

1001.20 PC INVESTIGATION REPORTS

AUTHORITY:	Sections 1001.20 through 1001.34 California Penal Code	
RESCINDS:	Procedure Manual Item 2-2-012, dated 12/29/11	
FORMS:	Instructions for Applicant for Probation	(F057-1013)
	Presentence Report Worksheet	(F057-1020W)
	Consent to Release Information	(F057-1025)
	from Service Records	
	Adult Investigation Worksheet	(F057-1020)
	Memorandum Regarding Probation Referral	(F057-1045)
	Record Check Request	(F057-1064)
	Adult Financial Statement	(F057-1115)
	Document Necessary for Verification	(F057-1260)
	Agency/Institution Info Request	(F057-1300AF)
	(i.e. DJJ, etc.)	
	Appointment Letter	(F057-1301AF)
	Arrest Reports and Dockets	(F057-1193)
	Arresting Officer Letter/Reference	(F057-1304AF)
	Check Letter	
	Medical/Psych Letter	(F057-1308AF)
	Victim's Letter - Restitution	(F057-1320AF)
	Authorization for Release of Medical/ Dental/Psychiatric/Psychological Information	(F057-7004)
PURPOSE:	To provide format for the preparation of 1001.20 PC (Cognitively Disabled defendant) diversion investigation reports.	

I. GENERAL INFORMATION

- A. The court may consider diverting any defendant who has been charged with a misdemeanor when it has reason to suspect a defendant is cognitively disabled, as defined in subdivision (a) of Section 1001.20 of the Penal Code. In order to be considered for such diversion, the defendant must:
 1. Consent to the diversion process and to his/her case being evaluated for eligibility for regional center services.
 2. Waive his/her right to a speedy trial.
- B. The court shall order the prosecutor (usually the District Attorney, but in some cases may be a City Attorney), the Probation Department and the regional center to prepare reports on specified aspects of the defendant's case. Each of the three reports shall be prepared concurrently.
- C. After considering the reports from the prosecutor, the regional center and the Probation Department, the court may divert the defendant under either dual or single agency supervision (1001.23(b&c)).

- D. If the court orders dual agency diversion:
1. The regional center is to submit a progress report to the Probation Department at least every six months.
 2. Five days after receiving a regional center report, the Probation Department is to submit a report to the court and the prosecutor regarding the defendant's progress, including a copy of the regional center's report, as an addendum.
 3. A copy of the prosecutors report will be provided to the Probation Department, the Regional Center and the probationer. The prosecuting attorney has the initial responsibility to advise the probationer of the nature of the diversion process, what roles and authorities various agencies have, and what liabilities and legal benefits may accrue to the probationer.
- E. If the court orders single agency diversion, the regional center reports directly to the court and the prosecutor.
- F. The period of diversion shall not exceed two years.
- G. Referral Process - The court makes a concurrent referral to the regional center, the prosecutor, and the Probation Department.
1. The regional center's report will be submitted to the Probation Department within 25 judicial days of the court's order. The report shall include:
 - a. A determination as to whether the defendant is cognitively disabled and eligible for regional center diversion-related services.
 - b. A proposed diversion program tailored to the needs of the defendant.
 - c. A statement whether such a program is available.
 2. The prosecutor's report will be submitted to the court within 30 judicial days of the court's order, with copies to the regional center and the Probation Department. The report shall include:
 - a. A statement whether the defendant has previously been diverted within two years.
 - b. If recommending diversion - a recommendation for either dual or single agency diversion will be submitted within 20 judicial days of the court's order to:
 - (1) The Regional Center
 - (2) The Probation Department
 - (3) The defendant

- c. If recommending against diversion, a declaration stating the grounds for denial will be made.

H. Assignment of Cases - The case is received by the Adult Court Services Division, and is assigned in the same manner as Superior Court reports (See Manual Item 2-2-001).

II. PROCEDURE

A. Investigative Process

1. Conduct investigations in the same manner as regular probation and sentencing investigations. (See Manual Item 2-2-001).
2. Place focus on the eligibility and suitability of diverting the defendant.
3. If during the course of the investigation it appears the defendant is ineligible for diversion, recommend denial of diversion.
4. Contact the prosecutor and regional center early in the course of the investigation to confirm their receipt of the referral. Advise each agency of the Probation Department's dictation deadline to encourage timely receipt of required information.
5. Obtain a completed financial statement (F057-1115.5) to assist in determining the defendant's ability to pay for diversion services.
6. Contact family members, appointed guardians, or service agency staff who may be familiar with the defendant's situation, and may be providing some level of support. Evaluate their input for inclusion in the report.

B. Format for Report to the Court

In general, Manual Item 2-2-001 (Pre-Plea & Sentencing Reports) should be followed in preparing the 1001.20 PC reports. The following, however, will serve as a further guide for mentally retarded diversion reports:

1. Face Sheet: The regular presentence face sheet (F057-1020W.10) will be utilized except at the bottom of the first page "Presentence Report" will be deleted and "1001.20 PC REPORT" will be typed. This designation will also be typed at the top of the first page.
2. Court Status: "On _____ date _____ a Complaint was filed in the _____ Superior Court charging the defendant with violation of _____.

On _____ date _____ the defendant waived his rights to a speedy trial and the matter was referred to the Probation Department for investigation under Section 1001.22 of the Penal Code."
3. Circumstances of the Offense: No change from usual presentence report.

4. Victim's Statement: This section should cover all of the aspects outlined for the usual presentence report. However, depending on the victim's stated expectations regarding the outcome of the case (i.e., expects restitution, strongly favors incarceration), it may be appropriate to advise the victim about the defendant's limitations.
5. Collateral (when applicable): No change from usual presentence report.
6. Defendant's Statement: An emphasis should be placed on the defendant's stated willingness to avail himself of the services of a treatment resource.
7. Statement of References and Interested Parties: No change from usual presentence report, except to the extent that certain persons may have particularly relevant knowledge based on their relationship to the defendant (i.e., appointed guardian, social worker, relative with whom defendant resides).
8. Psychiatric or Psychological Report: No change from usual presentence report.
9. Prior Record: No change from usual presentence report.
10. Social History: No change from usual presentence report.
11. Summary of Regional Center's Report: If this report is received prior to the dictation deadline, and can be attached as an addendum to the probation report, a summary of this report is sufficient. If the report is not received in time, telephone contact should be made with the person responsible for preparing the report. A summary of that conversation, including the recommendation, and an estimate of when the report will be available to the court, should be included in this section.
12. Summary of Prosecutor's Report: Since the prosecutor's report is submitted directly to the court, with a copy sent to Probation, a summary of this report is sufficient. If the copy of this report is not received prior to the dictation deadline, telephone contact should be made with the assigned prosecutor, and a summary of that conversation should be included in this section.
13. Discussion and Evaluation: Cognitively disabled defendants represent a unique challenge for the judicial system, as evidenced by the complexity of this process (three separate reports and the option of dual or single agency diversion). It is important to evaluate the defendant's apparent risk to the community against the likelihood that a proposed regional center program may deter further criminal behavior. The presence or absence of a support group (family, friends, or social agency staff) to assist the defendant in completing a proposed program should also be addressed.

Dual agency diversion (1001.20(f) PC) refers to a program "administered jointly by the regional center and the Probation Department." The Probation Department no longer has personnel resources to administer or oversee diversion programs. Computer assisted monitoring of program attendance is all that is possible under present staffing patterns. Therefore,

if the prosecutor recommends dual agency diversion, and the investigating DPO feels Probation Department involvement will enhance community protection, consideration should be given to recommending against diversion and discussing the advantages of formal probation.

14. Recommendation

- a. Against diversion: "It is respectfully recommended that this case not be diverted from the court process pursuant to Section 1001.23 of the Penal Code."
- b. For diversion: "It is respectfully recommended that this case be diverted from the court process pursuant to Section 1001.23 of the Penal Code, that the defendant be diverted under single agency supervision of the regional center, and that the matter be continued for six months for a progress report from the regional center."

REFERENCES:

Procedure:	2-2-001	Pre-Plea and Sentencing Reports
Policy:	A-1	Policy, Procedure and the Law

K. Gotts

APPROVED BY:	<u>Keith Gotts</u>	<u>November 20, 2013</u>
	Division Director	Date