



## Superior Court of California County of Orange

### PROCEDURAL GUIDELINES FOR MENTAL HEALTH DIVERSION

#### Statutory Overview of Mental Health Diversion, Penal Code 1001.36:

Pursuant to Penal Code 1001.36, the court may order a defendant who meets specific requirements into diversion for unique 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 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.

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 the 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.

#### Determination of Eligibility and Decision to Divert:

1. Defendants desiring diversion should timely file and serve a motion for diversion pursuant to section 1001.36, as follows:
  - a. All motions shall include a proposed treatment plan.
  - b. Motions must be filed electronically by email at:  
[MentalHealthDiversion@occourts.org](mailto:MentalHealthDiversion@occourts.org).
  - c. Motions must be served on the District Attorney's office via email at:  
[MentalHealth@ocdapa.org](mailto:MentalHealth@ocdapa.org).

- d. Defense counsel should attach all evidence to support a finding of eligibility and why the defendant is suitable for diversion.
  - e. Upon filing of a Mental Health Diversion motion, CCB1 staff will set the matter for hearing as soon as practicable on a Tuesday at 8:30 AM in CCB1. A Notice of Hearing will be emailed to the prosecution and defense counsel with the scheduled date and time.
2. Hearings will be conducted to determine eligibility and whether the court should exercise its discretion to divert the defendant.
- a. The first 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. Contested hearings will be set either on a Tuesday at 1:30 PM in Department CCB1, Thursday at 9:00 AM or 1:30 PM in Department C58, or a Friday at 8:30 AM in Department C27.
  - c. If the court ultimately denies the motion, then the case remains on the standard litigation track and will be set for a future hearing in the appropriate department at the originating justice center.
  - 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 Department CCB1, along with the case on which diversion was ordered.
  - b. The judicial officer in Department CCB1 may order unadjudicated cases or charges back to the originating justice center for further proceedings, if deemed appropriate.

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

If the decision is made to divert the defendant, the judicial officer in Department CCB1 will order the defendant placed in a specific treatment program and monitor their performance as follows:

1. The court will determine the requirements of the treatment program and order the defendant to comply with that 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 progress review hearings on Thursdays at 8:30 AM in Department CCB1. Unless otherwise ordered, the defendant and counsel shall be at the progress reviews.
4. No later than the Monday before each 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. Those progress reports shall be emailed to the court and prosecutor at the email addresses set forth above.
5. 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 will conduct a hearing to determine whether criminal proceedings should be reinstated. If the court orders criminal proceedings reinstated, the defendant's case(s) will be transferred back to the originating justice center.
  6. 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.