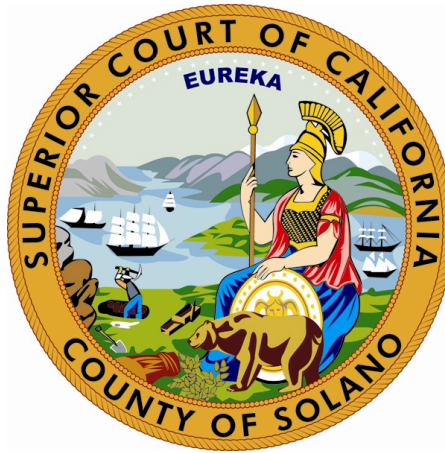


MENTAL HEALTH DIVERSION

POLICIES AND PROCEDURES MANUAL



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SOLANO

Adopted January 2021

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Mental Health Diversion (MHD)

California Penal Code (PC) section 1001.36, sets forth a discretionary pre-trial diversion procedure for any defendant charged with a misdemeanor or felony, who suffers from a mental disorder listed in the Diagnostic and Statistical Manual (DSM) of Mental Disorders, the symptoms of which can be abated with treatment, if the mental disorder played a significant part in the commission of the charged offense.

Statement of Purpose

Mitigate an individual's entry and reentry into the criminal justice system while protecting public safety.

Allow discretion and flexibility in development and implementation of diversion across a continuum of care settings.

Provide unique mental health treatment and support needs for individuals with mental disorders

Eligibility

The Court has broad discretion to grant or deny diversion, even if the defendant meets all criteria for diversion. In exercising said discretion, the Court shall consider all eligibility criteria as indicated below:

To be eligible for diversion, ALL of the following requirements must be met:

1. The court is satisfied that the defendant suffers from a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder, borderline personality disorder, and pedophilia;
 - a. A qualified mental health expert/alienist opines on the most recent diagnosis;
2. The court is satisfied that the defendant's mental disorder played a significant role in the commission of the charged offense;
3. In the opinion of a qualified mental health expert, the defendant's symptoms motivating the criminal behavior would respond to mental health treatment;
4. The defendant consents to diversion and waives the right to a speedy trial;
 - a. Exception to this requirement is when the defendant has actually been found incompetent and suitable for diversion under sections 1370, subdivision (a)(1)(B)(iv), or 1370.01,

Solano Superior Court Mental Health Diversion Policies and Procedures Manual

subdivision (a)(2). In such circumstances, the defendant is not competent to consent to diversion or waive the right to a speedy trial.

5. The defendant agrees to comply with treatment as a condition of diversion;
6. The court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety, as defined in section 1170.18, if treated in the community; and,
7. The court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant.

Persons Incompetent to Stand Trial

Persons charged with felony and found incompetent to stand trial are eligible for diversion if:

1. Person not transported to a mental health facility
2. Court receives information that defendant may benefit from diversion
3. Court determines defendant appropriate for diversion

Persons charged with misdemeanor and found incompetent to stand trial are eligible for diversion if:

1. Court determines appropriate for diversion

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.

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 ability to participate in diversion is not a matter of statutory right, but a matter of discretion with the court. The defendant will carry the burden of proof and persuasion regarding eligibility and suitability for diversion.

To establish Prima Facie Case (Defendant's burden)*

1. Defendant suffers from a mental disorder
 - a. Including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder, borderline personality disorder, and pedophilia.
 - b. Qualified Mental Health Expert (QMHE) opines "recent diagnosis" of the disorder.
2. QMHE opines defendant's mental disorder played a significant role in charged offense.
3. QMHE opines the defendant's symptoms motivating the criminal behavior would respond to mental health treatment.
4. Consents to diversion and waives the right to a speedy trial

Exception to this requirement is when the defendant has actually been found incompetent and suitable for diversion under sections 1370, subdivision (a)(1)(B)(iv), or 1370.01, subdivision (a)(2). In such circumstances the defendant is not competent to consent to diversion or waive the right to a speedy trial.
5. Court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety.
6. QMHE opines treatment will meet the specialized mental health needs of the defendant. The actual treatment plan will be provided by the behavioral health provider, if the client is found eligible for diversion.

The Court is permitted to consider any relevant and credible evidence, including, but not limited to, police reports, preliminary hearing transcripts, witness statements, statements by the defendant's mental health treatment provider, medical records, records or reports by qualified medical experts, or evidence that the defendant displayed symptoms consistent with the relevant mental disorder at or near the time of the offense.

The court may also consider the opinions of the district attorney, the defense, or a qualified mental health expert, and may consider the defendant's violence and criminal history, the current charged offense, and any other factors that the court deems appropriate.

The court may deny a grant of diversion if it believes, based upon the nature of the offense, nature of defendant's underlying mental health condition, public safety, or inadequacies of proposed diversion service plans, that the public and/or defendant would be better served by a more intensive form of court supervision such as Mental Health Court.

Designation of Solano County Mental Health Court to Hear Matters

A petition seeking MHD shall be filed in the home court where the case was initially assigned. That department shall conduct an initial hearing to determine whether the defendant has made a prima facie showing of eligibility and, if so, then conduct a hearing to determine whether the defendant is suitable for and should be diverted. Upon granting of that diversion order, the case shall then be assigned to the designated Mental Health Court calendar for a MHD assessment, treatment plan, case management and supervision. In Fairfield, the MHD calendar is heard by Department 9. In Vallejo, it is Department 2.

After Mental Health Diversion is granted, all diverted cases will be heard in the Solano County Mental Health Court, a Collaborative Court that includes pre-court staffing meetings.

Mental Health Diversion with County Services

The MHD team will include designated treatment providers: Solano County Mental Health's Forensic Treatment Team for persons eligible for public funding, private providers for those persons with such benefits, as well as case managers, participating probation officers, and mentors.

For those who are found eligible for Diversion by the Superior Court, Solano County Behavioral Health will recommend services based on an assessed level of care for **people eligible for public benefits**, called Solano County beneficiaries. The Court will refer the matter to the Solano County Behavioral Health Forensic Triage Team (FTT). A FTT mental health clinician will screen and assess the defendant and recommend an appropriate level of care of treatment and a treatment plan. FTT will refer defendant to an appropriate program and provide the Court with a description of the program and services which will be provided. To reiterate, FTT does not reassess for eligibility, just level of care and treatment services.

The County timeline for screening and assessment and future progress reports is three (3) weeks, provided the FTT received the minute order within two (2) days of the Court referral.

Mental Health Diversion without County Services

Individuals who have private insurance, Kaiser Medi-Cal or VA Healthcare, or do not require additional support to complete Court requirements can be diverted without receiving intensive case management from Solano County. Progress reporting for diversion cases without case management shall be the responsibility of diverted individuals and their defense counsel.

Court Diversion Process

The Diversion Court will order the defendant to comply with the treatment plan.

Regular progress reports shall be provided by the mental health treatment program in which the defendant has been placed. Positive progress reports will result in fewer court appearances.

If the defendant declines Diversion or if defendant is found ineligible and terminated from Diversion, the defendant will be referred back to his or her home court.

The length of Diversion is determined by each participant's progress and level of charges, with a maximum of two years.

Mandatory Terms / Agreements for diversion

1. **Restitution (*effective January 1, 2020*):** It shall be the responsibility of the District Attorney (DA) to pursue restitution for any victims. The MHD Court will make the order.

2. **Confidentiality, Release of Information (ROI), and Confidential Folder:** A defendant must sign a Release of Information (ROI) form (see Attachment 5), before any of his/her health information can be disclosed to the court and the parties. 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. 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.

3. **Periodic Progress Reports:** During the period of diversion, the treatment provider must deliver periodic reports to the Court and parties. FTT or its partners will provide progress reports for those participants in their programs. The Court will order those reports at least 10 Court days prior to hearing. To assist in this process, the treatment provider may use the attached form (Attachment 3). The privately insured participant and their defense counsel shall be responsible for providing the progress report to both the prosecutor and the Court in all other matters.

Successful Completion of Diversion

If the defendant performs satisfactorily during the period of diversion, the criminal charges shall be dismissed and the arrest upon which the diversion was based shall be deemed to have never occurred pursuant to California Penal Code § 1001.36(e). The statute specifies that the period of diversion shall be no longer than two years.

Modification or Termination of Diversion

Termination of Diversion or Modification of Treatment or Referral for Conservatorship

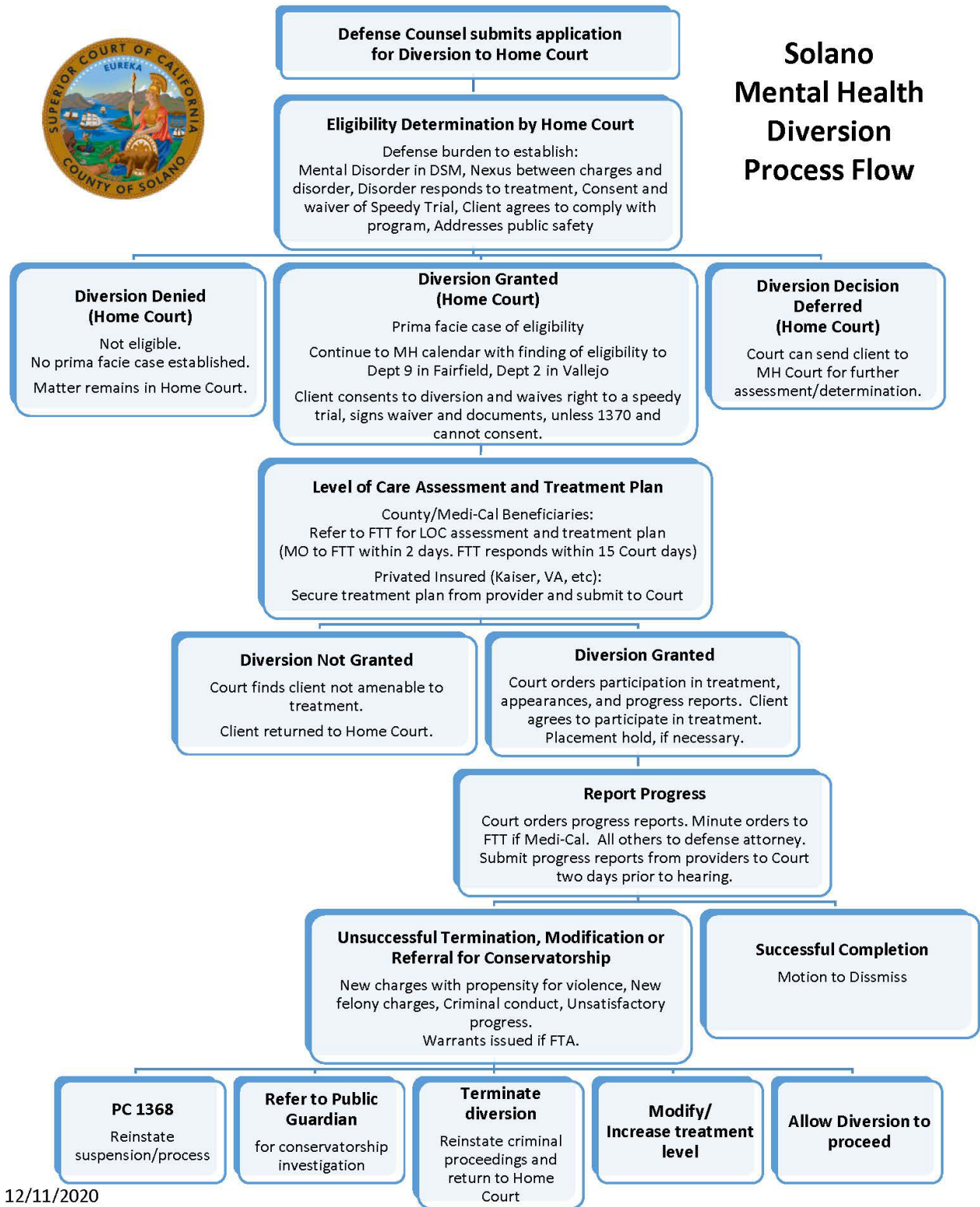
1. Motion to Terminate Diversion
 - a. The District Attorney (DA) may file or orally notice motion to terminate diversion on the following grounds:
 - i. The defendant is charged with an additional misdemeanor or felony allegedly committed during the pretrial diversion and that reflects the defendant's propensity for violence.
 - ii. The defendant is charged with an additional felony allegedly committed during the pretrial diversion.
 - iii. The defendant is engaged in criminal conduct rendering him or her unsuitable for diversion.

**Solano Superior Court Mental Health Diversion
Policies and Procedures Manual**

2. The defendant is performing unsatisfactorily in the assigned program, based upon the opinion of a qualified mental health expert (whom the court may deem an appropriate expert).
 - a. The court may do any of the following:
 - i. Deny the motion and allow diversion to proceed. In this case the Court and counsel shall then select the next progress report court date.
 - ii. Deny the motion but modify and/or increase treatment level. In this case, the Court and counsel shall then select the next progress report court date.
 - iii. Grant the motion terminating diversion and reinstate criminal proceedings. In this case, the Court and counsel shall select the next court date. Prior to that next court date, defense counsel shall inquire as to their client's suitability for Mental Health Treatment Court. Defense counsel should also consider the defendant's competence to stand trial and if warranted requests the court to declare a doubt pursuant to PC § 1368.

3. Referral for Conservatorship
 - a. The Court, defense counsel, or the District Attorney upon receipt of information from a qualified mental health expert that the defendant may be gravely disabled can notice a hearing to refer the defendant to the Public Guardian for purposes of conservatorship evaluation.

Mental Health Diversion Process Flow



12/11/2020

Forms

1 Elena D'Agustino
2 INTERIM PUBLIC DEFENDER
3 675 Texas St, Ste 3500
4 Fairfield, CA 94533
5 (707) 784-6700

6 [REDACTED]
7 Deputy Public Defender

8 Attorney for [REDACTED]

9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SOLANO

10
11 PEOPLE OF THE STATE OF
12 CALIFORNIA

13 Plaintiff,

14 vs.

15 [REDACTED]
16
17 Defendant

Case No.: [REDACTED]

Department No. [REDACTED]

APPLICATION FOR MENTAL HEALTH
DIVERSION PURSUANT TO PENAL
CODE SECTION 1001.36

18
19 Defendant [REDACTED] applies for Mental Health Diversion pursuant to
20 Penal Code section 1001.36. Defendant is charged with a qualifying crime, this matter is
21 timely filed, and defendant is prima facie eligible for diversion.

22
23 Defendant suffers from qualifying mental disorder:

24 [] Attached is a recent mental health diagnosis; or


25
26 [] Defendant will provide a recent mental health diagnosis; or

27
28 [] Defendant requests appointment of a qualified mental health expert pursuant to
Evidence Code section 730 to secure the necessary recent diagnosis.

1 Defendant requests this application be set for informal hearing for a prima facie
2 showing that the disorder played a significant role in commission of the offense(s), and
3 that a qualified mental health expert will opine that defendant's symptoms underlying the
4 criminal behavior would respond to treatment.
5

6 Defendant consents to mental health diversion; defendant is prepared to waive
7 [his][her] right to a speedy trial; defendant will comply with an appropriate treatment
8 program; and defendant does not pose an unreasonable risk of danger to public safety
9 within the meaning of Penal Code section 1170.18.
10
11

12
13 DATED: January , 2021
14

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17 Deputy Public Defender
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1 Thomas A. Barrett
2 INTERIM ALTERNATE PUBLIC DEFENDER
3 675 Texas St, Ste 3600
4 Fairfield, CA 94533
5 (707) 784-6755

6 [REDACTED]
7 Deputy Alternate Public Defender

8 Attorney for [REDACTED]

9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SOLANO

10
11 PEOPLE OF THE STATE OF
12 CALIFORNIA

13 Plaintiff,

14 vs.

15 [REDACTED]
16
17 Defendant

Case No.: [REDACTED]

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13 DATED: January , 2021
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17 Deputy Alternate Public Defender
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SOLANO
ORDER OF MENTAL HEALTH DIVERSION Section 1001.36 of the Penal Code

Defendant's Name		Xref Number	Case Number(s)	
Address		City	State	Zip
Primary Phone	Alternate Phone	Home Court Dept.	Next Court Date	

A complaint having been filed in this court charging the above-named defendant with a violation(s) contained within section 1001.36 of the Penal Code, (Mental Health Diversion) and the court having conducted a hearing and the defendant having waived his/her right to a speedy trial and consenting to further proceedings under Chapter 2.5 of the Penal Code:

IT IS HEREBY ORDERED that said defendant be diverted from further proceedings on the charge(s) now filed in this court for the period specified by the Court, but not to exceed two years; and during this time shall:

1. Obey all Laws;
2. Successfully comply with and complete the treatment plan and all its conditions deemed appropriate by the treatment provider(s), including taking prescribed medication as directed by a medical profession;
3. Attend all court hearings as ordered by the court;
4. Comply with any orders of the court that are associated with your charged crime(s), including, but not limited to: Criminal Protective Orders, no contact orders and stay away orders;
5. Do not possess or use controlled substances without a prescription;
6. Do not possess or use alcohol; and/or
7. Attend community self-help groups: Attend _____ number per week or month.
8. Pay victim restitution per section 1202.4 of the Penal Code in the amount of \$ _____, as ordered.

IT IS FURTHER ORDERED that the defendant shall be responsible for requesting that his/her treatment provider(s) submit a written report to the court on their conduct and progress in treatment and on their compliance with the conditions of this Order of Diversion for each progress review court date scheduled as directed by the court. The defendant may at any time on the court's own motion or upon recommendations of the treatment provider(s), be returned to the court for further hearing and for any order the court deems necessary.

Your failure to comply with all conditions of this order during the diversion period may, after a hearing, result in the court ordering that prosecution be resumed on the charges pending against you.

Upon successful completion of Mental Health Diversion, the court shall dismiss the pending charges in this case pursuant to 1001.36 of the Penal Code.

Deputy Clerk

Date

Department

Judge of the Superior Court

FURTHER CONDITIONS OF MENTAL HEALTH DIVERSION FOR DEFENDANT:

I understand that my records are protected under the Federal regulations governing Confidentiality of Medical, Alcohol and Drug Abuse Patient records, 42 CFR Part 2, and cannot be disclosed without my written consent unless otherwise provided for in regulations. I agree to provide that consent and to execute any further Releases of Information necessary regarding the reporting of my progress as a condition of Mental Health Diversion. I also understand that I may revoke this consent at any time except to the extent that action has been taken based on it, and that in any event, this consent expires automatically upon the court's acknowledgement of successful completion and dismissal of criminal allegations or the court's ruling of deletion. If consent is revoked, I understand that I must appear at the next scheduled court date and may be subject to deletion from Mental Health Diversion and my criminal proceeding reinstated.

The conditions of the Order of Diversion have been explained to me; I fully understand the conditions and agree to comply with all conditions and the treatment plan (attached). I acknowledge receiving a copy of the order this date.

Defendant's Signature

Date

Treatment Participation and Progress Report

Participant's Name: _____
Next Court Date: _____

Progress Period: _____
(i.e., Jan – Mar, 2018)

Treatment Provider: The above-named person is currently participating in the Solano Superior Court's Mental Health Diversion. The Court is required by Penal Code section 1001.36, subd. (c)(2), to periodically review the participant's progress while in treatment. Please complete the below information and either provide this form back to the participant or you may provide it directly to the participant's attorney of record indicated below, by fax or electronic mail. Please submit before the next court date noted above.

Attorney of Record: _____ Telephone No.: _____
Email Address: _____ Fax No.: _____

Provider's Name: _____ Provider's Agency: _____
Provider's Contact Information (phone, email): _____

During the progress period indicated above, the participant is

- Satisfactorily meeting the requirements of his/her treatment plan (engaged in treatment; attending appointments regularly, keeps in touch with provider, making progress towards treatment goals, etc.).
- Partially meeting the requirements (attendance at treatment is not consistent, needs further engagement, making some progress, but could be increased, etc.).
- In need of a higher level of care (*explain below*).
- Non-compliant—is not attending treatment.
- Other (*explain below*).

Comments (strengths and gains or plans for increasing participation in treatment):

Signature of Agency Representative

Print Name

Date



Penal Code 1001.36 Mental Health Diversion Treatment Plan

Participant's Name: _____
Next Court Date: _____ Date

Treatment Provider: The above-named person is applying for Solano Superior Court's Mental Health Diversion. The Mental Health Diversion court requires that a person provides a mental health diversion treatment plan. Please complete the below information and either provide this form back to the participant or you may provide it directly to the participant's attorney of record indicated below, by fax or electronic mail. Please submit before the next court date noted above.

Attorney of Record: _____ Telephone No.: _____
Email Address: _____ Fax No.: _____

Provider's Name: _____ Provider's Agency: _____
Provider's Contact Information (phone, email): _____

Patient is suffering from a mental disorder diagnosed as: _____

Symptoms include: _____

Based on the above diagnosis, patient's symptoms would respond to the following mental health treatment plan:

- Attend psychiatric appointments Next appointment: _____
- Take medication
- Keep in touch with provider How often client to be seen: _____
- Attend groups
- Other (*explain below*).

Please list any other recommendations below:

I believe patient can be treated in the community if patient agrees to comply with this plan. I have reviewed this plan with patient and patient agrees to comply with the plan.

Signature of Agency Representative	Print Name	Date
Signature of Patient	Print Name	Date





Superior Court of California County of Solano

Mental Health/Diversion Court

Confidentiality Admonition

Solano County Collaborative Courts conduct regular, multi-disciplinary case conferences in which the judge, attorneys, clinicians, and court personnel participate. During these meetings, a client's mental health and legal information is shared for purposes of assessment and treatment. All case conference participants must maintain the confidentiality of all client's information, regardless of the participant's individual legal or clinical relationship to any particular client.

Collaborative Court participants sign a consent permitting release of confidential information to all collaborative court team members. Information obtained during the case conference is NOT to be released to anyone who is not a Mental Health Court Team member. Information obtained in the pre-court case conference is not to be used against any client in this or any future court proceeding outside of this collaborative court.

I, the undersigned, hereby agree not to divulge any information or record concerning any Mental Health/Diversion Court client in accordance with the above admonition and without proper authorization from the client in accordance with state and federal law.

Print Name

Signature

Date



MENTAL HEALTH DIVERSION COURT PROGRAM
Consent to Release Information and
Consent to Obtain Information

Return document to Patient's Attorney	
Attorney Name	
Email	

To determine the appropriate treatment for me while in the Mental Health Diversion Court Program, I, _____, authorize the Solano County Superior Court's Mental Health Diversion Program to exchange (**provide and receive**) information pertaining to me with staff from the following entities:

- | | |
|--|--|
| Superior Court of California, County of Solano | Law Offices for my attorney of record |
| Solano County Probation Department | Solano County Behavioral Health |
| Solano County Public Defender's Office | Solano County Substance Abuse Administration |
| Solano County Alternate Defender's Office | Solano County Forensic Triage Team |
| Solano County District Attorney's Office | Caminar/MIOCR |

I authorize the following treatment providers to release my medical and mental health information:
 Kaiser Permanente
 Other, if not Kaiser Permanente: _____

Information about me that may be released/obtained from the entities listed above may include, but not limited to, assessments performed on me, my medical history, my treatment plan, my progress in treatment, clinical data and diagnoses, and urine test results. Participant will not be denied treatment if this consent form is not signed. A copy of this authorization is as valid as the original and the undersigned has the right to receive a copy of this authorization.

I understand that my records are protected by the provisions of 42 United States Code (USC) Section 2990dd-2, and the regulations implementing these laws at 42 Code of Federal Regulations (CFR), Part 2, and the Code of Federal Regulations 45, Parts 160 and 164 (HIPAA), which cannot be disclosed without my written consent unless otherwise provided in the regulations. I also understand that I may revoke this consent at any time except to the extent that such action has been taken in reliance on it, and that in any event this consent expires automatically as follows:

(Specify, event, or condition upon which this consent expires)

Date: _____
This release is valid only one year from date signed above.

 Participant (print name)

 Signature of Participant

 Participant Medical Record Number

Date: _____

 Mental Health Diversion Court Coordinator