



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

**MENTAL HEALTH DIVERSION  
PROCESS FOR MISDEMEANOR CASES ONLY**

---

**Effective: June 27, 2018**  
**Process Issued: October 15, 2018**

This process was developed in collaboration with the District Attorney's Office; Office of the Public Defender, Criminal Conflict Defenders, and the Behavioral Health Division

---

**California Penal Code<sup>1</sup> (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.

**A. 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;
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;
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.

**B. Offenses not eligible for MHD:**

*(Effective January 1, 2019)*

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.

---

<sup>1</sup> Unless otherwise indicated, all further statutory references are to the Penal Code.

## MENTAL HEALTH DIVERSION – MISDEMEANOR PROCESS FLOW

### I. PARTIES IDENTIFY CASES FOR MENTAL HEALTH DIVERSION (MHD) Department's 3 and 4: Daily

#### A. FILE MOTION

1. Defense counsel shall file an Application for Mental Health Diversion (MHD), pursuant to section 1001.36, with the Court and serve the prosecutor with a copy (see Attachment 1).
2. The Court shall continue the case four to six weeks for a MHD Status Conference. If the defendant is in-custody, custody status and/or expedited review may be considered.
3. During the continuance period, defense counsel shall gather additional information about defendant's mental health background.
4. Prior to the MDH Status Conference, defense counsel shall share the additional information with the prosecutor. The parties shall meet and confer and try to reach consensus on the referral to MHD.

#### B. MHD STATUS CONFERENCE

At the MHD Status Conference, the parties shall advise the Court on the results of their meet and confer— indicating that they are either in agreement and recommend MHD; or that they are not in agreement on MHD.

The Court shall then make any of the following findings:

1. A *prima facie* basis for diversion has been established; and the Court further finds the defendant and suitable for MHD.
  - a. If all parties agree, the court shall schedule the case for a MHD status hearing to allow for the defense counsel to provide the court with the defendant's treatment plan; or
  - b. If the parties do not agree to MHD, the Court may schedule and notice a contested hearing in the home court.
2. A *prima facie* basis for diversion has not been established and the MHD is denied. The Court shall continue with criminal proceedings; or
3. A *prima facie* basis for diversion has been established, but the Court finds the defendant is not suitable for MHD. If this finding is disputed by any of the parties, the Court may schedule and notice a contested hearing in the home court. Otherwise, the Court shall continue with the criminal proceedings.

### II. COURT REVIEWS AND APPROVES TREATMENT PLAN Department's 3 and 4 (each court to determine day and time for these hearings)

#### A. MHD STATUS HEARING FOR TREATMENT PLAN

1. Defense counsel shall submit a copy of the treatment plan to the prosecutor prior to the status hearing.
2. At the hearing, the defense counsel shall file a copy of the treatment plan with the Court. The Court shall retain the treatment plan in the court file in a confidential envelop.
3. The Court reviews the treatment plan and decides as follows:
  - a. If the treatment plan is suitable; the Court shall grant the motion for MHD and stay the criminal proceedings; and the defendant shall have up to two years from this date to complete treatment. The defendant shall sign the Order for Mental Health Diversion (Attachment 2). The defendant shall be ordered to return for a progress report hearing 30 to 90 days out and defendant shall request a progress report from his/her treatment provider (Attachment 3).
  - b. If the treatment plan is not suitable; the Court shall order the defendant to get an updated plan and continue the hearing for 2 to 3 weeks. Once the treatment plan is approved, the Court shall make the same orders noted in (a) above. If the Court is not able to find a treatment plan suitable, the Court may resume with the criminal proceedings.

### III. COURT MONITORS CASE FOR COMPLIANCE

Department's 3 and 4 (each court to determine day and time for these hearings)

#### A. SUBSEQUENT PROGRESS REPORT

1. Prior to the progress report hearing, defense counsel shall submit a copy of the progress report to the prosecutor.
2. At the progress report hearing, defense counsel shall submit a copy of the progress report to the judicial officer. The Court shall retain a copy of the progress report in the court file in a confidential envelope.
3. At the progress report hearing, the judicial officer shall review the report for compliance, and if:
  - (a) The defendant is making progress, set another progress report date (in 30 to 90 days);
  - (b) The defendant is not making progress, the Court may:
    - give defendant additional time to comply and continue progress hearing to another date;
    - terminate defendant from the program and continue criminal proceedings—if requested, the Court may consider scheduling a noticed hearing to hear further evidence on why defendant should not be terminated from MHD;
    - recommend defendant apply for Mental Health Treatment Court; or
    - refer defendant for conservatorship proceedings (pursuant to Welfare and Institution Code section 5350 et seq.).

### IV. DISPUTE RESOLUTION

Department's 3 and 4 (each court to determine day and time for these hearings)

#### A. CONTESTED HEARING

Prior to the start of the hearing, the judicial officer and parties shall attempt to resolve the matter informally. If not able to resolve, the hearing shall proceed and the parties shall present their evidence. Thereafter, the court shall render a decision. If:

1. **YES on MHD:** the Court shall schedule a MHD Status Conference in two to three weeks for the defendant to provide the Court with a treatment plan (if necessary).
2. **NO on MHD:** criminal proceedings shall resume and the defendant's case is calendared back in the home court for further proceedings.
3. **NO on MHD, but YES on Mental Health Treatment Court (MHTC):** if the Court recommends MHTC, the Court may grant defense additional time if necessary, for the defendant to apply for MHTC.
  - a. If the defendant is accepted into MHTC, the Court shall continue the criminal proceedings, and schedule the case for the next MHTC date in Dept. 8 (on Tuesday or Wednesday) for a plea and judgment and sentencing.
  - b. If defendant is not accepted into MHTC, the Court shall continue with the criminal proceedings and schedule a further proceedings hearing date back in the home court.

## Other Agreements:

1. **Designation of Department's 3 and 4 to Hear Matters:** It is anticipated that the majority of cases requesting MHD will already be assigned to Department's 3 or 4. The request for misdemeanor MHD however, may also come from other home court and/or trial departments. In such instances, the Court may want to decide that the defendant is potentially eligible for MHD and continue the matter for a final determination in their own department or continue the case to either Department's 3 or 4 for a MHD status hearing for final determination and monitoring, if applicable.
2. **Restitution (*effective January 1, 2019*):** It shall be the responsibility of the District Attorney (DA) to pursue restitution for any victims. Once determined and agreed upon, the Department of Revenue Recovery (DRR) shall collect the restitution (if necessary). The DA shall complete their (triplicate) form, "Restitution Order," and file it with the court. For any disputed restitution amounts, the court shall set the matter in Department 9, for restitution hearing assignment (per the regular court procedures).
3. **Periodic Progress Reports:** During the period of diversion, the service provider must provide periodic reports to the Court and parties. To assist in this process, the provider may use the attached form (Attachment 3). Either way, the participant/defense counsel shall be responsible for providing the progress report to both the prosecutor and the Court.
4. **Successful Completion of MHD:** 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. The statute specifies that the period of diversion shall be no longer than two years.
5. **Termination of Diversion or Modification of Treatment or Referral for Conservatorship**
  - A. Motion to Terminate Diversion
    1. The District Attorney (DA) may file or orally notice motion to terminate diversion on the following grounds:
      - a) The defendant is charged with an additional misdemeanor allegedly committed during the pretrial diversion and that reflects the defendant's propensity for violence.
      - b) The defendant is charged with an additional felony allegedly committed during the pretrial diversion.
      - c) The defendant is engaged in criminal conduct rendering him or her unsuitable for diversion.
      - d) 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).
    2. The court may do any of the following:
      - a) Deny the motion and allow diversion to proceed. In this case the Court and counsel shall then select the next progress report court date.
      - b) 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.
      - c) 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.
  - B. Referral for Conservatorship
    1. 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.

6. **Confidentiality, Release of Information (ROI), and Confidential Envelopes:** A defendant must sign a Release of Information (ROI) form (see Attachment 4), 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 envelope and filed in the court file.
  
7. **Linkages to Treatment Services:** The Office of the Public Defender and the Behavioral Health Division worked together and developed additional instructional documents to assist defendants with linking to mental health services, when they are not already linked. These documents guide defendants in accessing care when they do not have insurance, or when they have established Medi-Cal, or are homeless, or are veterans. The Office of the Public Defender shall maintain these documents and be responsible for keeping copies in the courtrooms and providing to private counsel, upon request.

**Attachments:**

Double-click on the icons below to access the forms.

<b>Attachment 1</b>	<b>Attachment 2</b>	<b>Attachment 3</b>
<b>Application for Mental Health Diversion</b>	<b>Mental Health Order of Diversion</b>	<b>Mental Health Diversion Progress Report</b>
 Application -- Mental Health Diversion -- 100	 Mental Health Div Order After Hearing_A	 CR-351 Self-Report Progress Report_MHP.
<b>Attachment 4</b>		
<b>Release of Information (ROI)</b>		
 2099_Authorization to Obtain-Release-Fillabl		