



SAN DIEGO SUPERIOR COURT

Probation and Sentencing Handbook for Infractions and Misdemeanors

Courtroom Counsel Copy

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SCOPE AND USE OF THE HANDBOOK

General Overview

The Probation and Sentencing Handbook for Infractions and Misdemeanors (“Handbook”) is a reference tool and guide. It does not replace the exercise of judicial discretion when determining the appropriate non-mandatory sentence, terms and conditions of probation, or fines, fees, penalties, and assessments (sometimes referred to simply as “fines and fees”).

The Handbook includes recommended total fines, and mandatory and discretionary sentencing terms for the most common infractions; and recommended total fines, mandatory and discretionary probation conditions, and mandatory sentencing terms for the most common misdemeanors. Mandatory sentencing terms for infractions and mandatory probation terms for misdemeanors include “(mandatory)” after the item. Discretionary sentencing terms for infractions, and discretionary probation terms for misdemeanors, are included for the judicial officer’s consideration. The discretionary terms are not intended to be required or mandatory.

Misdemeanor offenses also include mandatory sentencing requirements if probation is denied. In many instances, the requirements differ depending on whether probation is granted or not.

The Handbook does not attempt to address every possible criminal conviction, but to give guidance for those charges that are most often presented to the court.

To the extent possible, the statutory language was used for both mandatory and discretionary sentencing requirements, resulting in some inconsistencies in terminology throughout the Handbook.

Community Service (Volunteer Work or Litter Removal Program)

Community service can be ordered on misdemeanor and infraction diversion cases, as a condition of probation, as a sentencing enhancement, or in lieu of all or part of a fine. The court has two options when ordering community service: volunteer work or Litter Removal Program (LRP).

Volunteer work: Volunteer work may be ordered, in hourly increments, to be completed at any non-profit organization. The court must set a date on which the defendant must submit proof to the court on the letterhead of the organization at which the work was completed and state the number of hours completed.

Litter Removal Program (LRP): The County’s Department of Public Works (DPW) operates LRP, at which participants pick up litter on roads in the unincorporated areas of San Diego County. LRP should be ordered in daily increments, and is “negative reporting” which means that the court will be notified if the defendant does not complete the days ordered, and there is no need for a proof date to be set.

Transfer of Supervision

If a defendant is placed on formal probation and wishes to be supervised in another *county*, the defendant can apply for a jurisdictional transfer pursuant to Penal Code § 1203.9.

If a defendant on misdemeanor summary or formal probation wishes to leave the *state*, an application for the transfer of supervision through the Interstate Compact for Adult Offender Supervision (ICAOS) is required if more than **one** year of supervision is ordered and the instant offense includes one or more of the following:

1. An offense in which a person incurred direct or threatened physical or psychological harm.
2. An offense that involves the use or possession of a firearm.

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3. A second or subsequent misdemeanor conviction of driving while impaired by drugs or alcohol.
4. A sexual offense that requires the offender to register as a sex offender in the sending state.¹

Firearms Advisal, Report, and Relinquishment *and* Body Armor Prohibition and Relinquishment

Pursuant to Penal Code § 29810, for any conviction that renders a defendant subject to Penal Code §§ 29800, 29805, or 29815, the defendant must relinquish all firearms the defendant owns, possesses, has custody of, or controls, within 48 hours (if out of custody) or 14 days (if in custody) of the conviction.

Penal Code § 31360 requires that upon advising a person of a firearm prohibition, the court must also advise that the person is prohibited from purchasing, owning, or possessing body armor and that the person shall relinquish any body armor in the person's possession.

All misdemeanor offenses to which these requirements apply are included in the Handbook and show that a "Firearms Advisal, Report, and Relinquishment and Body Armor Prohibition and Relinquishment" is mandatory. However, only the most common of these offenses include mandatory and discretionary conditions of probation, and sentencing terms; the others simply include a reference to the requirement.

*Applicable misdemeanor offenses:*²

Pen. Code § 71	Pen. Code § 417	Pen. Code § 27510
Pen. Code § 76	Pen. Code § 417.6	Pen. Code § 27515
Pen. Code § 136.1	Pen. Code § 422	Pen. Code § 27520
Pen. Code § 136.5	Pen. Code § 422.6	Pen. Code § 27540(a), (c)-
Pen. Code § 140	Pen. Code § 487 if the	(f) involving a handgun
Pen. Code § 148(d)	prop. taken was a firearm	Pen. Code § 27545
Pen. Code § 148.5(f)	Pen. Code § 626.9	involving a handgun
Pen. Code § 171b	Pen. Code § 646.9	Pen. Code § 27550
Pen. Code § 171c(a)(1)	Pen. Code § 830.95	Pen. Code § 27585
Pen. Code § 171d	Pen. Code § 17500	involving a handgun
Pen. Code § 186.28	Pen. Code § 17510	Pen. Code § 29180(e), (f)
Pen. Code § 240	Pen. Code § 25100	Pen. Code § 29805 except
Pen. Code § 241	Pen. Code § 25135	as provided in Pen. Code
Pen. Code § 242	Pen. Code § 25200	§§ 29855 or 29800(a)
Pen. Code § 243	Pen. Code § 25300	Pen. Code § 30315
Pen. Code § 243.4	Pen. Code § 25400	Pen. Code § 32625
Pen. Code § 244.5	Pen. Code § 25800	Welf. & Inst. Code § 8100
Pen. Code § 245	Pen. Code § 25850	Welf. & Inst. Code § 8101
Pen. Code § 245.5	Pen. Code § 26100(b) or (d)	Welf. & Inst. Code § 8103
Pen. Code § 246	Pen. Code § 26350(a)	Any firearm-related offense
Pen. Code § 246.3	Pen. Code § 26400(a)	pursuant to Welf. & Inst.
Pen. Code § 247	Pen. Code § 27500(b)	Code §§ 871.5 or 1001.5
Pen. Code § 273a	Pen. Code § 27505 if	
Pen. Code § 273.5	involving the sale, loan, or	
Pen. Code § 273.6	transfer of a handgun to a	
Pen. Code § 368(b)-(c)	minor	

¹ ICAOS, Rule 2.105 – Misdemeanants. See www.interstatecompact.org.

² All felonies qualify.

Total Fine Amounts

What is Included in the Total Fine Amount

The total fine amounts found in the Handbook include the following mandatory fines and fees: a \$150 Restitution Fine (misdemeanors only),³ a \$40 Court Operations Assessment,⁴ and a \$35/\$30 (infraction/misdemeanor) Criminal Conviction Assessment.⁵ Additional mandatory and discretionary fines and fees may be applicable and are included, depending on the offense.

What is Not Included in the Total Fine Amount

The following are *not* included in the total fine amounts:

1. The Probation Revocation Restitution Fine (PRRF)⁶ in an amount equal to the Restitution Fine,⁷ which must be imposed and suspended separately from the total fine if probation is granted. The recommended terms and conditions of probation include direction to impose and suspend this fine, but the amount is not included in the total.
2. Victim restitution, which must be determined and ordered separately, or reserved, if applicable.⁸

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³ Pen. Code § 1202.4(b).

⁴ Pen. Code § 1465.8.

⁵ Gov. Code § 70373.

⁶ Pen. Code §1202.44.

⁷ Pen. Code § 1202.4(b).

⁸ California Constitution, Article I, Section 28(b)(13); Pen. Code §§ 1202.4, 1203.1(b).

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ADVISALS & WAIVERS INCLUDED IN THE HANDBOOK

4th Amendment Waiver

“Submit your person, property, place of residence, vehicle, and personal effects to search at any time, with or without a warrant, and with or without reasonable cause, when required by a Probation Officer or other law enforcement officer.”

AFA/VC 14607.6 Advisal (Auto Forfeiture Advisal) [Veh. Code, § 14607.8]

“A motor vehicle is subject to forfeiture as a nuisance if it is driven on a highway in this state by a driver with a suspended or revoked license, or by an unlicensed driver, who is a registered owner of the vehicle and has a previous misdemeanor conviction for a violation of subdivision (a) of section 12500 or section 14601, 14601.1, 14601.2, 14601.3, 14601.4, or 14601.5.”

Firearms Advisal, Report, and Relinquishment and Body Armor Prohibition and Relinquishment [Pen. Code, §§ 29810 & 31360]

See Firearms Advisal, Report, and Relinquishment *and* Body Armor Prohibition and Relinquishment section in Scope and Use tab.

IID Advisal (Ignition Interlock Device) [Veh. Code, §§ 23575(c), 23575.3(a), & 23575.3(m)]

“Installation of a functioning, certified IID is required on any vehicle you operate; you are prohibited from operating any vehicle not equipped with a functioning, certified IID; and installation of an IID does not allow you to drive without a valid license.”

Immigration Consequences [Pen. Code, § 1016.5]

“If you are not a U.S. citizen, this plea of guilty/no contest may, and for certain offenses *will*, result in your removal/deportation, exclusion from admission to the U.S., and denial of naturalization pursuant to the laws of the United States. You have the right to request additional time to consider your plea in light of this advisal. By entering this plea, you are indicating that you have discussed your immigration status with your attorney and have had sufficient time to consider and discuss the immigration consequences of your plea with him/her or an immigration attorney, and you wish to proceed.”

Post-conviction Relief Advisal [Pen. Code, § 1203.425(c)]

“On a monthly basis, in accordance with Penal Code section 1203.425, the Department of Justice will review convictions which occurred on or after January 1, 1973, to identify those who should automatically have the record of arrest or conviction sealed within the superior court should they meet the defined qualifications. You may also have a right to petition for a certificate of rehabilitation and pardon. Further information and forms are available on the court’s website and in the criminal business offices.” (See also, Post-Conviction Relief Advisal, San Diego Superior Court Form #CRM-276.)

SAC (Standard Alcohol Conditions) [Veh. Code, § 23600]

1. Not drive with any measurable amount of alcohol in blood.
2. If arrested for a violation of Vehicle Code sections 23152 or 23153, not refuse to submit to a chemical test of blood, breath, or urine, for the purpose of determining the alcoholic content of blood.
3. Violate no laws regarding driving a motor vehicle while under the influence or in the possession of alcohol or drugs.
4. Not drive without a valid license and proof of insurance.

VC 23593 Advisal (Driving Under the Influence) [Veh. Code, § 23593]

“You are hereby advised that being under the influence of alcohol or drugs, or both, impairs your ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If you continue to drive while under the influence of alcohol or drugs, or both, and, as a result of that driving, someone is killed, you can be charged with murder.”

ACRONYMS AND INITIALISMS USED IN THE HANDBOOK

AFA	Auto Forfeiture Advisal [VC 14607.6] (see Advisals & Waivers page)
B&R	Book and Release
BAC	Blood Alcohol Concentration
CPO	Criminal Protective Order (in CLETS)
D	Day(s)
DMV	Department of Motor Vehicles
DOJ	Department of Justice
DV	Domestic Violence
DVRP	Domestic Violence Recovery Program
FCP	First Conviction Alcohol Education Program
H	Hour(s)
IID	Ignition Interlock Device
ILO	In Lieu Of
ISS	Imposition of Sentence Suspended
LIO	Lesser Included Offense
LRP	Litter Removal Program
M	Month(s)
MCP	Multiple-Conviction Alcohol Education Program
PRRF	Probation Revocation Restitution Fine
SAAU	Substance Abuse Assessment Unit
SAC	Standard Alcohol Conditions [VC 23600] (see Advisals & Waivers page)
SAO	Stay Away Order
SARATSO	State Authorized Risk Assessment Tool for Sex Offenders
TRO	Temporary Restraining Order
TVS	Traffic Violator School
VNL	Violate no laws, minor traffic infractions excepted
Y	Year(s)