

RESOLUTION 03-04-04

DIGEST

Misdemeanor Diversion: Statewide Application

Amends Penal Code section 1001.2 to make misdemeanor diversion available statewide.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolution found.

Reasons:

This resolution amends Penal Code section 1001.2 to make misdemeanor diversion available statewide.

This resolution should be approved because it would make uniform the availability and application of misdemeanor diversion. Current law allows the district attorney in each county to approve any diversion program used in that county. This results in some counties having no diversion programs at all while a contiguous county has such a program. This results in a defendant in one county receiving a fine or jail sentence while another defendant in a contiguous county, arrested for the same offense under similar factual circumstances, is eligible for diversion. This diversity defeats the statewide policy encouraging diversion and creates a potential due process claim by a defendant denied diversion because the program has not been approved. The uniform application of a statewide statute is an important cornerstone in public respect for equal protection of the law.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates of California Bar Association recommends that legislation be sponsored to amend Penal Code Section 1001.2 to read as follows:

- 1 §1001.2
- 2 (a) This chapter shall not apply to any pretrial diversion or post-trial programs for
- 3 the treatment of problem drinking or alcoholism utilized for persons convicted of one or
- 4 more offenses under Section 23152 or 23153 or former Section 23102 of the Vehicle Code
- 5 or to pretrial diversion programs established pursuant to Chapter 2.5 (commencing with
- 6 Section 1000) of this title nor shall this chapter be deemed to authorize any pretrial
- 7 diversion or post-trial programs for persons alleged to have committed violation of Section
- 8 23152 or 23153 of the Vehicle Code.
- 9 ~~(b) The district attorney of each county shall review annually any diversion~~
- 10 ~~program established pursuant to this chapter, and no program shall continue without the~~
- 11 ~~approval of the district attorney. No person shall be diverted under a program unless it has~~
- 12 ~~been approved by the district attorney. Nothing in this subdivision shall authorize the~~

13 ~~prosecutor to determine whether a particular defendant shall be diverted.~~

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

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

Existing Law: Under existing law, local prosecutors must approve programs for misdemeanor diversion.

This Resolution: Would make misdemeanor diversion available statewide.

The Problem: Because of the discretion given county district attorneys under this provision, some counties have no misdemeanor diversion programs whatsoever. For example, a first offense of shoplifting ban in San Francisco will result in diversion. Such an offense, if committed on the other side of the street in San Mateo County, results in conviction with possible penalties of fine and imprisonment. Removing the district attorneys' discretion would make misdemeanor diversion available statewide. This is simply a matter of equal protection of the laws.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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