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M E M O R A N D U M

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Action Requested

Please review

To

Members of the Judicial Branch Statistical Information System Subcommittee

Deadline

N/A

From

Judicial Council staff
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Subject

Diversion Program Reporting in JBSIS 3.0
and Future Versions of JBSIS

Summary of the Issues

The Judicial Branch Statistical Information System (JBSIS) collects aggregate data from California Trial Courts on case filings and other court case processing data elements. In JBSIS 3.0, non-violent drug-related cases can be removed from the court's control, thus stopping the case aging, if the defendant enters a diversion program pending successful or unsuccessful completion of the program, pursuant to Penal Code chapter 2.5, Special Proceedings in Narcotics and Drug Abuse Cases (§§ 1000–1000.65). The JBSIS definition of how and when non-violent drug cases can be removed from the court's control is consistent with the rules of court on this issue. Currently, the case aging exclusion does not currently apply to the JBSIS reporting of non-drug-related diversion programs. Additionally, under the current JBSIS 3.0 standards, the only diversion programs explicitly mentioned in any context are drug court-related diversion programs as described in Penal Code sections 1000–1000.65.

The JBSIS Subcommittee asked staff to evaluate the following:

- (1) Should the current JBSIS 3.0 reporting standards only refer to drug court–related diversion programs as described in sections 1000–1000.65, or should the future version of JBSIS be expanded to include all diversion programs as described in sections 1000–1001.83?
- (2) If the future version of JBSIS is expanded to include all diversion programs, should the case be removed from the court’s control, thus stopping case aging, pending successful or unsuccessful completion of the program?

Context on Diversion Programs

Diversion programs are “criminal justice interventions that try to address the root cause of what is driving criminal conduct and incentivize treatment and services. ... Upon successful completion of diversion, defendants can avoid criminal convictions”¹ Defendants facing felony or misdemeanor charges may enter a diversion program either pretrial or postconviction, depending on the charges and nature of the case. When the defendant enters the program, the case is removed from the court’s control, thus stopping case aging. Charges that qualify a defendant for a diversion program, and the various diversion programs themselves, are outlined in the Penal Code in Part 2, Criminal Procedure.

It is essential to note that under current JBSIS 3.0, reporting of defendants entering diversion programs is only explicitly related to drug-related diversion programs pursuant to sections 1000–1000.65. This exclusive focus on the sections in chapter 2.5 implies a lack of recognition for diversion programs described in other Penal Code sections. Below is an outline of the 10 diversion programs and their respective Penal Code sections.

Figure 1: Diversion programs described in Penal Code

	Diversion Program	Penal Code
1	Drug Diversion Program	1000–1000.65
2	Cognitive Disability Diversion Program	1001.20–1001.34
3	Individuals with Mental Disorders Diversion Program	1001.35–1001.36

¹ San Francisco District Attorney’s Office, *Understanding Diversion* (fact sheet, undated), <https://sfdistrictattorney.org/wp-content/uploads/2022/03/Diversion-Factsheet.pdf>.

4	Traffic Violators Pretrial Diversion Program	1001.40
5	Misdemeanor Offenders Diversion Program	1001.50–1001.55
6	Bad Check Diversion Program	1001.60–1001.67
7	Parental Diversion Program	1001.70–1001.75
8	Military Diversion Program	1001.80
9	Theft and Repeat Theft Crimes Diversion Program	1001.81–1001.82
10	Primary Caregiver Diversion Program	1001.83

It is important to note a recent change in the Misdemeanor Offenders Diversion Program. Originally, sections 1001.50–1001.55 stipulated that the defendant’s entry into a diversion program for misdemeanor charges required the approval of the district attorney. However, in 2020, Assembly Bill 3234 (Stats. 2020, ch. 334) added chapter 2.96, Court Initiated Misdemeanor Diversion (§§ 1001.95–1001.97), which authorizes judges to offer misdemeanor diversion to defendants even over the objection of a prosecuting attorney. This change is noteworthy because it expands the pool of eligible candidates for the Misdemeanor Offenders Diversion Program and the courts’ ability to utilize these programs.

Current Reporting of Diversion Programs in JBSIS 3.0

In the current JBSIS 3.0 reporting standards, diversion programs are exclusively referenced in two JBSIS reports: Report 07c, Felonies, and Report 11a, Misdemeanors & Infractions.

Report 07c, Felonies

In Report 07c, diversion programs are mentioned in three sections: Inventory, Disposed Cases, and Workload.

Inventory

Row 900: Restored to Court’s Control – Felony cases are added to a court’s control after successful or unsuccessful completion of a diversion program pursuant to: PC 1000 et seq. and the Standards of Judicial Administration (Rules of Court) 2.2(n)(2). The time following an event that restores a case to the court’s control is added to the time prior to its removal from the court’s control for the purpose of reporting age of disposed and pending cases.

Row 1000: Removed from Court’s Control – Felony cases are removed from a court’s control pending successful or unsuccessful completion of a diversion program pursuant to: PC 1000 et seq. and the Standards of Judicial

Administration (Rules of Court) 2.2(n)(2). Case aging is suspended from when the case is removed from the court's control until control is restored.

Disposed Cases

Row 1335: Dismissal after Diversion – Defendants who successfully completed a diversion program prior to making a plea, or who pled guilty and then successfully completed a diversion program are dismissed.

Row 1800: Dismissal after Diversion – Defendants who successfully completed a diversion program prior to making a plea under PC 1000.5, or who pled guilty and then successfully completed a diversion program per PC 1000.3 are dismissed.

Workload

Row 5650: Diversion Hearing – A predisposition hearing at which the court determines if the defendant would benefit from diversion, with the defendant's consent, at which point the court conducts a review or follow-up hearing pursuant to PC 1000 et seq.

Report 11a, Misdemeanors & Infractions

In Report 11a, diversion programs are mentioned in three sections: Inventory, Disposed Cases, and Case Aging.

Inventory

Row 400: Restored to Court's Control – Misdemeanor cases are added to a court's control if the defendant does not successfully complete a diversion program pursuant to: PC 1000 et seq. and the Standards of Judicial Administration (Rules of Court) 2.2(n)(2). The time following an event that restores a case to the court's control is added to the time prior to its removal from the court's control for the purpose of reporting age of disposed and pending cases.

Row 600: Removed from Court's Control – Misdemeanor cases are removed from a court's control pending successful or unsuccessful completion of a diversion program pursuant to: PC 1000 et seq. and the Standards of Judicial Administration (Rules of Court) 2.2(n)(2). Case aging is suspended from when the case is removed from the court's control until control is restored.

Disposed Cases

Row 1600: Dismissal after Diversion (including Traffic School) – A disposition after hearing in which the defendant is dismissed following the successful completion of a diversion program. Include defendants who completed a diversion program prior to making a plea and defendants who pled guilty and then dismissed following successful completion of a diversion program.

Case Aging

Row 5100: Diversion Hearing – A predisposition hearing at which the court determines whether the defendant would benefit from diversion and whether they consent to diversion proceedings, or at which the court conducts a review or follow-up hearing pursuant to PC 1000 et seq.

In all references to diversion programs, only section 1000 is explicitly mentioned. Implicit references to other diversion programs are made in the inventory sections for Report 07c and Report 11a with the invocation of section 1000 “et seq.”

Diversion Programs in the Standards of Judicial Administration

Standard 2.2 of the Standards of Judicial Administration² outlines the trial court case disposition time goals. In relation to cases entering diversion programs, standard 2.2(n)(2)(C) specifies that felony or misdemeanor cases pending completion of diversion under section 1000 et seq. be removed from the court’s control, thus the period of time until the case is restored to the court’s control is excluded from case disposition time goals.

The *JBSIS Manual* sections “Restored from Court’s Control” and “Removed from Court’s Control” in Report 07c, Felonies, and Report 11a, Misdemeanors & Infractions, reference standard 2.2(n)(2)(C) because the standard influences inventory and case aging. Specifically, it influences how cases entering diversion programs are removed the court’s control, thus stopping case aging, until completion of the program.

Proposed Actions for Future Versions of JBSIS

Future versions of JBSIS could utilize one of the following options for the reporting of diversion programs:

² Standard 2.2 is available at www.courts.ca.gov/cms/rules/index.cfm?title=standards&linkid=standard2_2.

Option 1. Continue reporting diversion programs with only the explicit mention of sections 1000–1000.65.

Maintain the reporting of drug diversion programs, as stipulated by sections 1000–1000.65, within Report 07c, Felonies, and Report 11a, Misdemeanors & Infractions. Furthermore, continue to suspend case aging explicitly for cases that enter the drug diversion program. This approach ensures consistency in reporting from JBSIS 3.0 to future versions of JBSIS.

Option 2. Expand reporting of diversion programs with explicit mention of sections 1000–1001.83 in future versions of JBSIS.

Expand the reporting of diversion programs in future versions of JBSIS by explicitly referencing sections 1000–1001.83 in relevant reports. As the Penal Code specifies which diversion programs apply to misdemeanors and felonies, this expansion would incorporate sections 1000–1001.83 into Report 07c, Felonies, into the following rows:

Inventory

900 – Restored to Court’s Control

1000 – Removed from Court’s Control

Disposed Cases

1335 – Dismissal after Diversion

Workload

5650 – Diversion Hearing

In Report 11a, Misdemeanors & Infractions, the expansion would incorporate sections 1000–1001.83 and 1001.95–1001.97 into the following rows:

Inventory

400 – Restored to Court’s Control

600 – Removed from Court’s Control

Disposed Cases

1600 – Dismissal after Diversion (including Traffic School)

Case Aging

5100 – Diversion Hearing

To maintain brevity, row notes may be added to each report defining the specific Penal Code sections and that “PC 1000 et seq.” encompasses the aforementioned sections. Furthermore, with the inclusion of diversion program sections in rows 1000 and 600 (removal from court’s control)

of Report 07c and Report 11a, respectively, cases pending completion of a diversion program are removed from the court's control, thus stopping case aging. In addition to expanding the reporting of Penal Code sections in the future version of the *JBSIS Manual* by defining "et seq." in "PC 1000 et seq.," standard 2.2(n)(2)(C) may need to be expanded to include its definition of "1000 et seq." to also specify Penal Code sections 1000–1001.83.

PM/SH