

Mental Health Diversion (MHD) for Out-of-Custody Defendants

A Guide for Defense Attorneys

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1 INTRODUCTION

This guide provides defense attorneys with information on how to obtain clinical documentation and reports to support their client's MHD Petition and ongoing MHD participation. It is important to note that County Health Departments do not provide "Mental Health Diversion Evaluations," and requesting this from providers, programs and behavioral health access centers is likely to cause confusion. This guide provides you with the steps you need to take and/or advise your client to take to link to a treatment provider for clinically appropriate services and support with reports and documentation necessary for MHD participation.

2 MHD QUALIFYING DIAGNOSIS¹

Defense attorneys can obtain evidence of a qualifying Mental Health Diversion diagnosis through one of the following methods:

- **Medical Records:** Obtain from your client's current and/or past treatment providers to find evidence of a qualifying DSM 5 diagnosis.
- **Client-Sourced Documentation:** Ask your client to obtain documentation of a DSM-5 diagnosis from a past and/or current treatment provider.
- **No Available Records?** Your client will need to get linked to a treatment provider to obtain documentation of a qualifying diagnosis, if one exists. **The first step you and your client will need to take depends on your client's health insurance.**

3 INSURANCE TYPE AND TREATMENT LINKAGE

Ask your client what type of insurance they have.

- **Private Insurance:** Benefits and access to care is defined by the client's private insurance provider and insurance type. Your client will need to contact their insurance provider to identify what treatment resources are available. Clients with private insurance do not typically qualify for services provided by the County.
- **Medi-Cal:** Clients with active Medi-Cal benefits can access services via their county of residence's Behavioral Health Access Center (see attached guide for the Bay Area).
 - If unsure of their county of residence, your client can check with nearest Medi-Cal Office.

¹ CA PC §1001.36(b)(1) defines a **qualifying MHD diagnosis** as, "a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM -5)."

Excluded Diagnoses: Pedophilia and Antisocial Personality Disorder

- Residency changes can only be done through the County Social Services Department.
- ***Note*** that Behavioral Health Access Centers do not provide medical records, diagnosis or write court reports.
- **No Insurance:** Clients can apply for Medi-Cal in their intended county of residence (see attached Medi-Cal Information)

4 COORDINATION & COLLABORATION WITH TREATMENT PROVIDERS

After a client is linked to care, you will need to collaborate with their treatment provider to explain what MHD is and how they can support their client in participation. It is recommended that you share the following information:

- MHD's risks and benefits for the client.
- Reporting requirements
- Templates for court reporting (see appendices).
- Alternative options if the provider is unwilling to provide reports.
- Upcoming court dates and needed documentation.

Many treatment providers will be unfamiliar with Mental Health Diversion and will have questions and concerns about providing court reports. Attorneys may wish to meet with the provider and the client to answer questions and concerns and develop a collaborative plan for the client's MHD participation. Common concerns include:

- **Confidentiality & Privacy:** Balancing HIPAA compliance with court requirements.
- **Legal Implications:** Worry about the impact of reports on the client's legal standing.
- **Therapeutic Relationship:** Fear that reporting may erode trust with clients.
- **Court's Understanding of Mental Health:** Concerns that legal professionals may misinterpret clinical information.
- **Recommendations & Consequences:** Hesitation in reporting compliance or relapse issues due to potential harm that could come to the client including remand.

5 SUMMARY

Defense attorneys play a crucial role in supporting clients who may qualify for Mental Health Diversion (MHD) under Penal Code 1001.36. Rather than focusing on requesting MHD eligibility evaluations—which may not align with the perspective or processes of behavioral health providers—attorneys should prioritize collaboration with existing treatment providers. By working alongside these professionals or assisting clients in connecting to appropriate behavioral health services, attorneys can facilitate meaningful engagement in treatment. This

approach enhances the likelihood of their client’s successful participation in MHD while ensuring clients receive the care they need. Strengthening these partnerships and emphasizing treatment planning over court-ordered assessments will lead to more effective diversion outcomes.



6 TEMPLATES

The templates included in this guide’s appendix are available as optional tools for community providers but are not mandatory for use. These templates are designed to assist providers in structuring their reports to support MHD cases effectively. Defense attorneys can share these templates with providers as a helpful resource to guide them in drafting reports that align with court requirements. However, providers have the flexibility to use their own formats as long as they include the necessary information to support their client's participation in MHD.

6.1 MHD ELIGIBILITY REPORT TEMPLATE

Mental Health Diversion Eligibility Report

Court Date:

Department:

Provider Information:

Provider Name:

License/Certification Type & Number:

Agency/Organization (if applicable):

Email:

Client Information:

Full Name:

Date of Birth:

Court Case Number(s): (if available)

Defense Attorney Name & Contact:

Your Honor,

This report serves as verification of (insert client's name) DSM-5 Diagnosis(es).

- **Primary Diagnosis:**
- **Secondary Diagnosis (if applicable):**
- **Date of Diagnosis:**
- **Assessment Methodology (e.g., clinical interview, records review, psychological testing):**

Sincerely,

(Provider Name & credentials)

Provider Organization

6.2 MHD SUITABILITY REPORT TEMPLATE

Mental Health Diversion Suitability Report

Prepared by:

Department:

Court Date:

Report Purpose: Pursuant to California Penal Code § 1001.36, to inform the San Francisco Superior Court's Mental Health Diversion eligibility and suitability determination.

Note: This report does not opine on public safety risk.

Your Honor:

Based on an assessment of the defendant conducted on (insert date), I attest to the following:

There is available treatment for the defendant's qualifying diagnosis(es).

☐ Yes

☐ No

☐ Other: _____

The Defendant has given their informed consent to participate in and comply with treatment as a condition of Mental Health Diversion.

☐ Yes

☐ No

The defendant has signed the MHD authorization allowing me, his treatment provider to release Personal Health Information as part of MHD participation.

☐ Yes

☐ No

Recommendations:

☐ Because the defendant declined to sign a Release Information form for MHD, I/my organization cannot disclose their personal health information to the court.

☐ Because I/my organization do/does not offer treatment for the defendant's qualifying diagnosis, I/my organization unable to recommend MHD.

☐ The following treatment plan is recommended as a condition of my client's participation in Mental Health Diversion:

6.3 MHD TREATMENT PLAN TEMPLATE

Mental Health Diversion Treatment Plan

Client Name:

DOB:

County of Residence:

Insurance Coverage:

Health Plan (if relevant):

Treatment Providers:

Enhanced Care Manager (if applicable): Name and Contact Information

Behavioral Health Case Manager/Therapist: Name and Contact Information

Conservator (if applicable): Name and Contact Information

Other Provider: Name and Contact Information

Qualifying Diagnosis(es):

Primary Diagnosis:

Secondary Diagnosis(es):

Other Clinically Relevant Conditions

(i.e. chronic illnesses, pregnancy, traumatic brain injury, etc)

The following treatment plan identifies clinically appropriate goals, treatment providers, and accountability measures, and ensures the client is connected to care that promotes their stability and meets the requirements of Penal Code § 1001.36.

Brief History

This section should include psych history including meds, hospitalizations, treatment, etc.

Tips: **remove before submitting to the court* (Treatment plan sections can include more than one problem. Add and remove Goals, Objectives and Interventions as needed. Remove section if not relevant to client, e.g. patient doesn't have a substance use disorder)**

****Requests made by the client to modify this plan, if any, are documented in the relevant sections.****

Mental Health

Problem:

Goal:

Objectives & Interventions:

- **Objective:**
 - **Intervention:**
- **Objective**
 - **Intervention:**
- **Objective:**
 - **Intervention:**

Substance Use

Problem:

Goal:

Objectives & Interventions:

- **Objective:**
 - **Intervention:**
 - **Intervention:**
- **Objective:**
 - **Intervention:**
- **Objective:**
 - **Intervention:**
- **Objective:**
 - **Intervention:**

Physical Health

Problem:

Goal:

Objectives & Interventions:

- **Objective:**
 - **Intervention:**
- **Objective:**
 - **Intervention:**

Housing

Problem:

Goal:

Objectives & Interventions:

- **Objective:**
 - **Intervention:**
- **Objective:**
 - **Intervention:**
 - **Intervention:**

Benefits & Finances

Problem:

Goal:

Objectives & Interventions:

- **Objective:**
 - **Intervention:**
 - **Intervention:**
- **Objective:**
 - **Intervention:**

Employment & Education

Problem:

Goal:

Objectives & Interventions:

- **Objective:**
 - **Intervention:**
- **Objective:**
 - **Intervention:**

Social Supports

Problem:

Goal:

Objectives & Interventions:

- **Objective:**
 - **Intervention:**
- **Objective:**
 - **Intervention:**

Legal

Problem:

Goal: .

Objectives & Interventions:

- **Objective:**
 - **Intervention:**
- **Objective:**
 - **Intervention:**

6.4 MENTAL HEALTH DIVERSION TREATMENT PLAN EXAMPLE

Mental Health Diversion Treatment Plan

Patient Name: John Doe

DOB: 01/01/1988

Plan Date: [Insert Date]

MENTAL HEALTH

Problem: PTSD

Goal: Improve emotional stability and reduce PTSD symptoms to support community reintegration.

Objectives and Interventions:

- **Objective:** Engage in weekly trauma-informed therapy.
- Intervention: Refer to a licensed mental health provider for TF-CBT or EMDR.
- **Objective:** Maintain medication adherence with $\geq 90\%$ consistency.
- Intervention: Coordinate psychiatric evaluation and follow-up care.
- **Objective:** Practice at least 3 coping strategies to manage PTSD symptoms.
- Intervention: Support development and use of coping tools in therapy sessions.

Substance Use

Problem: John Doe has a history of opioid dependence and is at high risk for relapse post-release.

Goal: Achieve and maintain sobriety from all non-prescribed opioids and substances.

Objectives and Interventions:

- **Objective:** Initiate or continue MAT upon release.
- Intervention: Link to a MAT provider and ensure bridge prescription at discharge.
- **Objective:** Participate in outpatient SUD treatment within 7 days.
- Intervention: Refer to a dual-diagnosis outpatient treatment program.
- **Objective:** Attend at least 3 recovery group meetings per week.
- Intervention: Provide support and verify attendance through peer navigator.

Physical Health

Problem: John Doe is HIV-positive and requires consistent medical management.

Goal: Maintain viral suppression and prevent complications related to HIV.

Objectives and Interventions:

- **Objective:** Attend a primary care appointment within 7 days.
- Intervention: Refer to an HIV specialty clinic for continuity of care.
- **Objective:** Adhere to ART regimen daily.
- Intervention: Provide 30-day ART supply at discharge and confirm adherence with case manager.

Housing

Problem: John Doe has no long-term, stable.

Goal: Secure safe, stable, and recovery-oriented housing.

Objectives and Interventions:

- **Objective:** Work with case manager to develop a permanent housing plan.
 - Intervention: Assign a housing navigator to coordinate with programs.
- **Objective:** Begin working with case manager on permanent supportive housing application.
 - Intervention: Refer to a recovery housing provider with a confirmed intake date.
- **Objective:** Remain housed for at least 90 consecutive days.
- Intervention: Case manager to conduct weekly housing stability check-ins.

Benefits & Finances

Problem: John Doe lacks active benefits and financial stability.

Goal: Apply for Medi-Cal and secure basic income support.

Objectives and Interventions:

- **Objective:** Work with Jail Health Eligibility team to submit a Medi-Cal application prior to release.
- Intervention: Coordinate with jail enrollment staff to submit application.
- **Objective:** Apply for SSI/GA benefits within 30 days of release from jail.
- Intervention: Work with your case manager on application.

Employment & Education

Problem: John Doe is unemployed and has limited education and work experience.

Goal: Engage in education and vocational programming to build employment readiness.

Objectives and Interventions:

- **Objective:** Work with case manager or vocational support staff to assess for employment readiness.
- Intervention: Refer to reentry job training program.
- **Objective:** Enroll in GED or adult education within 60 days.
- Intervention: Connect to local adult education services.
- **Objective:** Submit 3 job applications per week after readiness program.
- Intervention: Assign employment counselor to assist with applications.

Support Systems

Problem: John Doe has limited positive support systems and a history of isolation.

Goal: Strengthen pro-social supports and recovery networks.

Objectives and Interventions:

- **Objective:** Identify two positive support people or mentors.
- Intervention: Complete support mapping with case manager.
- **Objective:** Attend weekly peer-led support groups.
- Intervention: Connect with community-based NA/AA.

Legal

Problem: John Doe's participation in treatment is a condition of his voluntary participation in Mental Health Diversion.

Goal: Maintain full compliance with diversion requirements.

Objectives and Interventions:

- **Objective:** Attend all appointments and treatments.
- Intervention: Case Manager/therapist to monitor and report to the court on compliance.
- **Objective:** Maintain contact with treatment team.
- Intervention: Schedule and confirm appointments/drop-in hours
- **Objective:** Submit monthly progress reports to the Court.
- Intervention: Clinician/case manager to provide regular reports to the court and maintain contact with the defense attorney regarding court dates.

6.5 MENTAL HEALTH DIVERSION PROGRESS REPORT TEMPLATE/EXAMPLE

MENTAL HEALTH DIVERSION PROGRESS REPORT

Participant's Name: [Full Name]

Court Date: [MM/DD/YYYY]

Treatment Provider's Name & Credentials:

TREATMENT GOALS & PROGRESS

Goal 1: (Ex.: Symptom Management & Stabilization)

- **Objective:** Reduce symptoms related to [diagnosed condition], including [list key symptoms such as anxiety, depression, mood instability, etc.].
- **Treatment to Support Goal Achievement:** [Individual and group treatment]
- **Progress:** [Fully met / Partially met / Not met]
- **Details:** [Describe progress, such as decreased severity of symptoms, improved emotional regulation, better stress management, etc.]

Example:

"The participant has demonstrated increased ability to recognize and manage symptoms of anxiety. They report a reduction in panic episodes from 5 per week to 2 per week. However, they continue to experience difficulty sleeping, which remains an area for continued focus."

Goal 2: (Ex.: Medication Adherence & Treatment Compliance)

- **Objective:** Consistently follow prescribed medication regimen and attend scheduled treatment sessions.
- **Treatment/Actions to support goal achievement:** [Monthly meeting with prescriber, daily meds at clinic, etc]
- **Progress:** [Fully met / Partially met / Not met]
- **Details:** [Describe compliance with medication, therapy attendance, and engagement in treatment.]

Example:

"The participant has attended 10 out of 12 scheduled therapy sessions and has consistently taken prescribed medication. They report improved focus and mood stability. However, they missed two appointments without prior notice, which has been discussed with them."

Goal 3: (Ex.: Coping Skills & Emotional Regulation)

- **Objective:** Develop and use effective coping mechanisms to manage stress, triggers, and emotional responses.

- **Treatment/Actions to support goal achievement:** [DBT therapy with individual therapist, daily exercise, support groups]
- **Progress:** [Fully met / Partially met / Not met]
- **Details:** [Describe improvements in coping skills and areas still needing work.]

Example:

"The participant has learned and practiced grounding techniques to manage distressing thoughts. They successfully used deep breathing and journaling to navigate a recent stressful event. However, they continue to struggle with setting boundaries in interpersonal relationships."

Goal 4: (Ex.: Social & Occupational Functioning)

- **Objective:** Improve relationships, maintain employment or engage in productive daily activities.
- **Treatment/Actions to support goal achievement:** [Taking classes to obtain GED, Participation in vocational training, part-time employment, etc]
- **Progress:** [Fully met / Partially met / Not met]
- **Details:** [Describe improvements in relationships, work stability, and daily responsibilities.]

Example:

"The participant has re-engaged with family members and reports improved communication. They have maintained part-time employment but struggle with time management, leading to occasional tardiness. Additional strategies for workplace success are being implemented."

Goal 5: (Ex.: Reduction of Risk Factors)

- **Objective:** Minimize behaviors that increase risk for relapse, legal involvement, or harm to self/others.
- **Treatment/Actions to support goal achievement:**
- **Progress:** [Fully met / Partially met / Not met]
- **Details:** [Discuss any substance use, self-harm, aggression, or other risk-related behaviors.]

Example:

"The participant has remained sober for the past three months and reports no incidents of self-harm or aggression. They have established a stronger support system and actively engage in self-care routines."

Goal 6: (Ex.: Maintain Recovery from Opioid Use)

- **Objective:** Develop alternative strategies for managing triggers that lead to substance use.
- **Treatment/Actions to support goal achievement:** [Attend NA and AA meetings at least once per day, remain compliant with buprenorphine]
- **Progress:** [Fully met / Partially met / Not met]

- **Details:** [Discuss any substance use, harm reduction efforts and/or activities that have helped the individual maintain sobriety]

Example:

"The participant has remained sober for the past three months and has been taking their suboxone as prescribed. They attend AA or NA meetings daily and sometimes twice a day on the weekends. They have established positive relationships with others in recovery which is helping them maintain their own sobriety."

CONCLUSION & RECOMMENDATION TO THE COURT

The participant is [**meeting / partially meeting / not meeting**] the requirements of their Mental Health Diversion treatment plan. Based on their progress:

- ☐ Then participant is participating in treatment, and it is recommended that they **continue** with their current treatment plan.
- ☐ The participant is moving to the next phase of their treatment plan due to their positive progress: (describe)
- ☐ The following additional interventions are recommended to provide the participant with additional support: (e.g., increased sessions, support services).
- ☐ The participant is currently experiencing challenges with treatment compliance and is working with their treatment provider to address these challenges.
- ☐ The participant is not currently compliant with treatment.

7 BAY AREA BEHAVIORAL HEALTH TREATMENT ACCESS

OVERVIEW

All California Counties are required to operate a 24/7/365 telephone referral line to ensure that their County Medi-Cal beneficiaries have around-the clock access to their behavioral health benefits. This number may be used by patients, their loved ones and others supporting the patient.

ALAMEDA

Alameda County Behavioral Health Access: 1-800-491-9091

Access is to the following services:

- Substance Use Disorder,
- Mental Health
- Forensic/Diversion

Alameda County Behavioral Health (ACBH) is a managed care plan contracted through the State of California Department of Health Care Services (DHCS) that provides behavioral health services to Alameda County residents who qualify for Medi-Cal insurance.

CONTRA COSTA

Behavioral Health Access Line: 1-888-678-7277

- Questions about mental health services and supportive recovery resources for substance use disorders.
- Assistance finding services.
- Insurance questions and referrals to low-cost and sliding scale services if uninsured.

George & Cynthia Miller Wellness Center - Behavioral Health
25 Allen St., Martinez, CA 94553
925-313-7940
Short-notice/same-day behavioral health appointments

MARIN

To Request a call: <https://www.marinbhhs.org/request-call>
Marin Access Line: (888) 818-1115

Services Provided by ACCESS

- General information about services and service alternatives

- Telephone screening to determine if consumer meets medical necessity criteria for Specialty Mental Health Services
- Substance Use Disorder Screening and Referrals
- Crisis screening and referrals
- Verification of eligibility
- Determination of appropriate level of care and provider selection

SANTA CLARA

Santa Clara Behavioral Health Call Center: 1 (800) 704-0900

The call center staff will connect you with a referral to address behavioral health needs. This may include a referral to a county mental health or substance use treatment program, or a community-based organization.

The call center's primary function is to provide a 24/7/365 telephone service which offers:

- Screenings for mental health and substance abuse treatment needs
- Substance use treatment (SUT) assessment appointments offered
- Referrals to outpatient MH, and outpatient, residential, and Detox SUTS services.
- Authorization for Fee-for-Services Medi-Cal visits
- Information on Assisted Outpatient Treatment (AOT)
- General information about MH or SUTS services

SAN MATEO

San Mateo Behavioral Health & Recovery Services Access: (800) 686-0101

For assistance in finding mental health and/or substance use services for someone who may be experiencing a mental illness and/or substance use condition, or for someone you are concerned about, call the **Behavioral Health and Recovery Services (BHRS) ACCESS** Call Center for information, an assessment and a referral based on individual needs. BHRS serves San Mateo County residents who have or are eligible for Medi-Cal, or those who are uninsured.

SAN FRANCISCO

San Francisco operates both a Behavioral Health Access Center and a Behavioral Health Access line. More information can be found here: [BHAC](#)

San Francisco Behavioral Health Access Line: [888-246-3333](#)

The **Behavioral Health Access Center** helps connect people to the mental health and substance use services that best meet their needs, including outpatient programs, residential treatment, medication support, pharmacy services, and more.

Location:

1380 Howard Street
at 10th), 1st Floor
San Francisco, CA 94103

Services include:

- Screening and referrals to care
- Access and navigation support for mental health and substance use services
- Pre-treatment support such as drop-in support groups
- Connection to pharmacy services and Medications for Opioid Use Disorder (MOUD)
- Medi-Cal enrollment and advocacy

Other services:

The team speaks English, Spanish, Cantonese, Mandarin, and Vietnamese. Other languages are available via an interpreter service.

Drop-in Hours

Services are provided on a drop-in basis seven days a week.

SOLANO**Solano County Access Line: 1-800-547-0495**

Solano SUD Services Access Line: 1-855-765-9703 (Beacon Health Services)

The purpose of the Access Line is to make sure you are being referred to the appropriate services based on your individual needs. The Access representative will work with you to find out if you have mental health needs, substance use treatment needs, or some other needs and provide a referral so you can start accessing care.

A Solano Access representative will greet you and begin the conversation by first determining if you are experiencing an emergency that requires an immediate response. If that is not the case, the representative will ask questions such as:

- Demographic information (name, date of birth, gender, etc.)
- Insurance information (Solano County Behavioral Health programs specifically serve those with Solano County Medi-Cal, Medicare and the uninsured)
- Current mental health symptoms and/or substance use problems
- Information about how your life is being impacted
- An access screening can take up to 20-30 mins, depending on your needs

An Access screening can take up to 20-30 minutes, depending on your needs

8 MEDI-CAL

See the accompanying guide: [myMedi-Cal: How to Get the Healthcare You Need](#) for information on how to enroll in Medi-Cal and access your healthcare benefits.