

**Superior Court of California
County of Solano**

**Rule 2 – Criminal and Traffic Infraction Cases
PART ONE: Rules Applicable to Misdemeanors and Felonies**

2.1 APPLICATION OF RULES

The rules in Part One of Rule 2 apply to all felony and misdemeanor criminal cases pending on, or filed on or after, January 1, 1998.

(Rule 2.1 amended effective January 1, 2013; adopted effective January 1, 1998; previously amended effective January 1, 2010.)

2.2 DIRECT CALENDARING OF CRIMINAL CASES

When a criminal case is filed either by complaint or indictment, the matter shall be assigned, after arraignment, to one judicial officer for all purposes. All criminal cases shall be heard first in an arraignment department of the court and from that department the case shall be assigned to one of the judicial officers in the Criminal Division of the court and the parties shall be notified in open court and on the record of the name of the judicial officer so assigned. The assignment to the judicial officer shall be deemed for all purposes.

If the parties are not notified of the assignment to one judicial officer for all purposes in open court, then the Clerk of the Court, after a judicial officer is selected, shall send a written notification to all parties by first class mail and file in the court file a verification of mailing.

(Rule 2.2 amended effective January 1, 2013; adopted effective January 1, 1998; previously amended effective January 1, 2010.)

2.3 PROCEDURE

a. PETITIONS PER PENAL CODE SECTION 1203.4 AND 1203.4a

Any defendant wishing to file a petition for relief per Penal Code sections 1203.4 or 1203.4a and who wishes to have their costs waived shall file a completed financial declaration on a form designated by the court. The form shall be filed concurrently with the petition.

(Subd. (a) adopted effective January 1, 2013.)

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b. ORDERS SHORTENING TIME

Regarding pretrial motions governed by Rule of Court 4.111, when good cause exists, the court may prescribe a shorter time for the service and filing of a notice of motion and supporting papers *sua sponte* or if the party seeking to shorten the time files an *Application for Ex Parte Order Shortening Time* with the court. A party filing an *Application for Ex Parte Order Shortening Time* must notify all parties no later than 10:00 a.m. the court day before the ex parte appearance, absent a showing of exceptional circumstances that justify a shorter time for notice. Notice may be given by telephone. The application shall be accompanied by an affidavit or declaration setting forth facts showing good cause for the order and showing that notice was given to each party of the ex parte hearing. The application shall also be accompanied by a proposed order, as well as by the notice of motion and supporting papers.

(Subd. (b) adopted effective July 1, 2014.)

(Rule 2.3 amended effective July 1, 2014; adopted effective January 1, 2013; prior Rule 2.3, adopted effective January 1, 1998, repealed effective January 1, 2013.)

2.4 DIVERSION

a. MENTAL HEALTH DIVERSION

The procedures and policies contained in the Mental Health Diversion Procedures and Policies in the Appendix to Rule 2 shall be followed for all mental health diversions in felony and misdemeanor matters.

(Rule 2.4 adopted effective July 1, 2019; former Rule 2.4 repealed effective January 1, 2013.)

2.5 – 2.49 [Reserved]

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**Rule 2 – Criminal and Traffic Infraction Cases
PART TWO: Felony Criminal Cases**

2.50 – 2.99 [Reserved]

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**Rule 2 – Criminal and Traffic Infraction Cases
PART THREE: Misdemeanor Cases**

2.100 – 2.149 [Reserved]

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**Rule 2 – Criminal and Traffic Infraction Cases
PART FOUR: Traffic Infraction Cases**

2.150 – 2.199 [Reserved]

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Rule 2 – Criminal and Traffic Infraction Cases

APPENDIX

**MENTAL HEALTH DIVERSION
PROCEDURES AND POLICIES**



SOLANO COUNTY SUPERIOR COURT

INTRODUCTION. California Penal Code **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.

ELIGIBILITY. The Court has broad discretion to grant or deny diversion. In exercising said discretion, the Court shall consider all of the following requirements:

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; said information should specifically detail “recent diagnosis” of the disorder.
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.
8. The Court shall consider whether defendant’s conduct in prior diversion or treatment programs suggest that defendant is now unsuitable.
9. If questions regarding defendant’s competence arise (pursuant to Penal Code section 1368, et.seq.), defendant may nonetheless place an incompetent defendant on diversion, provided that he/she is deemed “suitable”. Penal Code sections 1370(a)(1)(B)(iv) and 1370.01(a)(2).

Offenses not eligible for Mental Health Diversion:

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.

MENTAL HEALTH DIVERSION – PROCEDURES

A. Notice of motion. 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. The motion shall specify in detail:

- a. The mental disorder at issue, including diagnostic and treatment history of said disorder. If the defendant suffers from multiple or co-occurring disorders, the application shall so specify.
- b. A description of the nexus between defendant's mental disorder and the charged offense;
- c. The opinion of a qualified mental health expert indicating that the defendant's symptoms motivating the criminal behavior would respond to mental health treatment;
- d. A statement that the defendant consents to diversion and waives the right to a speedy trial;
- e. A statement that the defendant agrees to comply with treatment as a condition of diversion;
- f. A description of the proposed treatment plan. Said plan shall include, at a minimum, a discussion of:
 - i. Plan for receipt of medical / clinical treatment, including, if appropriate, plans for access to psychotropic medication
 - ii. Housing
 - iii. Insurance coverage / options for treatment
 - iv. Available support systems, including family and/or mentor support

B. Meet & confer prior to motion. Prior to hearing on the motion for diversion, defense counsel and prosecution shall meet and confer to determine:

- a. Whether the parties agree that diversion is appropriate;
- b. If there is no agreement, whether modifications of the treatment plan could lead to agreement for diversion.

C. Initial hearing on motion. The Court shall initially conduct a hearing to determine if the defendant has made a prima facie showing that he/she is suitable for consideration for mental health diversion. The Court shall find either:

- a. A *prima facie* basis for diversion has been established; and the Court further finds the defendant and suitable for MHD.

- b. A *prima facie* basis for diversion has not been established and the MHD is denied;
or
- c. A *prima facie* basis for diversion has been established, but the Court finds the defendant is not suitable for MHD.

If the Court finds that the defendant is suitable for MHD, it shall set a further hearing for defendant to present a treatment plan. If diversion is initially denied, the case shall continue as scheduled.

D. Diversion commencement hearing. The Court shall conduct a hearing to accept defendant's waivers and formally approve the diversion plan. 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 confidential section of the court file.

- a. **Approval of treatment plan.** The Court shall review the treatment plan and decide as follows:
 - i. 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. The defendant shall be ordered to return for a progress report hearing 30 to 90 days out on a MHD review calendar.
 - ii. If the treatment plan is **not suitable**: the Court shall order the defendant to get an updated plan and continue the hearing. 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 deny the motion for diversion and resume with the criminal proceedings.

E. MHD status conference. No less than 5 days prior to the date scheduled for progress report, the defense shall submit a progress report which shall describe, in detail, all progress made on each specified element of the treatment plan. The Court shall retain the treatment plan in the confidential section of the court file. 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;

F. Termination of Diversion or Modification of Treatment

- a. **Motion to Terminate Diversion.** 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).

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.

G. Completion of MHD. Upon successful completion of all terms and conditions of diversion, the Court shall dismiss the matter pursuant to Penal Code section 1001.36.

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