

San Luis Obispo County Superior Court Department 10

Guidelines for Consideration of Motions for Mental Health Diversion pursuant to Penal Code § 1001.36

Once the assigned individual trial court has made a prima facie finding of eligibility under Penal Code section 1001.36, subd. (e), the case will be assigned to Department 10 for hearing to determine eligibility and suitability for mental health diversion pursuant to Penal Code section 10001.36, subds. (a)-(c).

The court will not hear a motion for mental health diversion unless a properly noticed motion including an alienist report has been filed and served in advance of the hearing and the defendant has been screened by the County Behavioral Health Department (“CBH”) and by the Probation Department.

Pursuant to Penal Code section 1001.36, participation in mental health diversion is within the Court’s discretion. (Pen. Code, § 1001.36, subd. (a).) In addition to the requirements outlined in the statute, the Court also must be “satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant.” (Pen. Code, § 1001.36, subd. (f)(1)(A)(i).)

When a defendant qualifies for mental health treatment to be administered by CBH, CBH shall prepare a proposed treatment plan for the Court’s consideration.

When the defendant does not qualify for mental health treatment to be administered by CBH, the defendant must submit a detailed treatment plan which complies with the guidelines below for consideration by the Court. **The court will not hear a motion for diversion unless a proposed treatment plan complying with these guidelines has been filed and served in advance of the hearing.**

- (1) The treatment plan must be prepared by the provider and clearly describe the identity and credentials of the treatment entity, if applicable, and the individual who is responsible for providing treatment.
- (2) The proposed treatment plan must address all areas identified for treatment in the alienist report. In the event multiple treatment providers will be needed, each provider shall prepare a proposed plan that addresses the treatment they will provide.
- (3) The proposed treatment plan may include: the treatment goals; interventions such as individual and group therapy; individual and group counseling / stabilization skills; psychiatric appointments; medication monitoring; case management; drug testing; or any other treatment to be provided that will address the “specific specialized mental health treatment needs of the defendant,” as identified by the alienist.
- (4) The proposed treatment plan shall set forth the frequency of the proposed treatment components, such as therapy or counseling sessions and provider appointments. Any drug testing protocols shall be described in detail, to include the substances to be tested, the frequency of testing, whether testing will be random, and whether the tests will be observed.
- (5) In presenting the treatment plan, the treatment provider shall describe the defendant’s current progress in treatment if enrolled.
- (6) The treatment provider shall state their willingness to provide progress reports to defense counsel for consideration by the Court and opposing counsel, including but not limited to, compliance with the treatment plan; the dates of attendance at counseling, therapeutic, and medical appointments; failures to attend counseling, therapeutic, or medical appointments; positive tests or relapses; dilute tests; and any other behavior or conduct contrary to the treatment plan components. (See Pen. Code, § 1001.36, subd. (f)(1)(B).)

If approved, the proposed treatment plan will be attached to the Order Re Conditions of Release for Mental Health Diversion which the defendant must submit to the court along with the Mental Health Diversion Agreement / Conditions of Treatment Form.