http://www.sfpretrial.com/eligibilitycriteria.html

 (Pursuant to California Penal Code Sections 1001 through 1001.9
of Chapter 2.7, Title 6, Part 2)

A. GENERAL PROVISIONS

1. Diversion shall not be “deemed” completed. A diversion candidate shall enroll, participate in and successfully complete a prescribed program.

2. All diversion programs must be completed within twenty-four (24) months of the date that individual defendants are found eligible and suitable to participate in a diversion program.

**B. PERSONS ELIGIBLE FOR DIVERSION**

1. Persons Automatically Eligible for Diversion

Except as provided in Section B.2. or Section C., below, any person charged with a misdemeanor offense is automatically eligible for diversion through Chapter 2.7 and shall be referred to the Pretrial Diversion Project for an Eligibility Report.

2. Persons Eligible for Diversion Only Upon a Finding of Good Cause

Except as provided in Section C., below, persons who fall within any of the following categories are eligible for diversion and may be referred to the Pretrial Diversion Project only upon a finding of “good cause” articulated by the court on the record in open court and supported by a balancing of aggravating and mitigating circumstances, as described in, but not limited to, California Rules of Court Sections 4.421 and 4.423.

a. Persons initially charged by the District Attorney’s Office with the following misdemeanor violations of a section chargeable as either a felony or misdemeanor:

(1) Vehicle Code § 10851
(2) Penal Code § 496 or 496d
(3) Penal Code § 459 2nd Degree (Auto)
(4) Penal Code § 666 with one prior, qualifying theft conviction
(5) Penal Code § 487(a), (b), or (d)(1)
(6) Penal Code § 487a, 487b, 487d, 487e, 487g, or 487h
(7) Penal Code § 470, 470a, 472, 474, 475, 476, 476a, 481, or 481.1
(8) Penal Code § 484b, 484c, 484e, 484f, 484g, 484h, or 484i
(9) Penal Code § 533, 534, 535, 537(a)(2), 537e, or 538.5
(10) Penal Code § 319 through § 337.9

b. Persons charged with violating Penal Code § 594(b)(1) where the charge was initially filed by the District Attorney as a misdemeanor or as a felony and thereafter reduced to a misdemeanor by the Court or the District Attorney pursuant to Penal Code Sections 17(b)(4) and 17(b)(5). In any cases referred to diversion involving graffiti (whether under this Section or under Section B.1., above), the diversion program must include a requirement that the defendant complete no less than 96 hours of PWAP (graffiti clean-up).

c. Persons who were previously committed to the California Youth Authority.

d. Persons who have suffered a prior felony or misdemeanor conviction unless they are ineligible for diversion under Section C.26., below.

e. Persons charged with violating Penal Code Section 242 or 273a(b) wherein the injury is not substantial or significant. “Substantial or significant” injury means physical injury that requires professional medical treatment. However, in no event shall the defendant be eligible for diversion if the battery is committed by more than one person upon the same victim.

f. Persons charged with violating Penal Code Section 243(b) wherein the officer suffered no visible or substantial or significant injury.

C. PERSONS NOT ELIGIBLE FOR DIVERSION

Notwithstanding any of the foregoing provisions, the persons listed below are not eligible for diversion and shall not be referred to the Pretrial Diversion Project under any circumstances. Should a person ineligible for diversion be referred to the Pretrial Diversion Project in error, the Pretrial Diversion Project shall report that ineligibility to the Court and take no further action with respect to the referral by monitoring that person or allowing that person to participate in the diversion program.

1. Persons charged with an offense chargeable as a felony or misdemeanor where:

a. The charge was initially filed by the District Attorney as a felony and thereafter reduced to a misdemeanor by the Court or the District Attorney pursuant to Penal Code Sections 17(b)(4) and 17(b)(5); or

b. The charge was initially filed by the District Attorney as a misdemeanor, except for those offenses listed in Section B.2.a., above.

2. Persons charged with offenses listed in Title 2, Chapters 1 through 6, inclusive, of the Penal Code, known as “Control of Dangerous Weapons,” beginning at Section 12000 and continuing through Section 12809, and persons charged with loaded firearm offenses as defined by Sections 171c and 171d of the Penal Code.

3. Persons charged with Penal Code Section 243.2, 243.3, 243.35, 243.4(e), 243.6, 243.8, 243.10 or 273d.

4. Persons charged in cases wherein a dangerous or deadly weapon was used, including offenses enumerated in Penal Code Sections 417 through 417.8.

5. Persons charged with offenses involving domestic violence as defined by Sections 13700(b) of the Penal Code and 6211 of the Family Code including but not limited to violations of Penal Code Sections 243(e)(1) and 273.3.

6. Persons charged with more than one offense in a single complaint, factually related or not, where one of the charged offenses is ineligible for diversion.

7. Persons charged with drug offenses included in Penal Code Section 1000 (Deferred entry of judgment).

8. Persons charged with Vehicle Code infractions.

9. Persons charged with offenses wherein restitution or damage exceeds $3,500. The amount of restitution or damage is determined at the time of the actual loss, regardless of subsequent reductions by payment.

10. Persons charged with a violation of Penal Code Section 594(b)(2)(B).

11. Persons charged with more than one offense arising out of more than one event or transaction in one or more than one criminal complaint.

12. Persons charged with a violation of Penal Code Section 314.1 when in the presence of a minor.

13. Persons charged with violating Penal Code Section 242 or 273a(b) wherein the injury is “substantial or significant.”

14. Persons charged with violating Penal Code Section 243(b) wherein the injury is visible or “substantial or significant.”

15. Persons charged with a violation of Penal Code Section 647.6, 288.2, 311.3, 311.4, 311.11, persons charged with a violation of Penal Code Section 647(b) involving a minor, and persons charged with unlawful sexual intercourse with another under the age of eighteen (18) within the meaning of Penal Code Section 261.5(b).

16. Persons charged with stalking within the meaning of Penal Code Section 646.9.

17. Persons charged with a misdemeanor violation of Penal Code Section 290 that requires registration by sex offenders and persons charged with refusal to provide specimens within the meaning of Penal Code Section 298.1.

18. Persons charged with disorderly conduct within the meaning of Section 647(b) (not involving a minor), or loitering within the meaning of Section 653.22 and 653.23 of the Penal Code, or ***who are otherwise determined by the District Attorney to be eligible for the First Offenders Prostitution Program or the Early Intervention Prostitution Program***. However, ***referrals to diversion on Section 647(b) shall be accepted when the First Offender Prostitution Program or the Early Intervention Prostitution Program is unable to accept court referrals.***
19. Persons charged with infliction of pain, mental abuse, endangering health or theft or embezzlement from elder or dependent adults within the meaning of Penal Code Sections 368 and 243.25.

20. Persons charged with “hate” crimes or offenses that interfere with the exercise of civil rights under Penal Code Section 422.6 or under Article 4.5 of the Penal Code (sections 11410 through 11414).

21. Persons charged with Vehicle Code and Municipal Police Code violations relating to the operation of a motor vehicle, including driving under the influence of alcohol and/or drugs, except that persons charged with violating Vehicle Code Section 20002 (subject to the limitations set forth in Section C.9., above) and persons charged with auto tampering offenses (Vehicle Code Sections 10851.5 – 10853) are eligible for diversion under this program; and persons charged with auto taking (Vehicle Code Section 10851) originally filed as a misdemeanor may be eligible for diversion upon a finding of good cause pursuant to Paragraph B.2., above.

22. Persons charged with an offense upon or against a member of the Department of Parking and Traffic of the City and County of San Francisco (DPT).

23. Persons charged with a misdemeanor for any of the following “white collar” offenses:

a. Violation of any law relating to practicing a profession or working in an occupation without the required license or registration (e.g., contractors, lawyers, health professionals).

b. Violation of any environmental law, including Health & Safety Code, Division 20, Chapter 6.5, Chapter 6.75 or Chapter 6.95; Division 26, Part 4; Division 104, Part 13 or Part 14; Fish & Game Code section 5650 or 5652; Harbor & Navigation Code section 132 or 133; Penal Code sections 374 through 374.7; Vehicle Code section 23112.5, 23114 or 34506; Government Code section 8670.64 or 8670.65; San Francisco Health Code section 1130 or 1150; or Public Resources Code section 42850.1.

c. Violation of any worker safety law, including Labor Code section 6423, 6425 or 6509.

d. Violation of Penal Code Section 502 (Computer-Related Crimes).

e. Violation of Penal Code Section 499c (Trade Secrets).

f. Violation of Penal Code Section 530.5 (Identity Theft).

g. Violation of Penal Code Section 550 or 551 (Crimes Against Insured Property and Insurers).

h. Violation of Labor Code section 3550 or 3700.5 (Workers Compensation Insurance).

i. Violation of any law relating to public corruption, bribery, extortion, false statements or perjury.

j. Violation of any law relating to theft or misappropriation of public funds (except offenses involving violations of the Unemployment Insurance Code, Welfare and Institutions Code, and/or food stamp fraud, involving losses under $3,500).

k. Violation of any law relating to conflicts of interest, financial disclosure, or governmental ethics, including but not limited to those included in the California Political Reform Act (Govt. Code section 87100 et seq.), the San Francisco Campaign and Governmental Conduct Code, and the San Francisco Charter.

l. Violation of any law relating to elections and campaign finance, including but not limited to Elections Code sections 18500 through 18578, and San Francisco Campaign and Governmental Conduct Code sections 1.100 et seq.

m. Violation of any law relating to failure to appear on a promise to appear (Penal Code section 853.7).

n. Violation of the Revenue and Taxation Code.

o. Violation of any provision of the San Francisco Housing Code.

p. Violation of any provision of Chapter 37 of the San Francisco Administrative Code (Residential Rent Stabilization and Arbitration Ordinance).

24. Persons charged with any offense relating to the protection of fish or wild life, including:

a. Violation of any Fish and Game Code provision relating to commercial fishing (e.g., herring violations).

b. Violation of any law relating to possession or possession for sale of protected and/or endangered species parts.

25. Persons who have previously failed to complete diversion successfully, under this program or any other; persons previously diverted under this program within 5 years of the charged offense; persons who are currently on diversion, under this program or any other; persons who are currently on parole, felony probation or misdemeanor probation; and persons who are currently awaiting approval of an Eligibility Report for diversion under this program.

26. Persons who have suffered a prior felony conviction within 5 years of the charged offense; persons who have been on parole within 5 years of the charged offense; and persons who have suffered a prior misdemeanor conviction within 5 years of the charged offense.

D. RESIDENCE

Residence in San Francisco is not required for diversion eligibility provided the defendant is able to conform to conditions or participate in the program assigned.

E. NO ADMISSION OF GUILT

Acceptance of diversion and compliance with conditions imposed shall not be deemed to constitute an admission of guilt.

**F. REINSTATEMENT**

In every instance wherein a person is on one diversion and is performing unsatisfactorily in the program, the diversion previously granted shall immediately be referred back to the court for a hearing upon the issue of whether criminal proceedings should be reinstated or whether the person should be re-referred to diversion. If a new offense is charged while the person is in the diversion program, diversion shall be terminated.

G. CRIMINAL HISTORY

No person shall be certified by the Pretrial Diversion Project as eligible unless and until the Pretrial Diversion Project has received a current criminal history from the District Attorney’s Office. Only after that history has been received and reviewed and it has been determined therefrom that an applicant is eligible, may the Pretrial Diversion Project certify him as eligible. The certification of eligibility shall include a statement that a review has been conducted.

**H. IDENTIFICATION**

No person shall be referred to the Pretrial Diversion Project until and unless valid verifiable identification is provided in court or to the District Attorney. The District Attorney’s Office shall be given a reasonable opportunity to obtain a current criminal history for all persons seeking a referral to the Pretrial Diversion Project.

**I. DIVERSION RESTITUTION FEE (PENAL CODE SECTION 1001.90)**

The court shall impose a diversion restitution fee in addition to any other administrative fee provided or imposed under the law.

The fee imposed shall be set at the discretion of the court and shall be commensurate with the seriousness of the offense, but shall not be less than One Hundred Dollars ($100) and not more than One Thousand Dollars ($1000).

The restitution fee shall be ordered regardless of the defendant’s present ability to pay. However, if the court finds that there are compelling and extraordinary reasons, the court may waive imposition of the fee. The court shall state on the record all reasons supporting the waiver.

If the court sets the amount of the diversion fee in excess of the One Hundred Dollar ($100) minimum, the court shall consider any relevant factors, including but not limited to, the defendant’s ability to pay, the seriousness and gravity of the offense, and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, and the extent to which any person suffered any losses as a result of the crime. Those losses may include pecuniary losses to the victim or his or her dependants as well as intangible losses, such as psychological harm caused by the crime.

Considerations of a defendant’s ability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating the lack of his or her ability to pay. Express findings by the court as to the factors bearing on the amount of the fee shall not be required. A separate hearing for the diversion restitution fee shall not be required.

**San Francisco Municipal Police Code**

<http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca>

### SEC. 225.  SOLICITING PROSTITUTION PROHIBITED.

     It shall be unlawful for any person on any public street or highway or elsewhere, to solicit, by word, act, gesture, knock, sign or otherwise, any person for the purpose of prostitution.

 (Added by Ord. 1.075, App. 10/11/38)

### SEC. 226.  PENALTY.

     Any person violating the provisions of Section [225](http://www.amlegal.com/nxt/gateway.dll?f=id$id=San%20Francisco%20Police%20Code%3Ar%3A22d$cid=california$t=document-frame.htm$an=JD_225$3.0#JD_225) of this Article shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed $100, or by imprisonment for not more than 50 days, or by both such fine and imprisonment.

(Added by Ord. 1.075, App. 10/11/38)

Sec. 231.

(Added by Ord. 1.075, App. 10/11/38; repealed by Ord. 14-02, File No. 011845, App. 2/8/2002)

### SEC. 236.  USE OF BUILDINGS FOR PROSTITUTION PROHIBITED.

     It shall be unlawful for any person, company or corporation owning or acting as agent for the owner of any building to suffer or permit said building or any portion thereof to be rented, leased, occupied or used for the purposes of prostitution.

(Added by Ord. 1.075, App. 10/11/38)

### BookmarkSEC. 240.  UNLAWFUL TO OFFER OR AGREE TO COMMIT PROSTITUTION, ETC.

     Every person is guilty of a misdemeanor who:

     (a)     Offers or agrees to commit any lewd or indecent act or any act of prostitution; or

     (b)     Offers to secure another for the purpose of committing any act of prostitution, fornication, assignation or for any other lewd or indecent act with any other person; or

     (c)     Is in or near any thoroughfare or public place for the purpose of inducing, enticing or procuring another to commit an act of lewdness, fornication or unlawful sexual intercourse; or

     (d)     Knowingly transports any person to any place for the purpose of committing any lewd or indecent act or any act of prostitution; or

     (e)     Knowingly receives, offers or agrees to receive any person into any place or building for the purpose of assignation or of performing any act of lewdness or fornication, or knowingly permits any person to remain there for any such purposes; or

     (f)     Directs any person to any place for the purpose of committing any lewd or indecent act or any act of prostitution or fornication; or

     (g)     In any way aids or abets or participates in the doing of any of the acts prohibited by subdivisions (a) to (f), inclusive, of this Section.

(Added by Ord. 4428, Series of 1939, App. 5/12/47)