

15b. CRIMINAL HISTORY FOR DIVERSION CASES

In all misdemeanor cases in which people affected by the criminal justice system are being considered for diversion or alternative program (collectively, “program”), whether in a pre-filing or post-filing context, the person’s criminal history of past convictions shall not automatically disqualify the person from participation in those programs nor shall the person’s criminal history be the principal consideration in excluding anyone from a program.

This policy applies to, among other programs, Neighborhood Court (NHC), such that NHC will use this policy when considering eligibility or approval of prospective NHC participants.

Deputy District Attorneys are otherwise allowed to consider any other factor rationally related to whether or not a person being considered for a program (hereinafter, a “person”) should receive diversion or an alternative program, these factors may include, but are not limited to, the following:

- A. The seriousness of the crime(s) (including the gravity and sophistication of those crimes);
- B. Victim(s) input;
- C. The ability of a victim to receive restitution for the harms caused;
- D. The person’s age;
- E. The person’s past performance on probation or parole;
- F. The person’s past interventions such as treatment or counseling;
- G. The person’s previous history of having received, or participation in, a program;
- H. The effect of a conviction on immigration status; and
- I. The effect of a conviction on existing or imminently prospective employment.

The following cases are presumptively ineligible for a program absent extraordinary circumstances and specific approval from an Assistant Chief Deputy or higher:

- A. “Hate Crimes” under Penal Code Section 422.6, *et seq.*;
- B. “Domestic Violence” cases as defined by Penal Code Section 13700;
- C. Driving under the Influence of Alcohol or Drugs; and
- D. Any offense related to sexual assault.

Cases alleging violations of the above can cover a wide range of facts. Such cases, with victim and Assistant Chief Deputy approval, may be considered for diversion. Victim input must otherwise be sought with every case in which a person is victimized.