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District Attorney

Policy Directive

San Francisco District Attorney's Office

Primary Caregiver Diversion

March 9, 2020

I. INTRODUCTION

On October 9, 2020 Governor Newsom signed Primary Caregiver Diversion (PC §1001.83) into law expanding pretrial diversion for primary caregivers of minor children. This law is designed to avoid the trauma and instability caused by parental incarceration while ensuring accountability and rehabilitation.

The District Attorney supports Primary Caregiver Diversion (PCD) and encourages ADAs to support eligible referrals. All non-serious and non-violent offenses are eligible by statute (PC §1001.83(d)(5)).

II. POLICY

For all eligible offenses, please follow the referral process prescribed by the Court:

1. Defense counsel shall present an information packet to the ADA setting forth facts supporting a finding that their client is a primary caretaker. If the party's agree, they will tell the Court. The Court can review the information as well to satisfy themselves that the defendant is a primary caretaker. If the defendant has a matter in Juvenile or Family Court in SF, the Court will make inquiry to our Family/Juvenile Division to determine what, if any orders are on the case. If it is an out-of-county matter, the parties will need to file an 827 petition in that county to obtain information on what orders are outstanding in those cases.
2. If the defendant is found to qualify as a primary caretaker and the Court and parties are aware of any Family/Juvenile Court orders, the defendant will be referred to Pre-Trial Diversion for development of a service plan. If the Court or parties have any specific program requirements, those will be indicated on the referral form to PTD. The referral will also indicate how long the Diversion period is to complete the program requirements. If restitution is to be determined by PTD, that should be indicated on the form. If the restitution amount is already known, that amount will be indicated on the form. The matter will then be set at least three weeks out for receipt of the service

plan. Once received, the court can suspend criminal proceedings and set the matter for progress reports.

3. If at the end of the diversion period, the defendant has completed all requirements except the restitution, then diversion can be deemed successfully completed and the case dismissed IF a CR-115 is filed that same day or prior. The Court must also determine what restitution amount remains outstanding and order that amount so it is reflected in the minutes.

A few points of clarification about the process:

- Defense counsel will file PCD motions in Departments 9, 11, 12, 17 or 22 noticing the Court and District Attorney's Office with the motion and an information packet.
- The information packet may be filed under seal and must include the defendant's declaration attesting to the following under penalty of perjury along with available supporting documentation:
 - The defendant is a custodial parent or legal guardian of a minor child(ren); The declaration must identify the minor child(ren) by name(s) and date(s) of birth;
 - The defendant presently resides in the same household as the minor child(ren);
 - The defendant presently contributes care or financial support for the minor child(ren); and
 - The defendant's absence in the child(ren)'s life would be detrimental to the child(ren).
- Once accepted into PCD the case will remain in the referring department and the defendant must enter a time waiver. In some cases, the application process may itself require a time waiver if the preliminary hearing or trial date is imminent.

Any staff with questions about the policy should contact the Managing Attorney for Collaborative Courts or the Chief of Programs and Initiatives.

III. DATA COLLECTION

All ADAs shall assist with the District Attorney's Office procedures to collect data related to this policy. Any case that is discharged or dismissed because of this policy shall be recorded. The data will be analyzed to evaluate the effectiveness of this policy, and to ensure that the policy is applied consistently. Additionally, the data will be shared with the arresting agencies as a feedback to them for training purposes.