

**ELIGIBILITY CRITERIA FOR THE SONOMA COUNTY COMMUNITY
ACCOUNTABILITY DIVERSION
(CAD) PROGRAM**

(Pursuant to California Penal Code §§1001 -1001.90 Chapter 2.7)
Effective August 1, 2013

A. GENERAL PROVISIONS

1. A diversion candidate shall enroll, participate in and successfully complete a prescribed program. Diversion shall not be “deemed” completed without meeting the requirements of participation and successful fulfillment.

2. All diversion programs must be completed within twelve (12) months of the date that individual defendants are found eligible and suitable to participate in a diversion program.

B. PERSONS ELIGIBLE FOR DIVERSION

1. Persons Eligible for Diversion: Except as provided below, any person charged with the misdemeanor crimes set forth in Section C, is eligible for diversion through Chapter 2.7 and shall be referred to Community Accountability Diversion (CAD) for an Eligibility Report.

2. Timing of Diversion: Diversion is available both pre-filing and post-filing. However, diversion must be accepted by the defendant PRIOR to the setting of a TRIAL date.

C. MISDEMEANOR CRIMES ELIGIBLE FOR DIVERSION

Penal Code

- 166(c)(4) Disobeying court order
- 240/241 Assault
- 373 Public nuisance on property
- 374.3 Dumping
- 415 Fighting, noise, offensive words
- 459 Burglary – property taken under \$400
- 466 Possession of burglary tools
- 470 Forgery
- 475 Possession of forged bills/notes – only if under \$400
- 476 Non-sufficient Funds
- 484/488 Petty Theft
- 485 Appropriation of lost property – less than \$400
- 496 Possession/receiving stolen property under \$400
- 537 Defrauding an innkeeper
- 591 Obstruction of telephone lines
- 594 Vandalism – not if DV-related
- 601 Trespass
- 602.5 Unauthorized entry of property
- 647(b) Solicitation of Prostitution
- 647(c) Panhandling
- 647(f) Public Intoxication – Alcohol-related
- 647(h) Loitering
- 647(j) Unlawful Lodging
- 653.22 Loitering with Intent to Commit Prostitution

Health & Safety Code

- 11357(b) Possession of under an ounce of marijuana
- 11364 Paraphernalia (Marijuana connected only)

Business & Professions Codes

- 25658 Furnish a minor with alcohol
- 25661 Presenting/possessing false evidence of age
- 25662 Minor in possession

County Ordinances

- 5-40 Dog Vaccination Required
- 5-41 Dog License Required
- 5-115 Livestock at Large
- 5-119 Staking of Animals Prohibited
- 19-9 Consumption of Alcohol on Public Street
- 19-10 Public Urination
- 20-25 Camping in an Undesignated Area
- 20-40 Designated Camping Areas

CCR

- 4326 Violation of a Posted Closure Area
- 7.50(155)(b) Fishing a Closed Tributary to Russian River

D. PERSONS INELIGIBLE FOR DIVERSION

Should a person who is ineligible for diversion be referred to CAD, CAD shall report that ineligibility to the Court and not allow that person to participate in the diversion program.

The following persons are deemed ineligible for diversion, regardless of whether their current charge is diversion eligible.

1. The defendant is charged with more than one offense arising out of more than one event or transaction in one or more than one criminal complaint, even if the charged offenses are all eligible for diversion.
2. The defendant has failed to appear in the past on the case.
3. The defendant has ever been convicted of a felony or has been convicted of a misdemeanor (except one prior VC 12500) within five years prior to the filing of the accusatory pleading.
4. The defendant has other pending cases.
5. The defendant has been diverted pursuant to this chapter within five years prior to the filing of the accusatory pleading.
6. The charges have been reduced from a felony to a misdemeanor by the court pursuant to PC 17(b)(5).

7. The defendant has previously been granted probation or parole and probation or parole has been terminated unsuccessfully.
8. The defendant has been previously committed to the California Youth Authority.
9. The crime is gang related, whether or not an enhancement is charged.
10. Incarceration would be mandatory upon conviction of the defendant.
11. A grant of probation would be prohibited in the case.
12. There is an outstanding amount of restitution in the case. If restitution has been fully paid, the defendant may be referred to diversion as set forth herein. However, in no case may a case be continued longer than four months for restitution to be paid.
13. The charges are for an offense in which registration pursuant to PC 290 is compulsory or discretionary.
14. The charge involves the physical abuse or neglect of a minor. (Penal Code Section 1000.12)
15. The charge involves domestic violence or is domestic violence related or involves a person defined in Family Code §6211.
16. The charge involves the physical abuse or neglect of an animal.

E. TERMINATION

In every instance wherein a person is on diversion and is performing unsatisfactorily in the program, the diversion previously granted shall immediately be referred back to the court and diversion shall be terminated and the charges reinstated. If a new offense is charged while the person is in the diversion program, diversion shall be terminated. A defendant shall not be re-referred to diversion over the prosecution's objection.

F. CRIMINAL HISTORY

No person shall be deemed eligible unless and until the District Attorney's Office has reviewed their criminal history. Only after that history has been received and reviewed and it has been determined therefrom that an applicant is eligible, may the person be deemed as eligible.

G. SUITABILITY HEARING

In all cases in which a defendant is deemed eligible to participate in diversion, the court, prior to allowing the defendant to be diverted, SHALL hold a hearing and determine if the defendant is a person who would be benefitted by diversion. If so, and if all other criteria have been met, the defendant may proceed to diversion. If not, the case shall continue as any other case.

H. WAIVER OF SPEEDY TRIAL RIGHTS

In all cases in which the defendant requests diversion, (s)he shall waive his or her rights to a speedy trial. The defendant shall enter a time waiver before being referred for a diversion

eligibility report and before being referred for enrollment. If the defendant refused to enter a time waiver, the court shall summarily deny the referral.

I. DIVERSION RESTITUTION FEE (PENAL CODE SECTION 1001.90)

The court shall impose a diversion restitution fee in addition to any other administrative fee provided or imposed under the law.

The fee imposed shall be set at the discretion of the court and shall be commensurate with the seriousness of the offense, but shall not be less than One Hundred Dollars (\$100) and not more than One Thousand Dollars (\$1000).

The restitution fee shall be ordered regardless of the defendant's present ability to pay. However, if the court finds that there are compelling and extraordinary reasons, the court may waive imposition of the fee. The court shall state on the record all reasons supporting the waiver.

If the court sets the amount of the diversion fee in excess of the One Hundred Dollar (\$100) minimum, the court shall consider any relevant factors, including but not limited to, the defendant's ability to pay, the seriousness and gravity of the offense, and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, and the extent to which any person suffered any losses as a result of the crime. Those losses may include pecuniary losses to the victim or his or her dependants as well as intangible losses, such as psychological harm caused by the crime.

Considerations of a defendant's ability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating the lack of his or her ability to pay.

Express findings by the court as to the factors bearing on the amount of the fee shall not be required. A separate hearing for the diversion restitution fee shall not be required.

J. DISTRICT ATTORNEY DISCRETION

With approval of the CDDA overseeing misdemeanors, the People may stipulate to participation in diversion for any ineligible offense.

The DA retains discretion to stipulate to participation for any ineligible offense.