



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONO**

**MENTAL HEALTH DIVERSION
PROCESS MISDEMEANOR/FELONY**

Approved for Distribution: 3-19-2021

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This process was developed in collaboration with the District Attorney's Office,
Public Defender, Mono County Probation Department, and Mono County Behavioral Health

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.
9. Vehicle Code Sections 23152 and 23153. (Vehicle Code Sec. 23640; Moore v Superior Court (2020) 272 Cal.Rptr.3d 571, Tellez v. Superior Court (2020) 56 Cal.App.5th 439.)

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

MENTAL HEALTH DIVERSION – MISDEMEANOR/FELONY PROCESS

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

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) ***MUST include the signed Release of Information (see Attachment 5) before any of his/her health information can be disclosed to any party.***
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; the Court further finds the defendant is 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 court. If the contested hearing will be lengthy and require expert testimony the court may set the contested hearing (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 court. Otherwise, the Court shall continue with the criminal proceedings.

II. COURT REVIEWS AND APPROVES TREATMENT PLAN

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 Defendant is not able to find a treatment plan suitable, the Court may resume with the criminal proceedings.

III. COURT MONITORS CASE FOR COMPLIANCE

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;
 - refer defendant for conservatorship proceedings (pursuant to Welfare and Institution Code section 5350 et seq.).

IV. DISPUTE RESOLUTION

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 court may set the contested hearing (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 court for further proceedings.

Other Agreements:

1. **Designation to Hear Matters:** It is anticipated that the majority of cases requesting MHD will already be assigned a Judge. That Judge may want to decide that the defendant is potentially eligible for MHD and continue the matter for a 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 District Attorney shall collect the restitution. The DA shall complete their form, "Restitution Order," and file it with the court. For any disputed restitution amounts, the court shall set the matter for restitution hearing.
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. Counsel may want to consider the defendant's competence to stand trial.
 - 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 court. Documents that must be filed with the court shall be placed in a confidential envelope and filed in the court file.

Attachments:

Attachment 1	Attachment 2	Attachment 3
Application for Mental Health Diversion	Treatment Plan	Mental Health Order of Diversion
Attachment 4	Attachment 5	Attachment 6
Mental Health Diversion Progress Report	Release of Information (ROI)	Advisal and Waiver of Rights

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THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MONO

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

_____ ,

Defendant.

DOCKET #(s): _____

APPLICATION FOR MENTAL HEALTH
DIVERSION PURSUANT TO
PENAL CODE § 1001.36

Defendant _____ applies for Mental Health Diversion pursuant to Penal Code § 1001.36. Defendant is charged with a qualifying crime, this matter is timely filed, and defendant is prima facie eligible for diversion.

Defendant suffers from a qualifying mental disorder:

[] Attached is a recent mental health diagnosis with a HIPAA compliant release form; or

[] Defendant will provide a recent mental health diagnosis with a HIPAA compliant release form.

Defendant requests this application be set for informal hearing for prima facie showing that the disorder played a signification role in commission of the offense(s), and that a qualified

///

1 mental health expert will opine that defendant's symptoms underlying the criminal behavior
2 would respond to treatment.

3 Defendant consents to mental health diversion; defendant is prepared to waive his/her
4 right to a speedy trial; defendant will comply with an appropriate treatment program; and
5 defendant does not pose an unreasonable risk of danger to public safety within the meaning of
6 Penal Code § 1170.18.

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10 DATED:

Defendant

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13 DATED:

Attorney

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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 Mono County Superior Court's Mental Health Diversion. The 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, if authorized, 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 disorder:

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 Provider

Print Name

Date

Signature of Patient

Print Name

Date

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

Defendant's Name		Attorney	Case Number(s)	
Address		City	State	Zip
Primary Phone	E-mail address	Dept.	Next Court Date	

A complaint having been filed in this court charging the above-named defendant 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.

_____ _____
Date **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:**

AUTHORIZATION FOR USE OR DISCLOSURE OF HEALTH INFORMATION

Completion of this document authorizes the disclosure and use of health information about you. Failure to provide all information requested may invalidate this authorization.

Name of patient: _____ Date of Birth: _____

I hereby authorize: _____ to release to:

Mono County Superior Court
PO Box 1037
Mammoth Lakes CA 93546

Mono County District Attorney
PO Box 2053
Mammoth Lakes CA 93546

(Persons/Organizations authorized to receive the information)

The following information:

- a. All health information pertaining to my medical history, mental or physical condition and treatment received; OR
 Only the following records or types of health information (including any dates):

b. I specifically authorize release of the following information (check as appropriate):

- Mental health treatment information _____ (initial)
 Alcohol/drug treatment information _____ (initial)

Purpose of requested use or disclosure: Patient request; OR Other:

Limitations, if any:

This authorization expires on:

- I may refuse to sign this authorization. My refusal will not affect my ability to obtain treatment or payment or eligibility for benefits.
- I may inspect or obtain a copy of the health information that I am being asked to allow the use or disclosure of.
- I may revoke this authorization at any time, but I must do so in writing and submit it to the following address:

My revocation will take effect upon receipt, except to the extent that others have acted in reliance upon this authorization.

- I have a right to receive a copy of this authorization.
- Information disclosed pursuant to this authorization could be redisclosed by the recipient. Such redisclosure is in some cases not prohibited by California law and may no longer be protected by federal confidentiality law (HIPAA). However, California law prohibits the person receiving my health information from making further disclosure of it unless another authorization for such disclosure is obtained from me or unless such disclosure is specifically required or permitted by law.



Date: _____ Time: _____ AM - PM

Signature: _____
(patient/legal representative)

If signed by a person other than the patient, indicate relationship: _____

Print name: _____
(legal representative)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONO 100 THOMPSONS WAY P O BOX 1037 MAMMOTH LAKES CA 93546 MAMMOTH LAKES BRANCH	<i>FOR COURT USE ONLY</i>
PEOPLE OF THE STATE OF CALIFORNIA <p style="text-align: center;">v.</p> DEFENDANT:	
<p style="text-align: center;">(PENAL CODE § 1001.36)</p> MENTAL HEALTH DIVERSION ADVISAL AND WAIVER OF RIGHTS	CASE NUMBER:

Defendant: Initial each statement below.

1. ____ I am the defendant in the above-captioned case, which charges the following misdemeanor/felony violation(s) for which I am requesting Mental Health Diversion (Pen. Code § 1001.36):
 Charges: _____
2. ____ I have been advised of, understand, and waive my right to a speedy trial in this case.
3. ____ I understand that Mental Health Diversion, if granted, will be no longer than two years and will include a treatment plan/program, terms and conditions imposed by the court, including but not limited to a victim restitution order, protective order, stay-away order, and/or firearm prohibition order, where applicable.
4. ____ I understand that if Mental Health Diversion is granted, failure to comply with the terms and conditions imposed by the court may result in reinstatement of criminal proceedings.
5. ____ I understand that if I am arrested or charged with a new criminal offense while on Mental Health Division, criminal proceedings in this case may be reinstated and I may be found no longer eligible for Mental Health Diversion.
6. ____ I understand that if I perform satisfactorily during the period of Mental Health Diversion, the court will dismiss the criminal charges. I understand that, upon successful completion of Mental Health Diversion and dismissal of the charges, the arrest upon which the diversion was based shall be deemed to have never occurred, except as stated in Statement 7, below.
7. ____ I have been advised and understand that, regardless of my successful completion of Mental Health Diversion, the arrest upon which the diversion was based may be disclosed by the Department of Justice in response to a peace officer application request, and that I am still obligated to disclose the arrest in response to a direct question contained in a questionnaire or application for a position as a peace officer, as defined in Pen. Code § 830.
8. ____ I have been advised of, understand, and waive my psychotherapist /patient privilege, and agree to sign any necessary waiver and consent form(s) including Release of Information pursuant to HIPAA.

Date: _____

 (Attorney's Signature)

MENTAL HEALTH DIVERSION ADVISAL AND WAIVER OF RIGHTS

CASE NUMBER:

I declare under penalty of perjury under the laws of the State of California that I have read and understand each of the foregoing statements, and by initialing each statement I agree to their content and to the Terms and Conditions of Diversion.

Date: _____

(Defendant's Signature)

Mailing Address/Telephone/E-mail

INTERPRETER'S STATEMENT

I, having been duly sworn or having a written oath on file, certify that I truly translated this form to the defendant in the following language: Spanish Other (specify): _____

Date: _____

(Interpreter's Name)

(Interpreter's Signature)