Superior Court of California
County of Orange

PROCEDURAL GUIDELINES MILITARY DIVERSION PROGRAM

Statutory Overview of Military Diversion Program (Penal Code section 1001.80):

Military diversion, codified in Penal Code section 1001.80[1], is a pretrial diversion program for current and former members of the U.S. military who may be suffering from PTSD, traumatic brain injury, sexual trauma, substance abuse or mental health problems as a result of their military service. These guidelines outline the procedures followed by the Orange County Superior Court when addressing defendants who seek diversion pursuant to the statute.

From the statute's inception in 2015 through 2024, only misdemeanor charges were eligible for military diversion. Beginning January 1, 2025, the statute also allows felony charges to be considered for the program, with the following exceptions:

1. Murder or voluntary manslaughter
2. An offense for which a person, if convicted, would be required to register pursuant to Penal Code 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.
8. A violation of subdivision (b) or (c) of section 11418
9. A felony violation for driving under the influence.

(Subd. (n)(2)/(o).)

In order to enter the program, the defendant must consent and waive their speedy trial rights. (Subd. (d).) The period of diversion "shall be no longer than two years." (Subd. (j).) If it appears to the court that the defendant is performing "unsatisfactorily" or "is not benefitting from the treatment and services provided . . .," the court shall hold a hearing and determine if diversion should end, and criminal proceedings reinstituted. (Subd. (e).)

If a defendant successfully completes the diversion program, the criminal charges will be dismissed (subd. (e)) and "the arrest upon which the diversion was based shall be deemed never to have occurred." (Subd. (k).) But there is an exception permitting disclosure if the person applies for a job as a peace officer. (Subd. (l).)

Motion and Ruling:

1. Defendants desiring diversion should file and serve a motion for military diversion pursuant to section 1001.80.

    a. The motion shall be filed electronically by emailing a PDF copy of the motion and any supporting documents to mdmotions@occourts.org. The moving party should not select a hearing date when filing the motion.

[1] All future statutory references are to Penal Code section 1001.80.

b. The motion shall be served on the prosecutorial agency by copying the designated representative of that agency on the email to the court. Orange County District Attorney's Office shall be served by email to MentalHealth@ocdistrictattorney.gov. City of Anaheim shall be served by email to HTaylor@anaheim.net.

2. Military diversion motions will be calendared by the court on the second, third, fourth, or fifth Tuesdays of the month at 1:30 pm in Department C46. There will be a cap on number of motions heard per day.

   a. The court clerk will set the hearing at least 10 court days after the filing of the motion, pursuant to Cal. Rules of Court, Rule 4.111 ("Rule 4.111").

   b. If the first available hearing date has reached capacity, the clerk will select the next available Tuesday.

   c. When the hearing date is set, the clerk will notify parties by email.

3. Any opposition to the motion must be filed no later than 5 court days before the hearing date by emailing it to mdmotions@occourts.org and copying opposing counsel on the email.

4. Any reply papers in support of the motion must be filed no later than 2 court days before the hearing date by emailing it to mdmotions@occourts.org and copying opposing counsel on the email.

5. All hearings will be presumed to be non-evidentiary, meaning that the court will not hear from live witnesses. Counsel will argue the motions based on the written filings in support of and in opposition to the motion. If, at the conclusion of the non-evidentiary hearing, the court decides that it needs to hear from witnesses, the matter will be continued for a further evidentiary hearing.

   a. If the court denies the motion, then the case remains on the standard litigation track and will be reset to the appropriate justice center for further proceedings.

   b. If the court grants the motion, the court will (1) obtain the defendant's waiver of his or her speedy trial right; (2) order criminal proceedings suspended; and (3) order the defendant to appear in Department C46 on a Thursday at 8:30 am, for the determination of a treatment plan and further requirements of the diversion program.

6. Companion cases: If the decision is made to divert the defendant, standard case packaging rules for defendants before collaborative courts will apply.

   a. All open felony and misdemeanor matters, probation violations, and post-conviction matters with items still due are to be packaged along with the diversion matter.

   b. Dept. C46 may order unadjudicated cases 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 will order defendant placed in a specific treatment program and monitor his or her performance. It is anticipated that the following procedures will be followed:

1. The court will determine the requirements of the pretrial diversion program, and order the

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defendant to participate in a federal, county, or community treatment program.

2. The court will receive and file reports on the defendant's progress in the diversion program.

3. The court will oversee defendant's performance and determine if he or she is performing unsatisfactorily or satisfactorily.

4. If the defendant is performing unsatisfactorily or is not benefiting from the diversion program, the court will conduct a hearing to determine whether criminal proceedings should be reinstituted. If the court orders criminal proceedings reinstituted, the defendant's case[s] will be transferred back to the originating court.

5. The court will determine if the defendant has performed satisfactorily during the period of diversion, and if so, order the criminal charges dismissed and reports to be filed with the Department of Justice.

[1] All future statutory references are to Penal Code section 1001.80.

SUPERIOR COURT, COUNTY OF ORANGE
Military Diversion Program (Penal Code, section 1001.80)
Eligibility Assessment Resources Guide for Defendants

California's military diversion program establishes a pretrial diversion program for current and former members of the U.S. military who are charged with certain eligible offenses. Veterans, active duty, and reserve personnel are eligible for the program. Under Penal Code section 1001.80, the military diversion program applies to a defendant who "was, or currently is, a member of the United States military," and who "may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of their military service." (Cal. Pen. Code section 1001.80(b).) For felony charges, the court must also find that "the defendant's condition was a significant factor in the commission of the charged offense." (*Id.*, subd. (c)(2).) If a defendant meets the criteria, the Court "may" place him or her into a pretrial diversion program. (*Id.*, subd. (d).)

The purpose of this Eligibility Assessment Resources Guide is to provide defendants and their counsel with resources that may be able to assist in assessing whether the defendant is eligible to be considered for diversion. These resources are not exhaustive or exclusive.
Defendants and their counsel may seek to establish eligibility through other organizations, agencies and means. A determination that a defendant meets the criteria for eligibility by any person, agency, or organization, including those listed below, is not binding on the court and may be subject to a contested hearing.

DD-214 – Certificate of Release or Discharge from Active Duty:
A Report of Separation is generally issued when a service member performs active duty or at least 90 consecutive days of active-duty training. The Report of Separation contains information normally needed to verify U.S. military service and eligibility for healthcare, benefits, retirement, employment, and membership in veterans' organizations. If you have already established VA Healthcare eligibility and registered for VA Long Beach services, skip this step and proceed to contact the Veterans Administration per instruction below.

The DD-214 or other Report of Separation can be obtained from:

- United States National Archives and Records Administration
  http://www.archives.gov/veterans/military-service-records

- For urgent requests from National Archives:
  - ❖ Fax completed SF 180 to: 314-801-0764
  - ❖ Urgent Request Customer Service Phone: 314-801-800, 7 AM to 5 PM, Central time.

For in-person VA eligibility and registration assistance present to:

VA Long Beach Healthcare System
Patient Business Office (Bldg. 126, First Floor)
5901 East 7th Street
Long Beach, CA 90822

Toll Free: 888-769-8387, ext. 5915

Hours: Mon-Fri, 8 AM to 4 PM

United States Veterans Administration Healthcare System:
Once registered for healthcare, eligible veterans may seek Mental Health evaluation and services through the VA Healthcare System. With a signed release for medical information, the provider may be able to provide the defendant with a written assessment of his or her condition.

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Mental Health evaluation and services from the VA can be obtained from:

- Contacting your existing VA Mental Health provider for an appointment
- If new to VA Mental Health services present to:

  VA Long Beach Healthcare System
  Urgent Mental Health Clinic (UMHC), Bldg. 128
  5901 East 7th Street
  Long Beach, CA 90822

  Toll Free: 562-826-5737

  Hours: Mon-Fri, 8 AM to 4 PM

If you need assistance linking to services at VA, please contact your existing Veteran Justice Outreach staff.

Orange County Health Care Agency:
For defendants that have an other-than-honorable discharge from the military, the Orange County Health Care Agency or another provider to which it will make a referral may be able to provide an assessment of eligibility. With the appropriate signed release for medical information, the Orange County Health Care Agency or other provider will also be able to provide the defendant with a written assessment of his or her condition.

The Orange County Health Care Agency can be reached through:

Frank Fernandez-Duarte, M.F.T.
401 W. Civic Center Drive. Ste. 600
Santa Ana, CA 92701
Office: 714-647-1895
www.ochealthinfo.com

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