



## Superior Court of California County of Orange

### PROCEDURAL GUIDELINES MILITARY DIVERSION PROGRAM

#### Statutory Overview of Military Diversion Program, Penal Code section 1001.80:

The military diversion program, codified in Penal Code section 1001.80<sup>1</sup>, which went into effect on January 1, 2015, establishes 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 service. For a person covered by the statute, the court may place the person in a pretrial diversion program. These procedural guidelines provide guidance on the procedures followed by the Orange County Superior Court when addressing defendants who may fall under the statute.

The defendant must consent and waive time. (Subd. (b).)

If the court places the defendant in a pretrial diversion program, and he or she performs satisfactorily during the period of diversion, the criminal charges will be dismissed. (Subd. (c).) The period of diversion "*shall be no longer than two years.*" (Subd. (h).) During the period of diversion, the service provider must provide reports to the court and parties "*not less than every six months.*" If 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 resumed. (Subd. (c).)

If the court decides to divert a defendant, the court is required to assess the defendant and determine whether he or she should be ordered to participate in federal or community-based treatment programs with a demonstrated history of treating the range of mental health problems covered by the statute. (Subd. (e).) Preference is given to programs that have a demonstrated history of successfully treating veterans. (Subd. (f).)

If a defendant successfully completes the diversion program, "*the arrest upon which the diversion was based shall be deemed never to have occurred.*" (Subd. (i).) But there is an exception permitting disclosure if the person applies for a job as a peace officer. (Subd. (j).)

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

1. Defendants desiring diversion should timely file and serve a motion or petition for diversion pursuant to section 1001.80.
  - a. Petitions/motions are to be set in the justice center where the matter is venued under the court's standard packaging rules for motions.
  - b. Petitions/motions are calendared for hearing in the same manner as other criminal motions (e.g., 1538.5, motions to dismiss, etc.).
  - c. Service of petitions/motions must be made on the prosecutorial agency.
  - d. Defense counsel should attach all evidence to support a finding of eligibility, and why the defendant is suitable for diversion.

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<sup>1</sup> All future statutory references are to Penal Code section 1001.80.

2. The justice center in which a petition/motion to divert a defendant is set to be heard may conduct a hearing to determine eligibility and whether the court should exercise its discretion to divert the defendant.
  - a. If the court denies the request to divert the defendant, then the case remains on the standard litigation track, as any other misdemeanor.
  - b. If the court decides to divert the defendant and place him or her in a pretrial program, 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 Dept. C46 on Thursdays, at 8:30 a.m., for the determination of the requirements of the diversion program.
3. Companion cases: If the decision is made to divert the defendant, standard case packaging rules for defendants before collaborative courts will apply.
  - a. All pending felony and misdemeanor probation violations, adjudicated felony and misdemeanor cases, and unadjudicated misdemeanor matters are to be packaged and sent to Dept. C46, 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 in Dept. C46, 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 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 reinstated. If the court orders criminal proceedings reinstated, 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 order reports to be filed with the Department of Justice.

**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 a misdemeanor offense. Active duty and Reserve personnel are also eligible for this program. Under Penal Code, section 1001.80, subdivision (a), the military diversion program applies to defendants accused of a misdemeanor offense, who *"was, or currently is, a member of the United States military"*, and who *"may be suffering from sexual trauma, traumatic brain injury [TBI], post-traumatic stress disorder [PTSD], substance abuse, or mental health problems as a result of his or her military service."* (Subdivision (a), section 1001.80) If a defendant meets the criteria, the Court *"may"* place him or her into a pretrial diversion program.

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 evidentiary 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, 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: 314-801-0800, 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 7<sup>th</sup> 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 and a suggested treatment plan.

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 7<sup>th</sup> 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 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 Health Care Agency or other provider will also be able to provide the defendant with a written assessment of his or her condition and a suggested treatment plan.

The 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](http://www.ochealthinfo.com)