



Superior Court of California County of Orange

PROCEDURAL GUIDELINES 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. 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. The diversion period shall not be longer than two years.

The court will grant pretrial diversion if 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. Evidence of the defendant's mental disorder shall be provided by the defense and shall include a recent diagnosis by a qualified mental health expert. (Subd. (A).)

The court must be satisfied that the defendant's mental disorder was a significant factor in the commission of the charged offense. (Subd. (B).)

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. (Subd. (C).)

The defendant must consent and waive time, 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. (Subd. (D).)

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

The court must be 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. (Subd. (F).)

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 1001.36.
 - a. Effective Monday, August 2, 2021, petitions/motions will be filed in department CCB1 at the Community Court Building and motion hearings will begin in September;
 - b. All motions for misdemeanor and felony cases shall include a proposed treatment plan;
 - c. Petitions/motions must be filed electronically by email at:
MentalHealthDiversion@occourts.org
 - d. Service of petitions/motions must be made on the prosecutorial agency via email at:
MentalHealth@da.ocgov.com;
 - e. Defense counsel should attach all evidence to support a finding of eligibility, and why the defendant is suitable for diversion; and

2. A hearing will be conducted 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; or
 - 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 department CCB1, on a Tuesday at 1:30 p.m, for the determination of the requirements of the program.
3. Companion cases: If the decision is made to divert the defendant, standard case packaging rules for defendants in 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 department CCB1, along with the diversion matter; and
 - b. Judicial officer in department CCB1 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 department CCB1 will order defendant placed in a specific treatment program, and monitor their performance. It is anticipated that the following procedures 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 their 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; and
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 be filed with the Department of Justice.