intervention program as approved by the DVDP.
 - a) The defendant will be required to pay any fees associated with the batterer's intervention program.
 - i) Fee waivers/schedules will take into account the defendant's ability to pay.
 - b) The defendant must enroll in the program within 30 days of being accepted into the DVDP. The court will set a hearing within 45 days of acceptance into the DVDP for the defendant to provide proof of enrollment to the court. This hearing will be vacated if proof of enrollment is submitted to the Misdemeanor Window.
 - c) The court will set a hearing 60 days from the date the defendant provides proof of enrollment for the defendant to provide proof of continued attendance and participation in the batterer's treatment program.

- d) The court shall set a hearing date 180 days from the time of the defendant's acceptance into DVDP for the defendant to provide proof of completion of the batterer's treatment program. This hearing will be vacated if proof of compliance is submitted.
 - e) It is the responsibility of the defendant to notify the treatment provider and the court of his or her inability to complete the batterer's treatment program.
 - f) The court shall set a hearing one year from the date of entry into the program to determine if the defendant has complied with all terms of the program. If the defendant has complied with all terms of the program, the case shall be dismissed.
 - g) Any party may request a hearing regarding modifications at any time.
- 2) If drugs or alcohol were involved in the incident or the defendant's record indicates he or she has a substance or alcohol abuse issue, the defendant shall be required to attend 2 AA or NA meetings per week until enrolled in and attending a batterer's intervention program. After the defendant has enrolled in and began attending a batterer's intervention program, he or she will be required to attend 1 AA or NA meeting per week.
- a) DVDP will not require any classes or programs in addition to AA or NA meetings unless they are free of charge. The defendant may choose, at his or her personal expense, to enter a DVDP approved program other than those required by the DVDP to fulfill this requirement.
 - b) The Court will determine, with input from the DVDP, if continued AA, NA, or other substance abuse treatment is necessary.
 - c) The Court may, based on the circumstances of the drug or alcohol abuse, require testing.
- 3) A protective order shall be issued and shall be a term of the defendant's release from custody on his or her own recognizance. The protective order shall prohibit the defendant from having any direct or indirect contact with the victim and shall be a term of being released on his or her own recognizance.
- a) The protective order shall also protect any minor children or other members of the victim's household or family as deemed necessary by the members of the DVDP. This determination shall be based on the facts of the case.
 - i) If there are active family law orders regarding custody and visitation of children, the protective order shall allow for an exception for peaceful communication regarding the children and peaceful exchange of the children as required by the family court order.
 - b) The Court may modify the protective order to delete the "no contact" portion of the order at the request of the victim pursuant to the procedure outlined below.
 - i) Defendant may request hearing at any time to seek modification of the protective order.

- 4) If the court determines that restitution is required, the defendant shall pay restitution.
 - a) Ideally, the amount of restitution shall be agreed upon at the time the defendant enters the DVDP. However, if the restitution amount is unknown at the time the defendant enters the DVDP, restitution will be ordered pursuant to the ordinary procedure. The defendant shall have a right to a hearing to determine the amount of restitution. The standard shall be that of a *Cervantes* hearing.
- 5) The defendant will be required to pay a fee of forty-five dollars to the Kern County Superior Court for court fees if the defendant wants a payment plan. This fee does not apply if the defendant does not want a payment plan.
- 6) The defendant shall pay the fee pursuant to Chapter 4.36 of Title 4 of the County of Kern Ordinance Code.
- 7) The defendant shall commit no new law violations during the time period he or she is in the DVDP.
 - a) A "no new law violation" condition precedent is limited to acts of the defendant that would result in misdemeanor or felony violations of the law. Acts that would result in infraction violations will not violate this agreement.
 - b) If there is a dispute as to whether a "new law violation" was committed, the defendant agrees to a court hearing similar to a probation revocation hearing, wherein the prosecution bears the burden of proof, and the standard of proof is preponderance of the evidence.
- 8) The Court shall set a hearing date one year from date of acceptance to determine if the defendant has successfully completed the Domestic Violence Diversion Program.
 - a) In addition to completing the items listed above, the defendant must not have committed any further acts of domestic violence as defined in Penal Code section 13700, Family Code section 6203 and Family Code section 6211.
 - b) The program may be extended to allow completion if the defendant violated terms. See below under "program Violations" for requirements.
 - c) If the defendant has completed the Domestic Violence Diversion Program, the KCDA will dismiss the criminal complaint.

Stay Away Orders:

As a condition of the defendant remaining released on his or her own recognizance during the time the defendant is participating in the diversion programs, the defendant shall be ordered to have no contact directly or indirectly with the victim or victims listed in the criminal complaint or any other person ordered by the court upon request of a party.

If the victim requests that the stay away order be lifted during the time the defendant is participating in DVDP, the victim shall be required to meet with a representative advocate at the Alliance Against Family Violence and Sexual Assault. If the victim does not live in the Bakersfield area and does not have transportation to the Alliance Against Family Violence and Sexual Assault, the DVDP team may approve a provider outside of the Bakersfield area.

If the victim provides proof of attendance and the DVDP team determines that it would not jeopardize the safety of the victim, the Court may modify the protective order to delete the "no contact" portion of the protective order. The judge shall determine if it is appropriate and safe for a victim to have the protective order lifted prior to the defendant completing the intake process and the first class on the batterer's intervention program. If a separate civil order has been issued, the defendant must still abide by that order even if the DVDP stay away order is lifted.

Program Violations (PV):

If a defendant violates the terms of the diversion program, the Court, with input from the DVDP team, will determine if the defendant may remain in the diversion program or be excluded from the diversion program. The primary factor in determining if the defendant shall remain in the diversion program is whether or not the victim's safety will be jeopardized. The court may also extend the length of the program to allow the defendant to complete the DVDP.

The following factors shall be considered in determining if the defendant will be excluded from the diversion program:

- 1) Did the defendant commit an act of domestic violence against the victim or any other person?
- 2) Did the defendant violate the stay away order?
- 3) Did the defendant commit a new law violation(s)?
- 4) Did the defendant fail to attend the batterer's treatment program?
- 5) What were the reason(s) for the defendant's failure to attend the batterer's treatment program?
- 6) Did the defendant fail to attend substance abuse programs/classes?
- 7) What was the reason(s) for the defendant's failure to attend the substance abuse programs/classes?

8) Did the defendant fail to pay restitution?

9) Did the defendant fail to pay any of the fees as required by the DVDP?

The defendant shall be entitled to a hearing to determine if he/she will be excluded from the DVDP. Notice shall be given to the defendant and the standard at the hearing is preponderance of the evidence.

Confidentiality Laws and Team Communications:

The DVDP team shall ensure that communications among members about defendants' progress in a substance use disorder program are compliant with the requirements of Title 42, United States Code, 42 U.S.C. 290dd-2 and its implementing regulations found in Title 42, Code of Federal Regulations, 42 C.F.R. Part 2 and any other applicable laws. (Please see Appendix B.)

Each department head shall institute a policy for its own personnel to protect defendants' information as required by 42 U.S.C. 290dd-2 and the implementing regulations.

Batterer Intervention Program Requirements:

For the purposes of the DVDP, programs providing the 12 week intervention do not need to be 52 week probation department approved programs, however they must meet the following requirements:

- 1) They must utilize recognized evidence-based interventions and practices for effecting change in participant's thoughts, feelings and behaviors.
- 2) They must conduct an independent intake assessment to obtain biopsychosocial information and substance abuse history, and they must provide documents that inform the defendant of types of abusive behaviors and strategies for avoiding future violence during relational conflict.
- 3) The staff members facilitating the groups must have completed a minimum of eight (8) hours in batterer intervention facilitation; eight (8) hours in victimology and awareness of victim behaviors; and eight (8) hours in recognizing and understanding the effects of domestic violence with children.
- 4) The staff members facilitating the groups must earn eight (8) hours of continuing education hours annually in subject matter related to domestic violence issues.
- 5) Must keep accurate records as to attendance, participation and other information as required by the DVDP.

The Domestic Violence Diversion Program Team

The Domestic Violence Diversion Program team consists of the court, a deputy district attorney, defense attorney (either privately retained or appointed), a probation officer, and the appropriate designated counseling/treatment personnel.

DVDP Court Judge - duties and responsibilities include:

- 1) Preside over the Domestic Violence Diversion Program.
- 2) Make final determination, after reviewing the recommendation of the DVDP team, as to whether a defendant may stay in the DVDP after violating the rules of the program or failing to complete any portion of the program.
- 3) Direct all policies and procedures of the DVDP with the assistance of the team.
- 4) Participate as a member of the DVDP team and in the management of the program.

Court Administrator – duties and responsibilities include:

- 1) Designate the court files as eligible for the DVDP Program as provided by the District Attorney.
- 2) Collect court fee, attorney fee and fee pursuant to Chapter 4.36 of Title 4 of the County of Kern Ordinance Code.
- 3) Any other duties necessary to maintaining the files of the DVDP Court.
- 4) Provide information regarding current family law or juvenile court custody and visitation orders.

Deputy District Attorney - duties and responsibilities include:

- 1) Determine suitability of candidates and provide notice of this suitability to the court and defense attorney.
 - a) The District Attorney retains the sole discretion with respect to who will be permitted to participate in the DVDP at the time of the filing of the charges.
- 2) Make recommendations to the Court as to the consequences of a defendant's violation(s) of the requirements of the DVDP.
- 3) Schedule periodic meetings with the DVDP team to assure the programs objectives are being met.
- 4) Participate both as a member of the DVDP team and in the management of the program.
- 5) Designate program providers based on input from the DVDP team.

Probation Officer - duties and responsibilities include:

- 1) Assist the DVDP team in determining if a person is suitable for the DVDP by providing information regarding a defendant's criminal and probation supervision history.
- 2) Make recommendations to the Court as to the consequences of a defendant's violation(s) of the requirements of the DVDP.
- 3) Assist the DVDP team in monitoring the defendant's progress in the DVDP by providing an updated criminal history and probation status as needed and any other relevant information the Probation Department might possess.
- 4) Participate as a member of the DVDP team and in the management of the program.

Operation of the Program

TIME FRAME:

It is the intent of DVDP that the time from arrest to admission into the program is as short as possible.

It is the intent of the DVDP that the defendant complete the required programs within six months of admission and the remaining terms and conditions of the program within one year of admission to DVDP.

ASSESSMENT:

The District Attorney will make a determination at the time of the filing of the criminal complaint if the defendant is suitable for participation in the DVDP based on the criteria set out above.

If the District Attorney determines that a defendant is suitable for the DVDP and the defendant wishes to participate in the DVDP, the defendant shall be released from custody on his or her own recognizance and ordered to return within one week to the DVDP calendar. The defendant will also be ordered to stay away and have no contact with the victim(s) as a condition of remaining out of custody on his or her own recognizance.

At the defendant's first appearance on the DVDP calendar, the defendant must pay the fee pursuant to Chapter 4.36 of Title 4 of the County of Kern Ordinance Code and the court fee.

If KCDA found the defendant unsuitable for DVDP, the defendant may, through his or her attorney, request his or her case be set on the DVDP calendar, with the appropriate time waivers, for reconsideration by the District Attorney. The defendant may provide any materials he or she deems necessary to the District Attorney for consideration. The admission to DVDP remains at the sole discretion of the District Attorney.

At the defendant's first appearance on the DVDP calendar, the defendant will meet with his or her attorney and be informed of the rules and requirements of the program. At the time of the finding of suitability, the defendant will also be assessed to determine if substance abuse or alcohol abuse terms are necessary.

The defendant will be ordered to participate in program(s) as stated above in the "Domestic Violence Diversion Program Requirements" section and given court dates to return as set out above in the rules and regulations.

Non-compliance with the program requirements may result in the defendant's own recognizance release being revoked and he or she may be remanded into custody. The Court will determine, with input from the DVDP team, if the defendant's own recognizance release will be revoked.

Completion of the Domestic Violence Diversion Program

A defendant will be deemed to have successfully completed the program once the defendant has completed the above listed program requirements and has remained rule violation free for one year.

The District Attorney will dismiss the criminal complaint upon submission by the defendant of proof of the completion of the Domestic Violence Diversion Program to the court. The proof of completion shall consist of:

- 1) Certification that the defendant has completed twelve weeks of domestic violence counseling.
- 2) If applicable, proof of completion of NA or AA meetings as ordered by the court.

If the victim has obtained a civil restraining order or any other civil orders related to this case, the defendant must continue to abide by those orders, as they are court orders independent of the Domestic Violence Diversion Program.

APPENDIX A

The following charges and are eligible for entry into the Domestic Violence Diversion Program:

1. Penal Code section 166(a)(1): Violation of Court Order
2. Penal Code section 236: False Imprisonment
3. Penal Code section 240: Simple Assault
4. Penal Code section 243(a): Battery
5. Penal Code section 243(e)(1): Spousal Battery
6. Penal Code section 245: Assault with Weapon. Subsections (a)(1) and (a)(4) if it did not involve a firearm, knife, bat or other similar weapon. The facts of the case will be the determinate factor as to whether or not a defendant charged with 245 (a)(1) or (a)(4) will be found suitable.
7. Penal Code sections 273a(b): Child Endangerment if there were no actual injuries to the child.
8. Penal Code section 273a(a): Child Abuse and/or Endangerment if there were no actual injuries to the child.
9. Penal Code section 273.5: Spousal Abuse Causing Injury
10. Penal Code section 273.6: Violation of Protective Order
11. Penal Code section 415: Peace Disturbance
12. Penal Code section 417: Brandish a Weapon. The KCDA will consider the type of weapon used and the manner in which it was used in this offense.
13. Penal Code section 422: Criminal Threats
14. Penal Code section 488: Petty Theft
15. Penal Code section 487: Grand Theft
16. Penal Code section 496: Receiving Stolen Property
17. Penal Code section 591: Takes Down Telephone Line
18. Penal Code section 591.5: Prevent Person From Using Wireless Device
19. Penal Code section 594: Vandalism
20. Penal Code section 591.1: Failure to Care for an Animal
21. Penal Code section 602: Trespass
22. Penal Code section 646.9: Stalking
23. Penal Code section 666: Petty Theft with Priors
24. Penal Code section 666.5: Vehicle Theft with Priors
25. Vehicle Code section 10851: Vehicle Theft
26. Any attempt pursuant to Penal Code section 664 to commit one of the above listed crimes.

**Some of these charges are "wobblers" and would only be eligible if charged as a misdemeanor pursuant to Penal Code section 17(b).

APPENDIX B

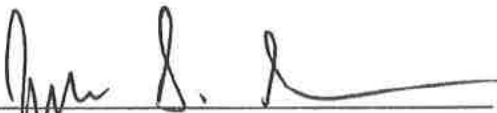
The pertinent parts of 42 U.S.C. 290dd-2 state:

- 1) Requirement
 - a) Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.
- 2) Permitted Disclosure
 - a) Consent
 - i) The content of any record referred to in subsection (a) of this section may be disclosed in accordance with the prior written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed under regulations prescribed pursuant to subsection (g) of this section.
 - b) Method of disclosure:
 - i) Whether or not the patient, with respect to whom any given record referred to in subsection (a) of this section is maintained, gives written consent, the content of such record may be disclosed as follows:
 - (1) To medical personnel to the extent necessary to meet a bona fide medical emergency.
 - (2) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner.
 - (3) If authorized by an appropriate court order of a court of competent jurisdiction granted after application showing good cause therefore, including the need to avert a substantial risk of death or serious bodily harm. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

- 3) Use of records in criminal proceedings:
 - a) Except as authorized by a court order granted under subsection (b)(2)(C) of this section, no record referred to in subsection (a) of this section may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.
- 4) Application:
 - a) The prohibitions of this section continue to apply to records concerning any individual who has been a patient, irrespective of whether or when such individual ceases to be a patient.
- 5) Nonapplicability:
 - a) The prohibitions of this section do not apply to any interchange of records (1) within the Uniformed Services or within those components of the Department of Veterans Affairs furnishing health care to veterans; or (2) between such components and the Uniformed Services. The prohibitions of this section do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities.
- 6) Penalties:
 - a) Any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined in accordance with title 18.
- 7) Regulations:
 - a) Except as provided in subsection (h) of this section, the Secretary shall prescribe regulations to carry out the purposes of this section. Such regulations may contain such definitions, and may provide for such safeguards and procedures, including procedures and criteria for the issuance and scope of orders under subsection (b) (2) (C) of this section, as in the judgment of the Secretary are necessary or proper to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.
- 8) Application to Department of Veterans Affairs:
 - a) The Secretary of Veterans Affairs, acting through the Under Secretary for Health, shall, to the maximum feasible extent consistent with their responsibilities under title 38, prescribe regulations making applicable the regulations prescribed by the Secretary of Health and Human Services under subsection (g) of this section to records maintained in connection with the provision of hospital care, nursing home care, domiciliary care, and medical services under such title 38 to veterans suffering from substance abuse. In prescribing and implementing regulations pursuant to this subsection, the Secretary of Veterans Affairs shall, from time to time, consult with the Secretary of Health and Human Services in order to achieve the maximum possible coordination of the regulations, and the implementation thereof, which they each prescribe.

MEMORANDUM OF AGREEMENT

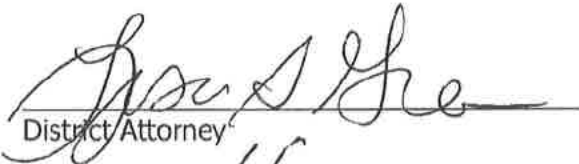
The following agree to have their personnel assigned to the Domestic Violence Diversion Program, and to abide by and adhere to the duties, policy and procedures set forth in the Domestic Violence Diversion Program, effective upon signing:



Superior Court Presiding Judge



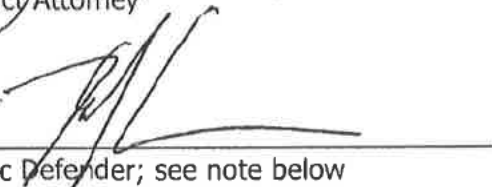
Court Administrator



District Attorney



Chief Probation Officer



Public Defender; see note below

Date October 13, 2015

Public Defender: The Public Defender agrees to the utility of encouraging diversion programs designed to reduce recidivism, and his/her signature reflects the same; provided however, the Public Defender's signature shall not be interpreted or asserted as reflecting substantive agreement, waiver or approval with the protocol's provisions, including those involving program eligibility, continued participation rights, entitlement to release from custody or dismissal, payment of fees, stay away orders, alleged rules violations, restitution, and matters attorney-client communications and assertion of associated privileges.