

## **AB 79 ALTA Diversion Summary**

All felony and misdemeanors (except for 187 and sex crimes which will be discussed below) are eligible for ALTA Diversion if the defendant was an ALTA client at the time the crime(s) were committed. However, ALTA Diversion is not available on VOP's.

PC 1001.21. (a) This chapter shall apply whenever a case is before any court upon an accusatory pleading at any stage of the criminal proceedings,

This chapter applies to any offense which is charged as a misdemeanor or felony offense, except that diversion shall not be ordered when the defendant previously has been diverted under this chapter within two years prior to the present criminal proceedings.

This chapter shall apply to persons who have a condition described in paragraph (2) or (3) of subdivision (a) of Section 1001.20 only if that person was a client of a regional center at the time of the offense for which the person is charged.

Below is the list of crimes excluded from ALTA Diversion. They are the same crimes excluded from Mental Health Diversion (PC 1001.36).

(b) This chapter applies to any offense that is charged as a misdemeanor or felony offense, except that a defendant may not be placed into a diversion program, pursuant to this section, for any of the following current charged offenses:

- (1) Murder or voluntary manslaughter.
- (2) An offense for which a person, if convicted, would be required to register pursuant to Section 290, except for a violation of Section 314.
- (3) Rape.
- (4) Lewd or lascivious act on a child under 14 years of age.
- (5) Assault with intent to commit rape, sodomy, or oral copulation, in violation of Section 220.
- (6) Commission of rape or sexual penetration in concert with another person, in violation of Section 264.1.
- (7) Continuous sexual abuse of a child, in violation of Section 288.5.
- (8) A violation of subdivision (b) or (c) of Section 11418.

Defendant cannot get ALTA Diversion if he/she has been ALTA diverted within two years of the current crime(s).

(c) Diversion shall not be ordered when the defendant previously has been diverted under this chapter within two years prior to the present criminal proceedings.

If the court agrees to entertain the prospect of ALTA Diversion, the court “shall” order DA, Probation, and the Regional Center to prepare reports.

PC 1001.22 ...the court shall order the prosecutor, the probation department, and the regional center to prepare reports on specified aspects of the defendant’s case. Each report shall be prepared concurrently.

#### Regional Center’s Report

(a) The regional center shall submit a report to the probation department within 25 judicial days of the court’s order. The regional center’s report shall include a determination as to whether the defendant has a cognitive developmental disability and is eligible for regional center diversion-related treatment and habilitation services, and the regional center shall also submit to the court a proposed diversion program, individually tailored to the needs of the defendant as derived from the defendant’s individual program plan pursuant to Section 4646 of the Welfare and Institutions Code, which shall include, but not be limited to, treatment addressed to the criminal offense charged for a period of time as prescribed in Section 1001.28. The regional center’s report shall also contain a statement whether the proposed program is available for the defendant through the treatment and habilitation services of the regional centers pursuant to Section 4648 of the Welfare and Institutions Code.

#### DA’s Report

(b) The prosecutor shall submit a report on specified aspects of the defendant’s case, within 30 judicial days of the court’s order, to the court, to each of the other agencies involved in the case, and to the defendant. The prosecutor’s report shall include all of the following:

- (1) A statement of whether the defendant's record indicates the defendant's diversion pursuant to this chapter within two years prior to the alleged commission of the charged divertible offense.
- (2) If the prosecutor recommends that this chapter may be applicable to the defendant, the prosecutor shall recommend either a dual or single agency diversion program and shall advise the court, the probation department, the regional center, and the defendant, in writing, of that determination within 20 judicial days of the court's order to prepare the report.
- (3) If the prosecutor recommends against diversion, the prosecutor's report shall include a declaration in writing to state for the record the grounds upon which the recommendation was made, and the court shall determine, pursuant to Section 1001.23, whether the defendant shall be diverted.
- (4) If dual agency diversion is recommended by the prosecutor, a copy of the prosecutor's report shall also be provided by the prosecutor to the probation department, the regional center, and the defendant within the above prescribed time period. This notification shall include all of the following:

- (A) A full description of the proceedings for diversion and the prosecutor's investigation procedures.
- (B) A general explanation of the role and authority of the probation department, the prosecutor, the regional center, and the court in the diversion program process.
- (C) A clear statement that the court may decide in a hearing not to divert the defendant and that the defendant may have to stand trial for the alleged offense.
- (D) A clear statement that should the defendant fail in meeting the terms of the diversion, or if, during the period of diversion, the defendant is subsequently charged with a felony, the defendant may be required, after a hearing, to stand trial for the original diverted offense.

### Probation's Report

- (c) The probation department shall submit a report on specified aspects of the defendant's case within 30 judicial days of the court's order, to the court, to each of the other agencies involved in the case, and to the defendant. The probation department's report to the court shall be based upon an

investigation by the probation department and consideration of the defendant's age, cognitive developmental disability, employment record, educational background, ties to community agencies and family, treatment history, criminal record if any, and demonstrable motivation and other mitigating factors in determining whether the defendant is a person who would benefit from a diversion-related treatment and habilitation program. The regional center's report in full shall be appended to the probation department's report to the court.

#### Reporting requirements during diversion period.

PC 1001.23. (c) If a dual agency diversion program is ordered by the court, the regional center shall submit a report to the probation department on the defendant's progress in the diversion program not less than every six months. Within five judicial days after receiving the regional center's report, the probation department shall submit its report on the defendant's progress in the diversion program, with the full report of the regional center appended, to the court and to the prosecutor. If single agency diversion is ordered by the court, the regional center alone shall report the defendant's progress to the court and to the prosecutor not less than every six months.

Diversion length is 2 years just like Mental Health diversion. Reports for dual agency case are prepared by both Probation and Regional Center. Single agency case only requires report from Regional Center.

PC 1001.28 The period during which criminal proceedings against the defendant may be diverted shall be no longer than two years. The responsible agency or agencies shall file reports on the defendant's progress in the diversion program with the court and with the prosecutor not less than every six months.

(a) Where dual agency diversion has been ordered, the probation department shall be responsible for the progress reports. The probation department shall append to its own report a copy of the regional center's assessment of the defendant's progress.

(b) Where single agency diversion has been ordered, the regional center alone shall be responsible for the progress reports

Modification of or termination of diversion. In dual agency cases, the court, DA, Regional Center or probation may initiate a modification/termination hearing. In single agency cases the court DA or Regional Center may initiate a modification/termination hearing. Commission of new felony is grounds for termination. But not until after defendant is held to answer at a preliminary hearing.

PC 1001.29. (a) If it appears that the divertee is not meeting the terms and conditions of the diversion program, the court may hold a hearing and **amend the program** to provide for greater supervision by the responsible regional center alone, by the probation department alone, or by both the regional center and the probation department. However, **notwithstanding the modification of a diversion order, the court may hold a hearing to determine whether the diverted criminal proceedings should be reinstituted** if any of the following circumstances exists:

- (1) The defendant is charged with an additional misdemeanor allegedly committed during the pretrial diversion and that reflects the defendant's propensity for violence.
  - (2) The defendant is charged with an additional felony allegedly committed during the pretrial diversion.
  - (3) The defendant is engaged in criminal conduct rendering the defendant unsuitable for diversion
  - (4) The defendant's performance in the diversion program is unsatisfactory.
- (b) In cases of **dual agency** diversion, a hearing to reinstitute the diverted criminal proceedings may be **initiated by either the court, the prosecutor, the regional center, or the probation department.**
- (c) In cases of **single agency** diversion, a hearing to reinstitute the diverted criminal proceedings **may be initiated only by the court, the prosecutor, or the regional center.**
- (d) No hearing for either of these purposes shall be held unless the moving agency or the court has given the divertee prior notice of the hearing.
- (e) Where the cause of the hearing is a **subsequent charge of a felony** against the divertee subsequent to the diversion order, **any hearing to reinstitute** the diverted criminal proceedings shall **be delayed until**

such time as probable cause has been established in court to bind the defendant over for trial on the subsequently charged felony.