

# MENTAL HEALTH DIVERSION PROCEDURAL GUIDELINES

## SUPERIOR COURT OF CALIFORNIA COUNTY OF SOLANO



Revised 10/02/2024

## **Mental Health Diversion (MHD) Penal Code 1001.36:**

Pursuant to Penal Code 1001.36, the Court may order a defendant who meets specific requirements into diversion for mental health treatment to support needs of individuals with mental disorders. The Court may grant pretrial diversion on misdemeanor and felony offenses (with the exception of specified misdemeanor and felony offenses). If the Court grants diversion, the Court will order court dates for periodic progress reviews for the defendant, and the mental health treatment provider shall provide regular reports to the Court, the defense, and the prosecutor on the defendant's progress in treatment. The defendant must plead not guilty to the charge(s) and waive their right to a speedy trial. If the defendant performs satisfactorily in diversion, at the end of the period of diversion, the Court shall dismiss the defendant's charges. Pursuant to Penal Code 1001.36(f)(c)(i)(ii) the period for diversion on a felony shall be no longer than two years and the period for diversion on a misdemeanor shall be no longer than one year.

### **Eligibility:**

The court will grant pretrial diversion if the court is satisfied that all of the following criteria are met (see Cal. Pen. Code 1001.36(b)(1)(c)(1)(2)(3)(4); (f)(1)(A):

(A) The defendant suffers from a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (with the exception of certain specified disorders). Evidence of the defendant's mental disorder shall be provided by the defense and shall include a diagnosis or treatment for a diagnosed mental disorder within the last five years by a qualified mental health expert.

(B) The defendant's mental disorder was a significant factor in the commission of the charged offense. If the defendant has been diagnosed with a mental disorder, the court shall find that the defendant's mental disorder was a significant factor in the commission of the offense unless there is clear and convincing evidence that it was not a motivating factor, causal factor or contributing factor to the defendant's involvement in the alleged offense.

(C) In the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder motivating criminal behavior would respond to mental health treatment.

(D) The defendant consents to diversion and waives the right to a speedy trial, unless a defendant has been found to be an appropriate candidate for diversion in lieu of commitment pursuant to clause (iv) of subparagraph (b) of paragraph (1) of subdivision (a) of Section 1370.

(E) The defendant agrees to comply with treatment as a condition of diversion.

(F) The defendant will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community.

(G) There is a treatment plan in place that meets the specific needs of the defendant

**Offenses not eligible for Mental Health Diversion:**

1. Murder or voluntary manslaughter;
2. An offense for which a person, if convicted, would be required to register pursuant to section 290, except for a violation of section 314;
3. Rape;
4. Lewd or lascivious act on a child under 14 years of age;
5. Assault with intent to commit rape, sodomy, or oral copulation, in violation of section 220;
6. Commission of rape or sexual penetration in concert with another person, in violation of section 264.1;
7. Continuous sexual abuse of a child, in violation of section 288.5; and,
8. A violation of subdivision (b) or (c) of section 11418 (Weapons of mass destruction).
9. Violation of VC 23152 (a) or (b) (driving under the influence).

**Burden:**

It is the defendant's burden to establish a Prima Facie Case for Mental Health Diversion (MHD) beyond a preponderance of the evidence. The defendant will carry the burden of proof and persuasion regarding eligibility and suitability for diversion.

**Determination of Eligibility and Decision to Grant Mental Health Diversion:**

1. Defendants seeking MHD shall file timely file a petition, with a proposed treatment plan in the home court where the case was initially assigned. Defense counsel shall attach all evidence to support a finding of eligibility and why the defendant is suitable for diversion.
2. The home department shall conduct an initial hearing to determine whether the defendant has made prima facie showing of eligibility and, if so, then conduct a hearing to determine (1) whether the defendant is suitable for and should be diverted; and (2) whether the proposed treatment plan is appropriate.
  - a. The prima facie hearing will include a discussion of the prosecution's position on the motion, including whether the prosecution opposes the motion, and potentially a discussion of the treatment plan and whether any additional information is needed.
  - b. The court may continue the hearing for further discussion and supplemental information or may set the motion for a contested hearing.
  - c. If the court ultimately denies the motion, then the case remains in the home court.
  - d. If the court grants the motion, the court will order a treatment program and monitoring of the defendant as indicated below.
3. Companion cases: If the court grants the motion, standard case packaging rules for defendants in collaborative courts will apply, as follows:
  - a. All pending felony and misdemeanor probation violations, adjudicated felony and misdemeanor cases, and unadjudicated misdemeanor matters will be packaged and

- sent to MHD court, along with the case on which diversion was ordered.
- b. Pending violations and revocations Should be handled in the home court before transferring to MHD Court.
  - c. The judicial officer in MHD court may order unadjudicated cases or charges back to the home court for further proceedings, if deemed appropriate.

**Placement in Treatment Program and Monitoring Performance:**

1. Upon granting of diversion and with an ordered treatment plan, the case shall then be assigned to the designated Mental Health Diversion Court calendar. The MHD court shall determine the requirements of the treatment program and order the defendant to comply with the program.
2. The Court will oversee the defendant’s performance and determine if they are performing satisfactorily in the assigned program.
3. The Court will hold periodic Court dates to review progress.
4. No later than the two days prior to the progress review hearing, defendant shall file with the Court and serve on the prosecutor, reports from the treatment providers regarding defendant's progress in the treatment program. Reports may be submitted directly from the service provider.

**Termination of Diversion or Modification of Treatment or Referral for Conservatorship:**

If any of the circumstances in subdivision (g) of section 1001.36 exist (including that the defendant is performing unsatisfactorily in the program), the court shall, notice to defendant, defense counsel and deputy district attorney and schedule a hearing.

1. After hearing court may:
  - a. Allow defendant to remain in diversion with no change.
  - b. Modify treatment terms and allow defendant to remain in diversion.
  - c. Terminate from diversion
    - i. Refer for grave disability assessment and possible conservatorship or
    - ii. Reinstate charges and return defendant to home court

**Successful Completion of Diversion:**

If the defendant has performed satisfactorily, at the end of the period of diversion, the court shall dismiss the criminal charges that were the subject of the criminal proceedings at the time of the diversion, and the clerk of the court will file the appropriate report with the Department of Justice.

1. A court may conclude the defendant has performed satisfactorily if the defendant has substantially complied with diversion requirements, has avoided significant new violations of law unrelated to the mental health condition, and has a plan in place for long-term mental

health care (Section 1001.36(e)). In making its conclusion, the court shall consider input from prosecution, defense, treatment providers and probation (where applicable).

2. Diversion shall be no longer than two years for felony cases and one year for misdemeanor cases.

**Mandatory Terms of Restitution:**

Restitution shall be the responsibility of the District Attorney (DA) to pursue restitution for any victims. The MHD Court will make the order.

1. Upon request the court shall conduct a hearing to determine whether restitution, as defined in section 1202.4(f), is owed to any victim as a result of the diverted offense and, if owed, order payment during the diversion period.
2. However, a defendant's inability to pay restitution due to indigence or mental disorder shall not be grounds for denial of diversion or finding the defendant has failed to comply with the terms of MHD. [Section 1001.36(c)(4).]

**Confidentiality:**

1. The judicial officer and court staff must adhere to the privacy and security regulations of the Health Insurance Portability and Accountability Act of 1996 (hereinafter "HIPAA") when receiving medical information and records and when referring to their contents for section 1001.36 purposes. The HIPAA requires the judicial officer to be proactive in protecting medical information and records.
  - a. A defendant must sign a Release of Information (ROI) form before any of his/her health information can be disclosed to the court and the parties.
  - b. Additionally, agencies providing information to the judge will likely have their own privacy and records management requirements; and will usually require the defendant to sign an Authorization for Release of Information before they will provide information to the judge. Documents that must be filed with the court shall be placed in a confidential folder and filed in the court file.
  - c. Documents that must be filed with the court shall be placed in a confidential folder and filed in the court file.
2. Anyone present in staffing including but not limited to, all judicial officers, the Mental Health Court team members, court staff and approved guests must complete a Participant Confidentiality Agreement prior to participating in the Mental Health Diversion Court staffing.