**California Penal Code**

**Section 1001.50-1001.55 Pretrial Diversion**

**1001.50.** (a) Notwithstanding any other provision of law, this chapter shall become operative in a county only if the board of supervisors adopts the provisions of this chapter by ordinance.

(b) The district attorney of each county shall review annually any diversion program established pursuant to this chapter, and no program shall continue without the approval of the district attorney. No person shall be diverted under a program unless it has been approved by the district attorney. Nothing in this subdivision shall authorize the prosecutor to determine whether a particular defendant shall be diverted

(c) As used in this chapter, “pretrial diversion” means the procedure of postponing prosecution either temporarily or permanently at any point in the judicial process from the point at which the accused is charged until adjudication.

**1001.51**. (a) This chapter shall apply whenever a case is before any court upon an accusatory pleading concerning the commission of a misdemeanor, except a misdemeanor specified in subdivision (b), and it appears to the court that all of the following apply to the defendant:

(1) The defendant’s record does not indicate that probation of parole has ever been revoked without thereafter being completed.

(2) The defendant’s record does not indicate that he has been diverted pursuant to this chapter within five years prior to the filing of the accusatory pleading which charges the divertible offense.

(3) The defendant has never been convicted of a felony, and has not been convicted of a misdemeanor within five years prior to the filing of the accusatory pleading which charges the divertible offense.

(b) This chapter shall not apply to any pretrial diversion or posttrial program otherwise established by this code, nor shall this chapter be deemed to authorize any pretrial diversion or posttrial program for any person alleged to have committed a violation of Section 23152 of the Vehicle Code.

(c) This chapter shall not apply whenever the accusatory pleading charges the commission of a misdemeanor:

(1) For which incarceration would be mandatory upon conviction of the defendant.

(2) For which registration would be required pursuant to Section 290 upon conviction of the defendant.

(3) Which the magistrate determines shall be prosecuted as a misdemeanor pursuant to paragraph (5) of subdivision (b) of Section 17.

(4) Which involves the use of force or violence against a person, unless the charge is of a violation of Section 241 or 243.

(5) For which the granting of probation is prohibited.

(6) Which is a driving offense punishable as a misdemeanor pursuant to the Vehicle Code.

**1001.52.** (a) If the defendant consents and waives his right to a speedy trial, the case shall be referred to the probation department. The probation department shall conduct such investigation as is necessary to determine whether the defendant qualifies for diversion under subdivision (a) of Section 1001.51, and whether he or she is a person who would be benefited by education, treatment or rehabilitation. The probation department shall also determine which educational, treatment or rehabilitative plan would benefit the defendant. The probation department shall report its findings and recommendation to the court. If the recommendation includes referral to a community program, the report shall contain a statement regarding the program’s willingness to accept the defendant and the manner in which the services they offer can assist the defendant in completing the diversion program successfully.

(b) No statement, or any information procured therefrom, made by the defendant to any probation officer, which is made during the course of any investigation conducted by the probation department pursuant to subdivision (b), and prior to the reporting of the probation department’s findings and recommendations to the court, shall be admissible in any action or proceeding brought subsequent to the investigation.

No statement, or any information procured therefrom, with respect to the specific offense with which the defendant is charged, which is made to any probation officer subsequent to the granting of diversion, shall be admissible in any action or proceeding.

In the event that diversion is either denied, or is subsequently revoked once it has been granted, neither the probation investigation nor statements or information divulged during that investigation shall be used in any pretrial sentencing procedures.

**1001.53.** The court shall hold a hearing and, after consideration of the probation department’s report, and any other relevant information, shall determine if the defendant consents to further proceedings under this chapter and waives his or her right to a speedy trial. If the court orders a defendant to be diverted, the court may make inquiry into the financial condition of the defendant, and upon a finding that the defendant is able in whole or in part to pay the reasonable cost of diversion, the court may order him or her to pay all or part of such expense. The reasonable cost of diversion shall not exceed the amount determined to be the actual average cost of diversion services.

If the court does not deem the defendant to be a person who would be benefited by diversion, or if the defendant does not consent to participate, the proceedings shall continue as in any other case.

At such time that a defendant’s case is diverted, any bail bond or undertaking, or deposit in lieu thereof, on file by or on behalf of the defendant shall be exonerated, and the court shall enter an order so directing.

The period during which the further criminal proceedings against the defendant may be diverted shall be for the length of time required to complete and verify the diversion program but in no case shall it exceed two years.

**1001.54.** If it appears to the probation department that the divertee is performing unsatisfactorily in the assigned program, or that the divertee is not benefiting from education, treatment or rehabilitation, or that the divertee is convicted of a misdemeanor in which force or violence is used, or if the divertee is convicted of a felony, after notice to the divertee, the court shall hold a hearing to determine whether the criminal proceedings should be reinstituted. If the court finds that the divertee is not performing satisfactorily in the assigned program, or that the divertee is not benefiting from diversion, or the court finds that the divertee has been convicted of a crime as indicated above, the criminal case shall be referred back to the court for resumption of the criminal proceedings. If the divertee has performed satisfactorily during the period of diversion, at the end of the period of diversion, the criminal charges shall be dismissed.

**1001.55.** (a) Any record filed with the Department of Justice shall indicate the disposition in those cases diverted pursuant to this chapter. Upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The divertee may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a diversion program shall not, without the divertee’s consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(b) The divertee shall be advised that, regardless of his or her successful completion of diversion, the arrest upon which the diversion was based may be disclosed by the Department of Justice in response to any peace officer application request and that, notwithstanding subdivision (a), this section does not relieve him or her of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.