

**RESOLUTION 06-08-2018**

**DIGEST**

Sentence Deferment: Availability of Judicial Diversion for First Time Misdemeanor Offenders  
Adds Penal Code sections 1001.94, 1001.95, 1001.96, 1001.97, 1001.98, and deletes section 1001.99, to reenact and make permanent the Deferral of Sentencing Law.

**STATEMENT OF REASONS**

The Problem: The legislature enacted Penal Code section 1001.94 et seq. in 2014 as a pilot project applicable to Los Angeles County only. It sunsetted on January 1, 2018. This judicial diversion has worked very well in Los Angeles County allowing first time, minor offenders to take diversion classes, pay restitution where applicable, follow all the rules and regulations of the court, and to avoid a conviction appearing upon the person’s record. Of course, if the person fails to complete the diversion program judgment is entered and the person sentenced. Unfortunately, this law expired and legislation to renew it was not introduced.

The Solution: The solution is to make reenact judicial diversion and to make it applicable statewide. That’s what this resolution does.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to add Penal Code sections 1001.94, 1001.95, 1001.96, 1001.97, 1001.98, and delete 1001.99 to read as follows:

1 § 1001.94

2 (a) There is hereby established the Deferral of Sentencing Program.

3 (b) A judge in the superior court may, at his or her discretion and over the objection of a  
4 prosecuting attorney, defer sentencing a defendant who has submitted a plea of guilty or nolo  
5 contendere to a misdemeanor pursuant to this chapter. Sentencing may be deferred for a period  
6 not to exceed 12 months, and the judge may order the defendant to comply with terms,  
7 conditions, or programs that the judge deems appropriate based on the defendant’s specific  
8 situation.

9 (c) A defendant may make a motion for imposition of diversion pursuant to this section.

10 (d) This chapter shall apply to first-time misdemeanor defendants, except as provided  
11 in Section 1001.98, in order to reduce the stigma that is often associated with a criminal record  
12 and to increase the likelihood that a defendant will be able to obtain employment.

13 (e) This chapter shall not be construed to preempt any current or future diversion  
14 programs. Nothing in this chapter is intended to limit the rights of a victim under Section 28 of  
15 Article I of the California Constitution.

16 (f) It is the intent of the Legislature that no new diversion programs are created, and that  
17 judges shall order a defendant, for whom judgment is deferred, to complete the same obligations  
18 that would have been imposed had judgment been entered. The only difference between this  
19 chapter and current practice is that under this chapter judgment will not be entered.

20  
21 § 1001.95

22 A defendant whose sentence is deferred pursuant to this chapter shall be required to  
23 complete all of the following in order to have his or her plea stricken:

24 (a) Complete all conditions ordered by the court.

25 (b) Make full restitution.

26 (c) Comply with a court-ordered protective order, stay-away order, or order prohibiting  
27 firearm possession, if applicable.

28  
29 § 1001.96

30 (a) If the defendant, during the period of deferral imposed pursuant to subdivision (a)  
31 of Section 1001.94, complies with all terms, conditions, and programs required by the court,  
32 then, the judge shall, at the end of the period, strike the defendant's plea and dismiss the action  
33 against the defendant.

34 (b) Upon successful completion of the terms, conditions, or programs ordered by the  
35 court, the arrest upon which sentencing was deferred shall be deemed to have never occurred.  
36 The defendant may indicate in response to any question concerning his or her prior criminal  
37 record that he or she was not arrested or granted deferred entry of judgment for the offense,  
38 except as specified in subdivision (c). A record pertaining to an arrest resulting in successful  
39 completion of the terms, conditions, or programs ordered by the court shall not, without the  
40 defendant's consent, be used in any way that could result in the denial of any employment,  
41 benefit, license, or certificate.

42 (c) The defendant shall be advised that, regardless of his or her successful completion of  
43 the terms, conditions, or programs ordered by the court pursuant to this chapter, the arrest upon  
44 which the judgment was deferred may be disclosed by the Department of Justice in response to a  
45 peace officer application request and that, notwithstanding Section 1001.94, this section does not  
46 relieve him or her of the obligation to disclose the arrest in response to a direct question  
47 contained in a questionnaire or application for a position as a peace officer, as defined in Section  
48 830.

49  
50 § 1001.97

51 If, during the period of deferral imposed pursuant to subdivision (a) of Section 1001.94,  
52 the defendant reoffends or fails to comply with the terms, conditions, or programs required by  
53 the court, then the court, the probation officer, or the prosecuting attorney shall make a motion  
54 for entry of judgment, and the court shall sentence the defendant as if deferral had not occurred.

55  
56 §1001.98

57 Deferral of sentencing shall not be offered when any of the following conditions are met:

58 (a) The defendant has been convicted of any misdemeanor in the previous 10 years, a  
59 misdemeanor involving force or violence, or a felony.

60 (b) The defendant has previously had his or her sentence deferred pursuant to this  
61 chapter or any other law.

62 (c) Incarceration is mandatory upon the defendant's conviction.

63 (d) The defendant is required to register as a sex offender pursuant to Section 290.

64 (e) The magistrate determines that the offense will be prosecuted as a misdemeanor  
65 pursuant to paragraph (5) of subdivision (b) of Section 17.

66 (f) The defendant is a partnership, firm, association, corporation, limited liability  
67 company, or other legal entity.

- 68           (g) The victim is a person identified in Section 6211 of the Family Code, a minor, or an  
69 elder or dependent adult pursuant to Section 368.  
70           (h) The charge includes any of the following:  
71           (1) Force or violence against a peace officer.  
72           (2) The unlawful use, possession, sale, or transfer of a dangerous weapon, firearm, or  
73 ammunition.  
74           (3) Violation of Section 23152 or 23153 of the Vehicle Code.  
75           (4) Violation of either subdivision (c) of Section 192 or subdivision (b) of Section 191.5.  
76           (5) Violation of Section 186.22.  
77           (6) Violation of Section 273.5 or 273.6.  
78           (7) Violation of an environmental or workplace safety crime, including, but not limited  
79 to, subdivision (a) of Section 5650 of the Fish and Game Code, Section 8670.64 of the  
80 Government Code, Section 25507 of the Health and Safety Code, Section 6423 or 6425 of the  
81 Labor Code, Section 387 of this code, or Section 13387 of the Water Code.

82  
83 ~~§ 1001.99~~  
84           ~~This chapter shall remain in effect only until January 1, 2018, and as of that date is~~  
85 ~~repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends~~  
86 ~~that date.~~

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Los Angeles County Bar Association

**IMPACT STATEMENT**

This resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**

Judicial diversion was enacted with the support of the CCBA due to passage of many expansive diversion resolutions.

**AUTHOR AND/OR PERMANENT CONTACT:** Mark Harvis, Los Angeles County Public Defender, 320 W. Temple Street, Suite 590, Los Angeles, CA 90012, phone: 213-974-3066, e-mail: mharvis@pubdef.lacounty.gov

**RESPONSIBLE FLOOR DELEGATE:** Mark Harvis

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**RESOLUTIONS COMMITTEE RECOMMENDATION**

APPROVE IN PRINCIPLE

History:  
No similar resolutions found.

Reasons:

This resolution adds Penal Code sections 1001.94, 1001.95, 1001.96, 1001.97, 1001.98, and deletes section 1001.99, to reenact and make permanent the Deferral of Sentencing Law. This resolution should be approved in principle because it reenacts a statutory scheme which the Legislature allowed to sunset without renewal, even though the pilot program in Los Angeles County for judicial diversion of first time misdemeanor offenders was successful.

In 2014, the Legislature enacted Penal Code section 1001.94 et seq. as a limited pilot project applicable only in Los Angeles County effective until January 1, 2018. It allowed judicial diversion of first time misdemeanor offenders. The court could order eligible offenders to take diversion classes, pay restitution where applicable, follow all of the rules and regulations of the court, and avoid a conviction appearing upon the person's record. If the defendant failed to complete the diversion program, judgment was entered and the defendant was sentenced. Unfortunately, the Legislature did not renew or introduce a similar program before it expired.

The resolution tracks the language of the 2014 Deferral of Sentencing Law, making it permanent and applicable statewide. The California senate legislative analysis for that 2014 Deferral of Sentencing Law explained the need for and benefits of misdemeanor diversion. (see [https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201320140AB2124#](https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140AB2124#).) Where a first time misdemeanor offender meets all requirements, and so avoids being sentenced, he/she will not have a criminal record, and therefore will not face the difficulties that persons with criminal records have in obtaining employment and/or professional licensing. This reduces the risk of additional criminal activity. Additionally, if the offender suffers from mental illness or has a substance abuse problem, diversion programs are useful in ensuring participation in treatment plans. Community service helps the person build self esteem, and further reduces recidivism. And, diversion lightens the courts' already overburdened criminal trial dockets, allowing the court to focus its resources on more serious criminal offenders. (*Id.*) Studies in other jurisdictions have also shown such benefits from diversions programs. (See e.g., [http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report\\_web.pdf](http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report_web.pdf))

The resolution should be approved in principle, to afford these opportunities for improvement to first time misdemeanor offenders throughout the state.