



SUPERIOR COURT OF CALIFORNIA, COUNTY OF BUTTE

MISDEMEANOR DIVERSION (PC 1001.95) INFORMATION

Effective January 1, 2021, sections 1001.95 - 1001.97 were added to the Penal Code (see Stats. 2020, Ch. 334 [AB 3234]), authorizing trial courts to grant diversion to individuals charged with most misdemeanor offenses, over the objection of the prosecution. The controlling statutes are cited in full at the bottom of this document.

The decision to allow Misdemeanor Diversion is wholly vested in the individual discretion of each judge. There are two forms available for use in cases deemed appropriate for this type of Misdemeanor Diversion, the Misdemeanor Diversion Request (PC § 1001.95) Advisal and Waiver of Rights, and the Misdemeanor Diversion Order.

Once the judge grants Diversion, that judge should keep the case for all future review/dismissal hearings.

Statutorily Ineligible Offenses (PC § 1001.95(e))

- (1) Any offense for which a person, if convicted, would be required to register pursuant to PC § 290.
- (2) PC § 273.5.
- (3) PC § 243(e).
- (4) PC § 646.9.

Factors/Information to consider in deciding whether to grant diversion

- Seriousness of the offense
- Input from the victim/whether the victim was particularly vulnerable (children, elders, animals)
- Criminal history of the defendant
- Whether restitution is required (Restitution may still be imposed – see PC § 1001.96(b))
- Whether a Fourth Amendment Waiver should be required
- Time elapsed since crime occurred and whether there has been additional criminality
- Suitability factors for other diversion statutes
- Rules of Court regarding factors in mitigation or aggravation

Terms and Conditions to consider imposing where applicable/appropriate

- Victim restitution (see PC 1001.96(b))
- A protective order, stay-away order, or order prohibiting firearm possession (see PC § 1001.96(c))
- Consider common conditions of summary probation

Controlling Statutes

PC § 1001.95

- (a) A judge in the Superior Court in which a misdemeanor is being prosecuted may, at the judge's discretion, and over the objection of a prosecuting attorney, offer diversion to a defendant pursuant to these provisions.
- (b) A judge may continue a diverted case for a period not to exceed 24 months and order the defendant to comply with terms, conditions, or programs that the judge deems appropriate based on the defendant's specific situation.
- (c) If the defendant has complied with the imposed terms and conditions, at the end of the period of diversion, the judge shall dismiss the action against the defendant.

- (d) If it appears to the court that the defendant is not complying with the terms and conditions of diversion, after notice to the defendant, the court shall hold a hearing to determine whether the criminal proceedings should be reinstated. If the court finds that the defendant has not complied with the terms and conditions of diversion, the court may and the diversion and order resumption of the criminal proceedings.
- (e) A defendant may not be offered diversion pursuant to this section for any of the following current charged offenses:
 - (1) Any offense for which a person, if convicted, would be required to register pursuant to Section 290.
 - (2) Any offense involving domestic violence, as defined in Section 6211 of the Family Code or subdivision (b) of Section 13700 of this code.
 - (3) A violation of Section 646.9.

PC 1001.96

A defendant who was diverted pursuant to this chapter shall be required to complete all of the following in order to have their action dismissed:

- (a) Complete all conditions ordered by the court.
- (b) Make full restitution. However, a defendant's ability to pay restitution due to indigence shall not be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion.
- (c) Comply with a court-ordered protective order, stay-away order, or order prohibiting firearm possession, if applicable.

PC § 1001.97

- (a) Upon successful completion of the terms, conditions, or programs ordered by the court pursuant to Section 1001.95, the arrest upon which diversion was imposed shall be deemed to have never occurred. The defendant may indicate in response to any question concerning their prior criminal record that they were not arrested. A record pertaining to an arrest resulting in successful completion of the terms, conditions, or programs ordered by the court shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.
- (b) The defendant shall be advised that, regardless of their successful completion of diversion, the arrest upon which the diversion was based may be disclosed by the Department of Justice in response to a peace officer application request and that, notwithstanding subdivision (a), this section does not relieve them of the obligation to disclose the arrest in response to a direct question contained in a questionnaire or application for a position as a peace officer, as defined in section 830.