

**PACIFIC EDUCATIONAL SERVICES-DELAYED ENTRY
OF JUDGMENT PROGRAM GUIDELINES
(PES DEJ PROGRAM)**

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PURPOSE

The PES DEJ Program (“Program”) set forth by these guidelines is designed to reduce recidivism and deter future involvement in criminal violations of a more serious nature by providing persons who meet the eligibility requirements of the Program the opportunity to participate in educational, rehabilitative, and service projects. A major component of this objective is that the defendant makes full restitution to the victim for any and all losses suffered as a result of the defendant criminal act. Further, in many cases the Program will require the defendant to obtain treatment through therapy or counseling in the event that a minor disorder gave rise to the aberrant behavior which resulted in the criminal law violation.

The Program is a pre-trial offer from the District Attorney. The Program is not District Attorney Diversion pursuant to Penal Code section 1000.

PROGRAM SUMMARY

1. The Deputy District Attorney reviewing an investigation will determine if the perpetrator is to be formally charged with an offense and if so, is eligible for the Program.
2. If the defendant is eligible, an offer to participate in the Program will be forwarded to the defendant or his attorney and to the Court by the reviewing Deputy District Attorney.
3. The Program is designed to be completed in 90 days with a maximum length of 180 days.
4. After the Program is accepted, all compliance with the program including collecting restitution and monitoring community service

will be done by Pacific Educational Services, Inc.
(www.pesprograms.com)

5. After successful completion of the Program, the defendant can withdraw the guilty plea or no contest plea, enter a not guilty plea and the District Attorney will dismiss the complaint.
6. Acceptance in the Program requires a guilty or no contest to the charged offense(s). A guilty or no contest plea requires one to give up or waive the following rights:
 - (a) If choose to represent yourself, the right to legal counsel
 - (b) The right to a trial by court or jury and to confront and cross examine the witnesses against you;
 - (c) The right to use the Court's subpoena power to compel witness' attendance at your trial for you defense and
 - (d) The privilege against self-incrimination.

THE PROGRAM PROCEDURE

A defendant must be deemed eligible for the Program. Eligibility prerequisites are specifically discussed *infra*. Generally, certain first time misdemeanor offenders who stand charged with specified misdemeanor offenses are eligible for the Program under these guidelines. Residence in El Dorado County is not required in order to participate in the Program. However, the defendant must be able to conform to the terms and conditions of the Program, to participate in the rehabilitative/counseling programs assigned, and perform the community service work hours as requested. Amenability to treatment through therapy or counseling for minor disorders which gave rise to the aberrant behavior underlying the criminal law violation are also a significant consideration in the assessment of eligibility for participation in the program.

ELIGIBILTiy

A defendant who is eligible for the Program:

1. Has never been convicted of a felony.
2. Has no previous misdemeanor convictions within 5 years preceding the date that the instant accusatory pleading was filed, other than a first time violation of Vehicle Code section 23152, 23103/23103.5 (Wet Reckless) or 14601.1(a) or 12500(a).

3. Has never had a previous grant of probation terminated unsuccessfully.
4. Has not been diverted under any program within 5 years preceding the date that the instant accusatory pleading was filed.
5. Will be able to make restitution to the victim within the time period of the Program.
6. Does not dispute that restitution may be owed.
7. Did not inflict an injury upon the victim or any other person during the commission of the crime which required professional treatment. It is irrelevant whether such conduct was charged.
8. Did not commit multiple offenses of the same class on different dates within a one year period.
9. Does not have any pending criminal charges in any court.
10. Did not exhibit criminal sophistication through his or her modus operandi, or criminal intent.

The District Attorney will determine who is eligible for the Program.

ELIGIBLE OFFENSES

The following misdemeanor cases may be eligible for the Program:

1. Penal Code section 488. (Shoplifting, Gas Siphoning, or Drive-Away)
2. Penal Code section 537(e) (Defrauding an Innkeeper with a value less than \$100.00)
3. Penal Code section 555. (Trespass on Posted Property)
*Unless crime involved an inhabited dwelling house, trailer, or inhabited portion of any other dwelling.
4. Penal Code section 594 (Vandalism)
*Unless property damage exceeds \$1,000.00
5. Penal Code section 602 (Trespass)

*Unless crime involved an inhabited dwelling house, trailer, or inhabited portion of any other dwelling.

6. Vehicle Code section 20002 (Hit and Run)

*Unless the offense involved the use of alcohol or drugs; the defendant has three or more prior moving violations currently on his DMV record, or the defendant has a prior accident in which the defendant was reported to DMV as the party at fault.

7. Any other misdemeanor violation which is minor in nature and not otherwise disqualified under these guidelines

INELIGIBLE OFFENSES

1. Infractions
2. Those offenses which were originally filed as felonies and were subsequently reduced by either the Court or the District Attorney pursuant to Penal Code sections 17(b)(4) and 17(b)(5).
3. Those offenses enumerated in Part 4, Title 2, Chapters 1-6 (§12000, et seq.) of the Penal Code.
4. Any weapons violation enumerated in the penal statutes.
5. Burglary, in violation of Penal Code section 459.
6. Forgery, in violation of Penal Code section 470, or any other type of identity theft crime.
7. Those offenses made divertible by any other provision of law pursuant to Part 2, Title 6, Chapters 2.5-2.9B (1000 et seq.) of the Penal Code, with the exception of 2.7, whether or not diverted under those sections.
8. Those offenses committed in violation of any Vehicle Code provision (except Vehicle Code section 20002) relating to the operation of motor vehicles, including Driving Under the Influence of Alcohol and/or Drugs.
9. Those offenses that are charged as sexual offenses.

10. Those offenses which are sexually motivated.
11. Those offenses involving controlled substances.
12. Hate crimes, as defined in Penal Code section 422.55 whether charged as such or not.
13. Violations of Penal Codes Sections 241, 241.1, and 243(b) through 243.1.
14. Resisting arrest, threatening an executive or judicial office in violation of Penal Code sections 69 and 71.
15. Welfare fraud.
16. Insurance fraud.
17. Those offenses involving domestic violence or elder abuse as defined in Penal Code sections 243(e); 273.5; and 368.
18. Stalking as defined in Penal Code section 646.9.
19. Those offenses involving animal cruelty.
20. Those offenses which involve evidence of, or were committed with a degree of criminal sophistication (e.g. acting in concert, evidence of conspiracy or planning, criminal street gang or other organized criminal activity) or a wanton disregard for the safety of others whether or not the conduct is charged.

DELAYED ENTRY OF JUDGMENT PROCEDURE

A. Eligibility Determination

At the time of filing a criminal complaint or before the defendant's arraignment, the reviewing Deputy District Attorney will submit to the court an offer, to participate in the Program outlining the Pacific Educational Services Inc., educational program required, the community service hours, if any and the restitution amount, if any and if known.

B. Length of the Program

The Program term is **90** days from the entry of a guilty or no contest pleas.

At the request of Pacific Educational Services Inc., and for good cause, the Program may be extended past 90 days, but in no case shall the Program term be more than 180 days.

C. Terms of the Program

All Program grantees are to be booked.

Every defendant may be required to fulfill a specified amount of Community Service hours.

The defendant will be required to complete a Pacific Education Services Inc. educational program(s) as determined by the District Attorney.

These programs are either a level I (2 sessions) or a level II (4 sessions). The educational programs include, but are not limited, to: (1) Choices, Changes and Challenges; (2) Anger Management; (3) Drug and Alcohol Education; (4) Theft and Property Violation; and (5) Parenting Skills.

The costs of said programs shall be paid for by the defendant.

The defendant may be required to comply with court ordered protective orders or stay away orders.

D. Restitution

Any case in which restitution is owed shall be handled as follows:

1. If the defendant, the prosecutor, and the victim are in agreement as to the amount owed at the time of the court hearing determining admissibility to the Program, the court shall order the amount of restitution to be paid.
2. If there is insufficient information as to the nature of restitution at the time of the hearing, or disagreement among the parties, the District Attorney will determine restitution to any victim (as defined by Penal Code Section 1202.4) or other injured or damaged party.

The defendant has a right to have a hearing for a judicial determination of the amount of restitution owed. The defendant may waive the right to a restitution hearing and may stipulate to the amount of restitution determined by the District Attorney or the court.

3. At the time entry in the Program is granted, the court will order restitution to be paid in full prior to the scheduled termination date of the Program.

4. At the time that restitution is ordered, the defendant shall complete a “Financial Disclosure Statement” as described in Penal Code section 1202.4(f)(5).
5. The Program cannot be successfully terminated nor, can the case be dismissed, unless and until restitution has been paid in full, and all other terms and conditions of the Program have been met.

E. Fees

The defendant will pay Pacific Educational Services, Inc. \$300 for the Program – Level I and \$480 for the PES DEJ Program – Level II.

The defendant will pay Pacific Educational Services, Inc. a \$25 per month restitution collection fee and a separate \$25 per month community service monitoring fee.

All of said above fees must be paid in full, cannot be discounted by the court and must be paid in full prior to the successful completion of the Program.

F. Miscellaneous

1. The defendant is required to personally appear at the following stages of the proceedings in the Program process if ordered by the Court:
 - a. Interviews with the Pacific Educational Services, Inc., staff as ordered by the Court;
 - b. Court hearings wherein the Program is granted, denied, or modified by the Court; and
 - c. Any hearing involving the resumption or reinstatement of criminal proceedings (other than dismissal) and successful termination of the Program, prior to its original scheduled date of termination.
2. If participation is offered to and accepted by the defendant, the defendant must agree to the conditions of the Program, admit guilt and must waive time for sentencing.
3. If participation is offered to a defendant who is out of custody, the Program offer must be accepted no later than **15** court days before the first trial setting. If the defendant was in custody at the first trial setting, the defendant must accept participation **10** court days before the first trial setting. The offer to participate in the Program is withdrawn once the above time limits have passed.

4. A defendant who accepts the Program and commits any new criminal offense, or fails any other term or condition of the Program will be terminated from the program and forfeit all program fees. The postponed sentence may then be executed.
5. If the defendant is being terminated from the Program because of a new offense, the defendant will be entitled to a hearing. At that hearing, District Attorney will be required to prove by a preponderance of the evidence that the new offense was committed by the defendant. Evidentiary rulings will be governed by the same standards as applicable at a Violation of Probation hearing.

SUCCESSFUL COMPLETION

After successful completion of the Program, the defendant is allowed to withdraw his/her previously entered guilty or no contest plea and enter a not guilty plea. The District Attorney will then dismiss the case.