

PENAL CODE

SECTION 1001.60-1001.67

1001.60. Upon the adoption of a resolution by the board of supervisors declaring that there are sufficient funds available to fund the program, the district attorney may create within his or her office a diversion program pursuant to this chapter for persons who write bad checks. For purposes of this chapter, "writing a bad check" means making, drawing, uttering, or delivering any check or draft upon any bank or depository for the payment of money where there is probable cause to believe there has been a violation of Section 476a. The program may be conducted by the district attorney or by a private entity under contract with the district attorney.

1001.61. The district attorney may refer a bad check case to the diversion program. Except as provided in Section 1001.64, this chapter does not limit the power of the district attorney to prosecute bad check complaints.

1001.62. On receipt of a bad check case, the district attorney shall determine if the case is one which is appropriate to be referred to the bad check diversion program. In determining whether to refer a case to the bad check diversion program, the district attorney shall consider, but is not limited to, all of the following:

- (a) The amount of the bad check.
- (b) If the person has a prior criminal record or has previously been diverted.
- (c) The number of bad check grievances against the person previously received by the district attorney.
- (d) Whether there are other bad check grievances currently pending against the person.
- (e) The strength of the evidence, if any, of intent to defraud the victim.

1001.63. On referral of a bad check case to the diversion program, a notice shall be forwarded by mail to the person alleged to have written the bad check which contains all of the following:

- (a) The date and amount of the bad check.
- (b) The name of the payee.
- (c) The date before which the person must contact the person designated by the district attorney concerning the bad check.
- (d) A statement of the penalty for issuance of a bad check.

1001.64. The district attorney may enter into a written agreement with the person to forego prosecution on the bad check for a period to be determined by the district attorney, not to exceed six months, pending all of the following:

(a) Completion of a class or classes conducted by the district attorney or private entity under contract with the district attorney.

(b) Full restitution being made to the victim of the bad check to hold offenders accountable for victims' losses as a result of criminal conduct. For the purpose of this subdivision, "restitution" means the face value of the bad check or bad checks and any bank charges, as described in Section 1001.65.

(c) Full payment of the diversion fees, if any, specified in Section 1001.65.

1001.65. (a) A district attorney may collect a processing fee if his or her office collects and processes a bad check. The amount of the fee shall not exceed fifty dollars (\$50) for each bad check in addition to the actual amount of any bank charges, including the returned check fee, if any, incurred by the victim as a result of the offense.

(b) Notwithstanding subdivision (a), when a criminal complaint is filed in a bad check case after the maker of the check fails to comply with the terms of the bad check diversion program, the court, after conviction, may impose a bad check processing fee for the recovery and processing efforts by the district attorney of not more than fifty dollars (\$50) for each bad check in addition to the actual amount of any bank charges incurred by the victim as a result of the offense, including the returned check fee, if any, not to exceed one thousand two hundred dollars (\$1,200) in the aggregate. The court also may, as a condition of probation, require a defendant to participate in and successfully complete a check writing education class. If so required, the court shall make inquiry into the financial condition of the defendant and, upon a finding that the defendant is able in whole or part to pay the expense of the education class, the court may order him or her to pay for all or part of that expense.

(c) If the district attorney elects to collect any fee for bank charges incurred by the victim pursuant to this section, including any fee charged for a returned check, that fee shall be paid to the victim for any bank fees that the victim may have been assessed. In no event shall reimbursement of a bank charge to the victim pursuant to subdivision (a) or (b) exceed fifteen dollars (\$15) per check.

1001.66. At no time shall a defendant be required to make an admission of guilt as a prerequisite for placement in a precomplaint diversion program.

1001.67. No statement, or information procured therefrom, made by the defendant in connection with the determination of his or her eligibility for diversion, and no statement, or information procured therefrom, made by the defendant, subsequent to the granting of diversion or while participating in the program, and no information contained in any report made with respect thereto, and no statement or other information concerning the defendant's participation in the program shall be admissible in any action or proceeding.