

**COURT MISDEMEANOR DIVERSION (“CMD”) PROTOCOL
PURSUANT TO PENAL CODE SECTIONS 1001.95 AND 1001.96
SAN LUIS OBISPO COUNTY**

1. The court, at its discretion, offers diversion to a Defendant or the Defendant requests diversion. The Defendant must waive time for arraignment and/or speedy trial, and consent to the court reviewing the police reports attached to the criminal complaint.
2. The court reviews the charges to determine if the Defendant is presumptively eligible for diversion as forth in the CMD guidelines. If the charges are presumptively eligible for diversion and the People do not object, the court shall impose the terms, conditions, or programs as set forth in the CMD guidelines.
 - a. The Defendant signs an CMD Agreement which sets forth the terms, conditions, or programs imposed by the court. Court-ordered programs include, but are not limited to, treatment at Drug and Alcohol Services (“DAS”), County Behavioral Health (“CBH”), and/or Restorative Partners. Defendants may be required to sign a Release of Information (“ROI”) with their treatment provider. The Defendant must agree to comply with the terms, conditions, or programs imposed by the court for the entire diversionary period. For the length of the diversionary period, refer to the CMD guidelines. The court, in its discretion, may grant diversion to a Defendant appearing through counsel pursuant to PC 977.
 - b. The court schedules a HEARING FOR PROOF OF ENROLLMENT in programs, if applicable, two weeks from the date that a Defendant is granted misdemeanor diversion. Counsel may appear pursuant to PC 977 if proof of enrollment is brought to court. Alternatively, if proof of enrollment is filed no later than five court days before the proof of enrollment hearing, the hearing shall be taken off calendar.

- c. If the Defendant is diverted, the court requests the Defendant to make full restitution in a stipulated amount and orders the Defendant to pay restitution (i) through, and payable to, the Probation Department in addition to a 15% collection fee, or (ii) via civil compromise arranged by the Public Defender's office or defense counsel, or (iii) via civil compromise arranged by the District Attorney's Office. If there is no stipulated restitution amount and the amount of restitution is disputed, the court shall refer the case(s) to the Probation Department for a determination of restitution and schedule an RSD eight weeks out at which time the court shall review the request for restitution, if any, and schedule a restitution hearing if the amount of restitution remains disputed. The Defendant shall be ordered to contact the Probation Department within two business days regarding restitution. The court shall provide notice of the RSD and any restitution hearings to the Defendant and the alleged Victim(s). A Defendant's inability to pay restitution due to indigence shall not be grounds for denial of diversion or a finding that a Defendant has failed to comply with the terms of diversion.
- d. The court schedules a HEARING FOR PROOF OF COMPLETION regarding the terms, conditions, or programs ordered by the court, scheduled at the end of the diversionary period. If applicable, treatment providers such as DAS, CBH, and/or Restorative Partners shall provide the court with proof of completion of program(s) ordered by the court and secure applicable ROIs from the Defendant. The court may, in its discretion, extend the diversionary period if the Defendant needs more time to comply with the program(s) ordered by the court, and the Defendant wishes to have charges dismissed.
- e. For an accompanying probation violation arraignment on a prior case, if applicable, the Defendant should admit the violation and the court should reinstate probation with the additional term and condition that the Defendant comply with CMD.

- f. If applicable, the court shall schedule a PROGRESS HEARING to determine whether the Defendant has enrolled in a program as ordered by the court and whether the Defendant is performing satisfactorily. The court-ordered treatment provider, such as DAS and/or CBH, shall provide the court with proof of enrollment and/or a progress report. The court may, in its discretion, extend the diversionary period if the Defendant needs more time to comply with the program(s) ordered by the court, and the Defendant wishes to have charges dismissed.
 - g. If a Defendant complies with all court-ordered terms, conditions, or programs, the court shall dismiss all of the charges in the complaint against the Defendant.
3. If the prosecuting attorney objects to misdemeanor diversion for charges that are presumptively eligible or ineligible for diversion, the prosecuting attorney shall state its reasons for the objection and provide the court with information regarding the Defendant's criminal history and whether the alleged Victim(s) object(s) to diversion. All Victims have a right to attend court proceedings and be heard pursuant to Article I, Sections 28(b)(7) and (8) of the California Constitution and the court may continue the case so that an alleged Victim(s) can address the court. The court shall consider the impact on the alleged Victim(s) and review the police reports. The court, in its discretion, may still offer diversion to a Defendant over the objection of the prosecuting attorney. The court may also continue the hearing and take the matter under submission to decide whether to offer diversion. If diversion is granted, the court shall consider the position of the Victim(s) before ordering a Restorative Justice Conference as a term, condition, or program for the Defendant's diversion.
 - a. If the court denies the request for diversion, the criminal case proceeds.
 - b. If the court grants the request for diversion, follow the steps above in 2(a) through 2(g).

4. If it appears to the court that the Defendant is not complying with the terms and conditions of diversion, the court shall provide notice to the Defendant and alleged Victims, if any, and schedule a misdemeanor diversion violation hearing to determine whether the criminal proceedings should be reinstated. The court shall notice the Defendant and/or their counsel, in writing, no less than 30 days before the misdemeanor violation hearing. If the Defendant fails to appear at this hearing, the Court shall revoke diversion and issue a warrant. If the court finds that the Defendant has not complied with the terms and conditions of diversion, the court may end the diversion and order resumption of the criminal proceedings. In determining whether criminal proceedings should be reinstated, the court shall consider:
 - a. Whether the Defendant has engaged in criminal conduct rendering the Defendant unsuitable for diversion;
 - b. Whether the Defendant is charged with an additional misdemeanor allegedly committed during diversion and that reflects the Defendant's propensity for violence;
 - c. Whether the Defendant is charged with a felony allegedly committed during diversion;
 - d. Whether the defendant is performing unsatisfactorily in the assigned program(s), if applicable;
 - e. Whether the Defendant is performing satisfactorily on probation in other cases, if applicable.
5. Upon successful completion of the terms, conditions, or programs ordered by the court pursuant to PC 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.

6. 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 PC Section 1001.97(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 PC Section 830.
7. A Defendant may not be offered misdemeanor diversion for any offense for which a person, if convicted, would be required to register pursuant to Section 290; a violation of Section 273.5; a violation of Section 243(e); a violation of Section 646.9; and violations of Vehicle Code Section 23152 and 23153. The court also has the discretion to offer misdemeanor diversion to a Defendant for charges not contained in the CMD guidelines and maintains the discretion to deny diversion for charges contained in the CMD guidelines.