



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

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

Effective: June 27, 2018

Process Issued: October 15, 2018

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Amended: January 29, 2019

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 Code¹ (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.

¹ Unless otherwise indicated, all further statutory references are to the Penal Code.

MENTAL HEALTH DIVERSION – FELONY PROCESS FLOW

I. PARTIES IDENTIFY CASES FOR MENTAL HEALTH DIVERSION (MHD)

Departments 8, 60, 61, 62 and 63: 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 MHD 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 (see Attachment 2); or
 - b. If the parties do not agree to MHD, the Court may schedule and notice a contested hearing in the home court. If the contested hearing will be lengthy and require expert testimony the home court may set the contested hearing in Department 9 (no earlier than 2 weeks) for an evidentiary hearing.
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

Departments 8, 60, 61, 62, and 63 (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 envelope.
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 3). 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 4).
 - 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

Departments 8, 60, 61, 62 and 63 (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

Departments 8, 60, 61, 62 and 63 (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. If the contested hearing will be lengthy and require expert testimony the home court may set the contested hearing in Department 9 (no earlier than 2 weeks) for an evidentiary hearing. 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 Felony Home Courts (Departments 8, 60, 61, 62, and 63) to Hear Matters:** It is anticipated that the majority of cases requesting MHD will already be assigned to the felony home courts. The request for felony MHD however, may also arise in trial departments. In such instances, that 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 a felony home court 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 5), 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.

Attachment 1	Attachment 2	Attachment 3
Application for Mental Health Diversion	Treatment Plan	Mental Health Order of Diversion
 Application -- Mental Health Diversion -- 10/	 CR_355_MHD Treatment Plan_EffJar	 CR_350_MHD_Order of Diversion_Jan2019.1
Attachment 4	Attachment 5	
Mental Health Diversion Progress Report	Release of Information (ROI)	
 CR-351 Self-Report Progress Report_MHP_	 2099_Authorization to Obtain-Release-Fillabl	

Note: The above links will only work if you received this document in Microsoft WORD format (not PDF).

1 Defendant requests this application be set for informal hearing for a prima facie
2 showing that the disorder played a significant role in commission of the offense(s), and
3 that a qualified mental health expert will opine that defendant's symptoms underlying the
4 criminal behavior would respond to treatment.
5

6 Defendant consents to mental health diversion; defendant is prepared to waive
7 [his][her] right to a speedy trial; defendant will comply with an appropriate treatment
8 program; and defendant does not pose an unreasonable risk of danger to public safety
9 within the meaning of Penal Code section 1170.18.
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13 DATED: February , 2019
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16 _____
17 Assistant Public Defender
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Penal Code 1001.36 Mental Health Diversion Treatment Plan

Participant's Name: _____
Next Court Date: _____

_____ Date

Treatment Provider: The above-named person is applying for Sacramento Superior Court's Mental Health Diversion. The Mental Health Diversion court requires that a person provides a mental health diversion treatment plan. Please complete the below information and either provide this form back to the participant or you may provide it directly to the participant's attorney of record indicated below, by fax or electronic mail. Please submit before the next court date noted above.

Attorney of Record: _____ **Telephone No.:** _____
Email Address: _____ **Fax No.:** _____

Provider's Name: _____ **Provider's Agency:** _____
Provider's Contact Information (phone, email): _____

Patient is suffering from a mental disorder diagnosed as: _____

Symptoms include: _____

Based on the above diagnosis, patient's symptoms would respond to the following mental health treatment plan:

- Attend psychiatric appointments Next appointment: _____
- Take medication
- Keep in touch with provider How often client to be seen: _____
- Attend groups
- Other (*explain below*).

Please list any other recommendations below:

I believe patient can be treated in the community if patient agrees to comply with this plan. I have reviewed this plan with patient and patient agrees to comply with the plan.

Signature of Agency Representative Print Name Date

Signature of Patient Print Name Date





**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO
ORDER OF MENTAL HEALTH DIVERSION Section 1001.36 of the Penal Code**

Defendant's Name		Xref Number	Case Number(s)	
Address		City	State	Zip
Primary Phone	Alternate Phone	Home Court Dept.	Next Court Date	

A complaint having been filed in this court charging the above-named defendant with a violation(s) contained within section 1001.36 of the Penal Code, (Mental Health Diversion) and the court having conducted a hearing and the defendant having waived his/her right to a speedy trial and consenting to further proceedings under Chapter 2.5 of the Penal Code:

IT IS HEREBY ORDERED that said defendant be diverted from further proceedings on the charge(s) now filed in this court for the period specified by the Court, but not to exceed two years; and during this time shall:

1. Obey all Laws;
2. Successfully comply with and complete the treatment plan and all its conditions deemed appropriate by the treatment provider(s), including taking prescribed medication as directed by a medical profession;
3. Attend all court hearings as ordered by the court;
4. Comply with any orders of the court that are associated with your charged crime(s), including, but not limited to: Criminal Protective Orders, no contact orders and stay away orders;
5. Do not possess or use controlled substances without a prescription;
6. Do not possess or use alcohol; and/or
7. Attend community self-help groups: Attend _____ number per week or month.
8. Pay victim restitution per section 1202.4 of the Penal Code in the amount of \$ _____, as ordered.

IT IS FURTHER ORDERED that the defendant shall be responsible for requesting that his/her treatment provider(s) submit a written report to the court on their conduct and progress in treatment and on their compliance with the conditions of this Order of Diversion for each progress review court date scheduled as directed by the court. The defendant may at any time on the court's own motion or upon recommendations of the treatment provider(s), be returned to the court for further hearing and for any order the court deems necessary.

Your failure to comply with all conditions of this order during the diversion period may, after a hearing, result in the court ordering that prosecution be resumed on the charges pending against you.

Upon successful completion of Mental Health Diversion, the court shall dismiss the pending charges in this case pursuant to 1001.36 of the Penal Code.

Deputy Clerk

Date

Department

Judge of the Superior Court

FURTHER CONDITIONS OF MENTAL HEALTH DIVERSION FOR DEFENDANT:

I understand that my records are protected under the Federal regulations governing Confidentiality of Medical, Alcohol and Drug Abuse Patient records, 42 CFR Part 2, and cannot be disclosed without my written consent unless otherwise provided for in regulations. I agree to provide that consent and to execute any further Releases of Information necessary regarding the reporting of my progress as a condition of Mental Health Diversion. I also understand that I may revoke this consent at any time except to the extent that action has been taken based on it, and that in any event, this consent expires automatically upon the court's acknowledgement of successful completion and dismissal of criminal allegations or the court's ruling of deletion. If consent is revoked, I understand that I must appear at the next scheduled court date and may be subject to deletion from Mental Health Diversion and my criminal proceeding reinstated.

The conditions of the Order of Diversion have been explained to me; I fully understand the conditions and agree to comply with all conditions and the treatment plan (attached). I acknowledge receiving a copy of the order this date.

Defendant's Signature

Date

Treatment Participation and Progress Report

Participant's Name: _____
Next Court Date: _____

Progress Period: _____
(i.e., Jan – Mar, 2018)

Treatment Provider: The above-named person is currently participating in the Sacramento Superior Court's Mental Health Diversion. The Court is required by Penal Code section 1001.36, subd. (c)(2), to periodically review the participant's progress while in treatment. Please complete the below information and either provide this form back to the participant or you may provide it directly to the participant's attorney of record indicated below, by fax or electronic mail. Please submit before the next court date noted above.

Attorney of Record: _____ Telephone No.: _____
Email Address: _____ Fax No.: _____

Provider's Name: _____ Provider's Agency: _____
Provider's Contact Information (phone, email): _____

During the progress period indicated above, the participant is

- Satisfactorily meeting the requirements of his/her treatment plan (engaged in treatment; attending appointments regularly, keeps in touch with provider, making progress towards treatment goals, etc.).
- Partially meeting the requirements (attendance at treatment is not consistent, needs further engagement, making some progress, but could be increased, etc.).
- In need of a higher level of care (*explain below*).
- Non-compliant—is not attending treatment.
- Other (*explain below*).

Comments (strengths and gains or plans for increasing participation in treatment):

Signature of Agency Representative

Print Name

Date





**County of Sacramento
AUTHORIZATION TO OBTAIN
OR RELEASE PROTECTED
HEALTH INFORMATION (PHI)**

CONTACT:

Client Name (First, Middle, Last): *Print Neatly*	
Date of Birth:	Record #:
Address:	
City/State/Zip Code:	
Phone #: ()	
Email (Optional-For Contact only)	

OBTAIN from (Individual or Entity that has the Protected Health Information):

RELEASE (disclose) your Protected Health Information to:
Recipient Name:

Address:

City/State/Zip Code:

Phone #: () **Fax #: ()**

PURPOSE: The health information disclosed may only be used for the following purpose(s):

INFORMATION TO BE RELEASED:

<input type="checkbox"/> All Medical Records (<u>Except Mental Health, Alcohol/Drug or HIV unless indicated in next section</u>)	<input type="checkbox"/> Attendance Only Records
<input type="checkbox"/> Lab Tests	<input type="checkbox"/> Consultation Reports/Physician Order
<input type="checkbox"/> Medication	<input type="checkbox"/> Progress Reports/Notes
<input type="checkbox"/> Treatment/Personal Service Plan	<input type="checkbox"/> Psychiatric/Psychological Assessment/Testing Results
<input type="checkbox"/> Discharge Summary	<input type="checkbox"/> Billing or Payment Information
<input type="checkbox"/> Social History	
<input type="checkbox"/> Records from a specific visit or hospitalization (Enter date and location):	
<input type="checkbox"/> Other (Must describe):	

NOTE: Records relating to mental health, or alcohol/drug departments, or results of HIV antibody tests are specifically protected, and will not be disclosed unless you sign below:

Mental Health records **Signature:**

Alcohol/Drug dependency treatment records **Signature:**

HIV antibody test results **Signature:**

EXPIRATION: This Authorization will expire on ____ / ____ / ____ **date.** (mm/dd/yyyy) (Must be no more than one year from the date of signature.)

REVOCAION: You or your personal representative can revoke this authorization at any time upon written request. Revocation will take effect upon receipt, except to the extent that others have acted upon this authorization prior to receipt of the revocation.

REDISCLASURE: Re-disclosure of these records is not allowed unless another authorization is obtained from you, or such disclosure is specifically required or permitted by federal or state law.

I understand that I have a right to a signed copy of this authorization.

Client's Signature	Printed Name	Date
		____ / ____ / ____

Personal Representative's Signature	Printed Name	Date
		____ / ____ / ____

STAFF PERSON WHO VERIFIED IDENTITY OF THE ABOVE (Print Name):

VERIFICATION: We are required to verify you have the authority to sign this form. You will need to provide picture identification, like a California state ID or a California driver's license. (See County HIPAA Privacy Rule Policy and Procedures for other acceptable forms of identification). You are required to attach a copy of the picture identification or present it in person.

VERIFICATION for Personal Representative: If the signer is a guardian or legal custodian of an adult, minor, emancipated minor or a representative of a deceased client and is authorized by state law to act on behalf of the individual in making decisions about health care, a copy of the legal authority (guardianship or custody order) must be attached to this form. If the signer is a personal representative that does not have the legal authority, the patient must provide documentation in writing appointing this person as a representative and this documentation must be attached.

General Medical Records: Re-disclosure of these records is not allowed unless another authorization is obtained from you, or unless such disclosure is specifically required or permitted by federal or state law.

HIV, Alcohol and Drug, and Mental Health Treatment: These records are protected under federal or state law and cannot be disclosed without your written authorization unless otherwise provided. All HIV test information released must be labeled with a statement that: "This information may not be disclosed to any one without the specific written authorization of the individual."

This authorization is voluntary. The client's health information may be protected under federal or state confidentiality laws. These federal or state laws may not apply to the person or organization receiving the information being shared. The client may choose not to sign this authorization and this will not affect their ability to obtain treatment or payment or my current eligibility for health care benefits. However, if this information is necessary to determine if client is eligible to enroll in the Sacramento County Health program, the client may not be able to show they qualify for these services.

(If applicable) Client understands that County of Sacramento has been asked to provide a health care service (such as a test or evaluation) only for the purpose of being able to provide that information to someone else, and if client chooses not to authorize the disclosure of that information to the other person, then County of Sacramento may not provide that health care service to the client.

VALID AUTHORIZATION: THIS AUTHORIZATION IS NOT VALID IF:

The authorization is missing the elements described below:

- A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion.
- The name or other specific identification of the person authorized to make the requested use or disclosure.
- The name or other specific identification of the person(s) or class of persons to whom the covered entity may make the requested use or disclosure.
- A description of each purpose of the requested use or disclosure. The statement "at the request of the individual" is a sufficient description of the purpose when an individual initiates the authorization and does not, or elects not to, provide a statement of the purpose.
- A specific expiration date not to exceed one year from the client's signature.
- Signature of the client or client's personal representative and date.