

Defendant Advisal as Modified from PC 1001.36

- (d) If any of the following circumstances exists, the court shall, after notice to the defendant (you), defense counsel, and the prosecution, hold a hearing to determine whether the criminal proceedings should be reinstated, whether the treatment should be modified, or whether you should be conserved and referred to the conservatorship investigator of the county of commitment to initiate conservatorship proceedings pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code:
- (1) If you are charged with an additional misdemeanor allegedly committed during the pretrial diversion and that reflects a propensity for violence.
 - (2) If you are charged with an additional felony allegedly committed during the pretrial diversion.
 - (3) If you are engaged in criminal conduct rendering you unsuitable for diversion.
 - (4) If, upon notice by the program to the court, you fail to conform/comply with all rules/requirements of the program a bench warrant may issue for the alleged violation and the court may terminate diversion
 - (5) Based on the opinion of a qualified mental health expert whom the court may deem appropriate, either of the following circumstances exists:
 - (A) If you are performing unsatisfactorily in the assigned program.
 - (B) If you are gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code. You shall only be conserved and referred to the conservatorship investigator pursuant to this finding.
- (e) If you have performed satisfactorily in diversion, at the end of the period of diversion, the court shall dismiss your criminal charges that were the subject of the criminal proceedings at the time of the initial diversion. A court may conclude that you have performed satisfactorily if you have substantially complied with the requirements of diversion, have avoided significant new violations of law unrelated to your mental health condition, and have a plan in place for long-term mental health care. If the court dismisses the charges, the clerk of the court shall file a record with the Department of Justice indicating the disposition of the case diverted pursuant to this section. Upon successful completion of diversion, if the court dismisses the charges, the arrest upon which the diversion was based shall be deemed never to have occurred, and the court shall order access to the record of the arrest restricted in accordance with Section 1001.9, except as specified in subdivisions (g) and (h). If successful in completing diversion you may indicate in response to any question concerning your prior criminal record that you were not arrested or diverted for the offense, except as specified in subdivision (g).
- (f) A record pertaining to an arrest resulting in successful completion of diversion, or any record generated as a result of your application for or participation in diversion, shall not, without your consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.
- (g) You shall be advised that, regardless of your completion of diversion, both of the following apply:
- (1) The arrest upon which the diversion was based may be disclosed by the Department of Justice to any peace officer application request and that, notwithstanding subdivision (f), this section does not relieve you 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.
 - (2) An order to seal records pertaining to an arrest made pursuant to this section has no effect on a criminal justice agency's ability to access and use those sealed records and information regarding sealed arrests, as described in Section 851.92.
- (h) A finding that you suffer from a mental disorder, any progress reports concerning your treatment, or any other records related to a mental disorder that were created as a result of participation in, or completion of, diversion pursuant to this section or for use at a hearing on your eligibility for diversion under this section may not be used in any other proceeding without your, unless that information is relevant evidence that is admissible under the standards described in paragraph (2) of subdivision (f) of Section 28 of Article I of the California Constitution. However, when determining whether to exercise its discretion to grant diversion under this section, a court may consider previous records of participation in diversion under this section.
- (i) The county agency administering the diversion, your mental health treatment providers, the public guardian or conservator, and the court shall, to the extent not prohibited by federal law, have access to your medical and psychological records, including progress reports, during your time in diversion, as needed, for the purpose of providing care and treatment and monitoring treatment for diversion or conservatorship.