

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY

MILITARY DIVERSION INFORMATION SHEET

Monterey County Superior Court will use the following information regarding Military Diversion pursuant to PC § 1001.80 (hereafter Military Diversion). This information represents best practices. It does not represent strict rules or guidelines.

APPLICABILITY OF MILITARY DIVERSION PROGRAM (§1001.80)

1. Defendant is charged with misdemeanor conduct only; Defendant with an unadjudicated felony charge will not be admitted.
2. Defendant is a current or former member of the United States Armed Forces.
3. Defendant may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her military service.
4. Defendant consents to being placed on Military Diversion and waives his or her rights to a speedy trial.

FACTORS FOR CONSIDERATION IN GRANTING OR DENYING ENTRANCE INTO MILITARY DIVERSION

1. Defendant would benefit by education, treatment and rehabilitation provided by diversion and not better served by a higher level of structure and supervision. (An alternative to Military Diversion is Veterans' Treatment Court which provides a higher level of structure and supervision for participants while potentially earning a dismissal of the criminal conviction pursuant to PC § 1170.9.)
2. Defendant does not have any outstanding warrants, holds, or additional pending charges that would prevent participation in the program.
3. In exercising its discretion, the court may consider factors outlined in other diversion statutes including PC § 1000 as well as any factors that are reasonably related to participation in the diversion program.

PROCESS OF ADMISSION

1. Defendant files a Request for Military Diversion at the earliest possible time prior to adjudication of the case.
2. Upon receipt of the request for Military Diversion, for qualifying offenses, the matter will be set on the Military Diversion Calendar, and the final determination will be within the discretion of the Military Diversion Court.
3. If, at the hearing, the court finds the defendant is not eligible for Military Diversion, or that Military Diversion is not appropriate, the request for Military Diversion will be denied, any previously vacated dates will be reset, and the case will continue in due course. Any person not found eligible for Military Diversion pursuant to PC § 1001.80, and the criteria set forth above, may be considered for Veterans' Treatment Court if the requirements of that section are satisfied pursuant to PC § 1170.9.
4. If the court finds the Defendant eligible for diversion, and a grant of diversion is appropriate, the court will grant diversion for a period not to exceed two years, postponing criminal proceedings for that time period. The court will impose conditions of the diversion program (e.g. treatment programs). Review hearings will be set to show proof of enrollment/compliance. The court will also set the date upon which the case will be dismissed if the defendant successfully completes the diversion program. Any restitution owed must be paid before a diverted case will be dismissed.

EXAMPLES OF POTENTIAL CONDITIONS OF DIVERSION

1. Twelve (12) to Twenty-Four (24) months of treatment.
2. Search and seizure waiver.
3. Random drug and alcohol testing.
4. Substance abuse or other counseling, therapy or treatment as recommended in the assessment and/or treatment plan.
5. Protective Order for the duration of the diversion program.
6. Any other treatment services that would assist in rehabilitation.
7. Written progress reports from care/treatment providers due every 90 days.

SUCCESSFUL COMPLETION

1. At the end of the period of diversion, if the defendant has performed satisfactorily, the court will schedule the case for dismissal of the criminal charges, whereupon the case will be dismissed.
2. Pursuant to P.C. § 1001.80(i) and (j), the arrest will be deemed never to have occurred, except that: (1) the Department of Justice will be notified of the disposition of the case; (2) the arrest upon which the diversion was based may be disclosed by the Department of Justice in response to a peace officers application request; and (3) the defendant is still obligated 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 § 830. Defendant must be advised of exceptions (2) and (3).

UNSUCCESSFUL COMPLETION

1. If it appears to the court that the defendant is performing unsatisfactorily in the diversion program, or is not benefitting from the treatment and services provided, the court, with notice to the defendant, will hold a hearing to determine whether the defendant shall be terminated from the Military Diversion program and criminal proceedings shall be reinstituted.