

# SAN FRANCISCO COUNTY – MENTAL HEALTH DIVERSION PROCEDURES

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## I. PARTIES IDENTIFY ELIGIBLE CASES FOR DIVERSION AND DEVELOP AN MHD PETITION

### **(1) 1001.36 eligibility (Step One) reports:**

At any point in criminal proceedings before adjudication, defense counsel may refer their client for a 1001.36 eligibility report if they believe that their client may be eligible and suitable for MHD. A 1001.36 eligibility report evaluates whether the individual has been diagnosed with a qualifying DSM-5 mental health disorder in the past five years. The 1001.36 eligibility report should be ordered returnable to the **originating department**.

#### *In-Custody Clients*

Jail Health Services (JHS) completes all 1001.36 eligibility reports for clients in custody regardless of insurance type or county of residence. JHS clinicians will review the individual's medical records and complete any additional evaluation required to determine the presence of a qualifying DSM-5 diagnosis. Should the evaluation find a qualifying diagnosis, the clinician will identify the collaborative court(s) for which the client may be eligible. If there is an eligible diagnosis and no collaborative court is identified, the client should be referred to Department 15.

#### *Out-of-Custody Clients*

To obtain a 1001.36 eligibility report for an out-of-custody client, defense attorneys shall work with their client to obtain a report from an existing provider or support their client with connecting to a treatment provider who can provide an eligibility report once care is established. Medi-Cal beneficiaries may connect with a treatment provider through their County's Behavioral Health Access Center. Their contact information can be found online. Clients with private insurance will need to go through their health plan to determine service eligibility and identify a provider.

Upon receipt of a 100.36 eligibility report identifying the client as MHD eligible, the originating department will schedule the matter in Department 15 or in a different collaborative court for which the client is eligible, depending on clinical need and legal recommendation. All referrals should be calendared as a "Mental Health Diversion Referral", regardless of the department in which it is calendared.

Before appearing in a collaborative court, please provide a courtesy copy of the 1001.36 eligibility report to the assigned Assistant District Attorney.

### **(2) Treatment plans:**

Treatment plans must be designed to meet the specialized treatment needs of the defendant using existing resources. The treatment plan must address the symptoms of the DSM-5 diagnosis(es) causing, contributing, or motivating the criminal behavior charged in the diverted case. When necessary, wraparound support services should be included in the treatment plan to address underlying needs that

may pose barriers to a client's engagement in treatment (e.g., access to housing, transportation, food, childcare, primary healthcare, etc.).

## **In-Custody Clients**

### *Department 15*

- For in-custody defendants who are **Medi-Cal eligible** regardless of county of residence, treatment plans may be ordered from Jail Health Services (JHS). For clients with out-of-county Medi-Cal, the Pretrial MHD Case Manager will support care brokerage.
- For in-custody defendants with **private insurance** or those who are **ineligible for Medi-Cal**, treatment plans can be obtained from a public defender's social worker or from privately retained social workers.
- Upon receipt, please send a courtesy copy of the treatment plan to [BHS@sftc.org](mailto:BHS@sftc.org).

### *Department 8*

- For in-custody defendants **with San Francisco Medi-Cal**, treatment plans can be ordered from the Drug Court Treatment Center or Community Justice Center clinical team, respectively.
- For in-custody defendants **with out-of-county Medi-Cal** or **who are ineligible for Medi-Cal benefits**, treatment plans can be obtained from a provider in the defendant's county of origin with the support of the Pretrial MHD Case Manager, from the public defender's social worker or from privately retained social workers. Clients without Medi-Cal may also apply for Medi-Cal benefits while in custody.

### *Department 26*

- Treatment plans can be ordered from the Felton Institute treatment team. If the client is on probation for another case, the UCSF Citywide Probation team can provide the treatment plan.

## **Out-of-Custody Clients**

### *Department 15*

- For out-of-custody defendants **with** San Francisco Medi-Cal benefits who **are actively engaged in treatment outside of custody**, the client shall work with their treatment provider to provide a treatment plan.
- For out-of-custody defendants **with** San Francisco Medi-Cal benefits who **have not been previously connected to services**, clients should access the Department of Public Health's Behavioral Health Access Center (BHAC) at 1380 Howard Street, where they will be referred to a treatment provider. They can also call the BHAC Access Line at 888-246-3333.
- For out-of-custody defendants **without** San Francisco Medi-Cal benefits, treatment plans can be obtained from a treatment provider in their county of origin, from the public defender's social worker or from privately retained social workers.
- Upon receipt, please send a courtesy copy of the treatment plan to [BHS@sftc.org](mailto:BHS@sftc.org).

### *Department 8*

- For out-of-custody defendants **with** San Francisco Medi-Cal benefits, the client shall work with the Department 8 clinical team to provide a treatment plan. If they have an existing treatment provider outside of custody, the Department 8 clinical team may coordinate with the existing provider to provide a treatment plan.

- For out-of-custody defendants **without** San Francisco Medi-Cal benefits, treatment plans can be obtained from a treatment provider in their county of origin, from the public defender's social worker or from privately retained social workers.

#### *Department 26*

- Treatment plans can be ordered from the Felton Institute treatment team. If the client is on probation for another case, the UCSF Citywide Probation team can provide the treatment plan.

**NOTE: In order for a client to participate in MHD, they must be linked to a treatment provider who is willing and able to provide regular reports to the court on the client's progress in treatment. Reports may come from a case manager, residential treatment program staff, outpatient treatment providers, primary care providers, etc.**

Once a client has been connected to a treatment provider or a court-based clinical team, treatment plans should be calendared for return to the respective collaborative court. For in-custody defendants, please allow at least **two weeks** for calendaring the treatment plan return date. For out-of-custody defendants, please allow **four weeks** or more – enough time for the plans to be completed by the community provider or court-based clinical team.

#### **(3) Petitions:**

Once the treatment plan is received, counsel may file a formal petition for entry into MHD and schedule a petition hearing.

- To qualify for a hearing on an MHD petition, defendants must file the following in the department in which they are seeking MHD:
  - (1) evidence of a qualifying DSM-5 diagnosis under PC 1001.36,
  - (2) a treatment plan, and
  - (3) hard copies of a petition, police report(s) and RAP sheet.
- Hard copies of the relevant police report(s) and RAP sheet must be delivered to the relevant collaborative court department clerk *at least two weeks* before the hearing.
- In addition to service on opposing counsel, a courtesy copy of the petition shall be sent to the Assistant District Attorney assigned to the collaborative court to which the case is being referred.

**NOTE:** If a client in custody must be transported to court for a hearing in Department 15, the bailiff must be notified **by 3:30pm on the day prior to the scheduled court date.**

The prosecution may file an opposition in writing at least 24 hours before the hearing or oppose verbally.

Pursuant to Penal Code 1001.36(m), the prosecution may request an order from the court that the defendant be prohibited from owning or possessing a firearm until they successfully complete diversion because they are a danger to themselves or others pursuant to subdivision (i) of Section 8103 of the Welfare and Institutions Code. Should the court find that the prosecution has met its burden by clear and convincing evidence and grant this prohibition, it will order the Adult Probation Department to administer the Prohibited Person Relinquishment Form (PPRF) for MHD and report its findings to the court.

Until a defendant has been accepted to MHD, all bail motions and other pretrial motions must remain in the **referring department**.

## II. MONITORING TREATMENT PROGRESS AND COMPLIANCE

### PROGRESS REPORTS and APPEARANCES

Progress reports are used by the court to track a client's progress in treatment and to modify the client's treatment plan as necessary. Progress reports shall substantially address each element outlined in the client's treatment plan and may come from multiple providers or from a single case manager who oversees the client's comprehensive care. For out-of-custody individuals, **it is the responsibility of defense counsel** to notify their client's provider of upcoming court dates and to obtain and deliver reports to the court.

- 1) The court, in its discretion, may order a participant to appear at any scheduled progress report hearing. Appearances are expected to be in person, except when this would interfere with treatment or pro-social activities.
- 2) Prior to a hearing in Department 15, the client's treatment provider(s) shall submit a copy of the progress report to the [BHS@sftc.org](mailto:BHS@sftc.org) email address or via the Court's Access Database **at least 24 hours prior to the scheduled court date**.
  - o Prior to a hearing in Department 8, the client's court-based case manager shall submit a copy of the progress report via the Court's Access Database **at least 24 hours prior to the scheduled court date**. For clients with out-of-county Medi-Cal or private insurance, their provider shall email the progress report to the Department 8 Coordinator.
  - o Prior to a hearing in Department 26, the client's treatment provider shall submit a copy of the progress report via the Court's Access Database **at least 24 hours prior to the scheduled court date**.

### SUCCESSFUL COMPLETION

If the defendant performs satisfactorily in MHD, at the end of the period of diversion, the court shall dismiss the criminal charges on which the defendant was granted MHD. Upon a finding of successful completion of MHD, the corresponding arrest record(s) shall be sealed pursuant to Penal Code Section 1001.9 and corresponding stayaway and protective orders shall be vacated.

The court may conclude that the defendant has performed satisfactorily in MHD if the defendant has:

- 1) Substantially complied with the requirements of diversion (i.e., their treatment plan);
- 2) Avoided significant new violations of law unrelated to the defendant's mental health condition; and
- 3) Has a plan in place for long-term mental health care.

Upon request the court shall conduct a hearing to determine whether restitution, as defined in section 1202.4(f), is owed to any victim as a result of the diverted offense. The defendant must either pay any restitution before the case(s) is dismissed, or the defendant must accept a judgment for restitution before the case is dismissed. However, a defendant's inability to pay restitution due to indigence or mental

disorder shall not be grounds for denial of diversion or finding the defendant has failed to comply with the requirements of MHD.

Defense counsel must file a motion to dismiss and a motion to seal records based on successful completion of MHD. The motions must address the criteria outlined in the statute for successful completion (see above). Motions must be filed in the department in which the client is participating in MHD, and a courtesy hard copy must be provided to the department's clerk. These motions must be filed at least ten days in advance of the court date during which the counsel will move for successful completion, dismissal and sealing.

### **TERMINATION, MODIFICATION, OR REFERRAL FOR CONSERVATORSHIP**

If any of the following circumstances exists, the court shall, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether criminal proceedings should be reinstated, whether treatment should be modified, or whether the defendant should be referred to the conservatorship investigator to initiate conservatorship proceedings:

- 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) Based on the opinion of a qualified mental health expert, the court deems appropriate either (1) the defendant is performing unsatisfactorily in the assigned program, or (2) the defendant is gravely disabled as defined by Welfare and Institutions Code section 5008(h)(1)(B).

The court may do any of the following:

- a) Allow diversion to proceed;
- b) Modify and/or increase required treatment;
- c) Order an investigation regarding conservatorship to commence; or
- d) Terminate diversion and reinstate criminal proceedings.