



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

MILITARY DIVERSION INFORMATION SHEET

The court, in collaboration with the Offices of the District Attorney, City Attorney, and Public Defender, has compiled the following information regarding Military Diversion pursuant to Penal Code section 1001.80 (hereafter Military Diversion). This information is for guidance as to best practices only and does not represent strict rules or guidelines.

A. ELIGIBILITY CRITERIA

1. Defendant is charged with a misdemeanor or felony offense, except as specified below.
 - a. Misdemeanor offenses:
 - i. If charged with any offense related to driving under the influence other than misdemeanor violations Vehicle Code section 23152 and Vehicle Code section 23153.
 - b. Felony offenses:
 - i. Murder or voluntary manslaughter.
 - ii. An offense for which a person, if convicted, would be required to register pursuant to Penal Code section 290, except for a violation of Penal Code section 314.
 - iii. Rape.
 - iv. Lewd or lascivious act on a child under 14 years of age.
 - v. Assault with intent to commit rape, sodomy, or oral copulation in violation of Penal Code section 220.
 - vi. Commission of rape or sexual penetration in concert with another person in violation of Penal Code section 264.1.
 - vii. Continuous sexual abuse of a child in violation of Penal Code section 288.5.
 - viii. A violation of subdivision (b) or (c) of Penal Code section 11418.
2. Defendant is a current or former member of the United States military.
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 defendant's military service.
4. Defendant consents to being placed on Military Diversion and waives defendant's right to a speedy trial.
5. Defendant has not been granted Military Diversion for any other case.

B. EXCLUSIONARY CONSIDERATIONS

1. Defendants with a prior conviction for the same or similar offense are better served by a post-conviction referral to Veteran's Treatment Court as opposed to a grant of Military Diversion. Veteran's Treatment Court provides a higher level of structure and supervision for participants, while potentially earning a dismissal of the criminal conviction pursuant to Penal Code section 1170.9.
2. Multiple grants of Military Diversion for the same defendant prevent that person from seeking the higher level of treatment available in Veteran's Treatment Court. Military Diversion should only be granted on a one-time basis.

C. PROCESS OF ADMISSION

1. Defendant files a Request for Military Diversion; Advisal and Waiver of Rights (SDSC Form #CRM-284) (hereafter "Request for Military Diversion") at the earliest possible time prior to adjudication of the case.
2. Upon receipt of the Request for Military Diversion, the court will vacate any future hearing dates previously set and will set the matter for hearing on the Military Diversion calendar. A copy of the Request for Military Diversion will be sent by the court to the prosecuting agency with notice of the hearing date.
3. At least 15 calendar days prior to the hearing date, the defense must file and serve on the prosecution a Motion for Military Diversion that includes the alleged factual basis for eligibility for Military Diversion, including any supporting documentation (e.g., proof of military service and an assessment of the defendant's condition by a mental health or

other appropriate professional), as well as a proposed treatment plan from an appropriate mental health provider (e.g., from the program providers recommended in the assessment). Any opposition or response from the prosecution must be filed and served on the defense at least five calendar days before the hearing date.

- If the defendant has already compiled the motion, assessment, treatment plan, and/or other necessary evidence at the time defendant files the Request for Military Diversion, defendant should request a hearing date approximately three weeks out. Otherwise, the hearing date will be set approximately 60 to 90 days out.
 - If the defendant is a military veteran, the assessment may be done by a regional Veterans Center (San Diego, San Marcos, or Chula Vista), the VA Mental Health Access Clinic, or the VA Substance Abuse Recovery and Rehabilitation Treatment Program.
4. 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.
 5. If at the hearing the court finds the defendant is eligible for Military Diversion and that a grant of Military Diversion is appropriate, the court will grant Military Diversion for a period not to exceed two years, postponing the 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 Military Diversion.

D. EXAMPLES OF CONDITIONS OF MILITARY DIVERSION

1. 12 to 24 months of treatment.
2. Protective Order (JC Form #CR-160) for the duration of Military Diversion program (DV cases).
3. 52 week Family Recovery Program at a regional Veterans Center (San Diego only) or a probation-certified Domestic Violence Recovery Program (DVRP) (DV cases).
4. First Conviction Program (FCP) and MADD Impact Panel (DUI cases).
5. Random drug and alcohol testing by the treatment provider.
6. Substance abuse or other counseling, therapy or treatment as recommended in the assessment and/or treatment plan.
7. Written progress reports from care/treatment providers due every 90 days.
8. Possible prohibition from controlling, owning, purchasing, possessing, receiving a firearm until successful completion of Military Diversion.

E. SUCCESSFUL COMPLETION

1. At the end of the period of Military Diversion, if the defendant has performed satisfactorily, the court will dismiss the criminal charges.
2. The arrest will be deemed to have never 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 officer 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 Pen. Code § 830. Defendant must be advised of (2) and (3).

F. UNSUCCESSFUL COMPLETION

If it appears to the court that the defendant is performing unsatisfactorily in the Military Diversion program or is not benefiting from the treatment and services provided, the court will set a hearing to determine whether the defendant shall be terminated from the Military Diversion program and the criminal proceedings reinstated.