



MENTAL HEALTH DIVERSION

PC 1001.36 Overview & Analysis

Danger Will Robinson Danger



When the Stakes Are High

Deterrence
and Conflict
among
Major Powers

Vesna Danilovic



An E-mail



From: De De Scrivner-Bosuego <dedeatvallejotogether@gmail.com>

Date: May 19, 2020 at 11:00:26 PM PDT

To: Lindsey Hall <Lindsey.Hall@yolocounty.org>

Subject: You killed Maria Guevara

We told you she needed in patient mental health program!!!!!!!!!!!!!!!!!!!!!!

She was a danger to herself and others!!!!!!!!!!!!!!!!!!!!!!

The mental health system is broken and Maria is dead!!!!!!!!!!!!!!!!!!!!!!

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My Reply

Dear Ms. Scrivner-Bosuego,

I am so sorry about the tragic loss of Ms. Guevara. I know this has devastated the Vellejo community as well as folks beyond that community. The Solano D's Office asked us to handle this case because District Attorney Krishna Abrams had a conflict since she was friends with Ms. Guevara. I decided to handle it myself because I am very involved with our amazing Mental Health Court (see our website below – Innovative Programs). I have had contact with Solano NAMI members about how our Mental Health Court operates.

I objected to the court granting the public defenders request to grant Ms. Guevara mental health diversion because I felt she need much more structure and a much more robust treatment plan.



FOCUS OF THIS WEBINAR:



1. THE 6 CORE CRITERIA OF ELIGIBILITY
2. THE PRIMA FACIE SHOWING
3. TREATMENT REQUIRMENTS
4. TERMINATION
5. SUCCESSFUL COMPLETION



Eligibility Criteria @ A Glance

- Diagnosed Mental Disorder from the most recent edition of the DSM by
“qualified mental health expert”
- The Court “is satisfied” that the defendant’s mental disorder was a “significant factor” in the commission of the charged offense. PC 1001.36(b)(1)(B)
- In the opinion of a mental health expert *Symptoms of the mental disorder motivating the criminal behavior* would respond to mental health treatment. PC 1001.36(b)(1)(C)



Eligibility Criteria @ A Glance

- Defendant must:
 - Consents to diversion AND
 - Waives speedy trial right OR
 - If incompetent to stand trial then diverted per PC 1370(a)(1)(b)(iv). PC 1001.36(b)(1)(D)
- Defendant agrees to comply with treatment as a condition of diversion. PC 1001.36(b)(1)(E)
- Defendant will not pose an unreasonable risk of danger to public safety as defined in PC 1170.18 if treated in the community. PC 1001.36(b)(1)(F)

Mental Disorder



- Anything in the Diagnostic & Statistical Manual, 5th Edition
 - Except:
 - Borderline Personality Disorder
 - Antisocial Personality Disorder
 - Pedophilia
- Evidence of mental disorder shall be supplied by the defense
 - Reasons why we don't see too many referrals – it takes work!
- Diagnosis must be recent
- Diagnosed by a *qualified mental health expert*

WHAT IS A QUALIFIED MENTAL HEALTH EXPERT?



EXAMPLES:

- Permitted by license to diagnose mental disorders, &
- Has training and experience ruling out borderline personality disorder, antisocial personality disorder & Pedophilia
- LCSWs?

Mental Disorder = “Significant Factor” in Charged Offense



- “Significant factor” defined as “the defendant’s mental disorder substantially contributed to the defendant's involvement in the commission of the offense”
- But for the mental illness, the defendant would not be committing the offense
- May offenses are intra-familial
- The court may rely upon “relevant and credible evidence”

Symptoms of the mental disorder
motivating the criminal behavior
would respond to treatment



CONSENT & WAIVER



- Defendant must consent to diversion
- Defendant must waive right to speedy trial
 - Don't assume this element just because counsel requests diversion. Ask for the defendant's **PERSONAL WAIVER** on the record.

AGREEMENT TO TREATMENT



-Defendant must also AGREE TO ALL ASPECTS OF TREATMENT including medication compliance.

-Terms & conditions of treatment should be in writing and acknowledged by defendant like a waiver of rights form in a criminal disposition.

UNREASONABLE RISK OF DANGER



- As defined in PC 1170.18 *if treated in the community*
 - BEWARE: This limitation may not be required if INPATIENT TREATMENT PROPOSED

PC 1170.18



“unreasonable risk of danger to public safety” means an unreasonable risk that the petitioner will commit a new violent felony within the meaning of clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667.

EXCLUDED OFFENSES



- Murder or voluntary manslaughter
- 290 registerable offenses (except PC 314)
- Rape
- Lewd or lascivious act on a child under 14 years of age

EXCLUDED OFFENSES



- Assault w/ intent to commit rape, sodomy or oral copulation in violation of PC 220
- Rape or sexual penetration in concert in violation of PC 264.1
- PC 288.5
- PC 11418(b) or (c)

The Prima Facie Showing



The words “prima facie” mean literally, “at first view,” and a prima facie case is one which is received or continues until the contrary is shown and can be overthrown only by rebutting evidence adduced on the other side. *Maganini v. Quinn* (1950) 99 Cal.App.2d 1 citing *Frank Moline Co. v. Kleinberger*, 108 Cal.App. 60, 290 P. 1042.

The Prima Facie Showing



- Discretionary
- Hearing
- Informal
 - Argument
 - Offers of proof
 - Hearsay

BUT! The call to question is . . .



...WHETHER THE MINIMUM
REQUIREMENTS CAN BE MET

AND

WHETHER THE DEFENDANT &
THE OFFENSE ARE SUITABLE
FOR DIVERSION

PROGRAM OF TREATMENT



Before approving a proposed treatment program, the court shall consider the:

- Request of prosecution
- Request of defense
- Needs of defendant
- Interests of the community

PROGRAM OF TREATMENT



- Inpatient OR outpatient
- Will meet the specialized mental health treatment needs of the defendant
- Defendant may be referred to a program of MH treatment utilizing existing inpatient or outpatient resources

PROGRAM OF TREATMENT



- Mental Health Services are provided *only*:
 - To the extent resources are available AND
 - Defendant is eligible for those services
- Provider of MH treatment shall provide “regular” reports on def. progress in treatment.

DIVERSION TERMINATION

- Diversion “shall be no longer than two years.”



DIVERSION TERMINATION



If any of the following circumstances exist [PC 1001.36(d)1-4]:

- Def. charged w/ misdemeanor, that misdemeanor reflects def. “propensity for violence” & that misdemeanor was committed during diversion. Or...
- Def. charged w/ felony & that felony was committed during diversion OR

DIVERSION TERMINATION



- The defendant “is engaged in” criminal conduct “rendering him or her unsuitable for diversion”
- Based on the “opinion of a qualified MH expert” whom the court may deem appropriate:
- The defendant is performing unsatisfactorily in the program
OR
- The defendant is gravely disabled per 5008(h)1(B) {Murphy Conservatorship}
 - A defendant shall only be conserved and referred to the conservatorship investigator pursuant to this finding.

SUCCESSFUL COMPLETION



If the defendant performed satisfactorily in diversion, “at the end of the period of diversion” the court “shall” dismiss the defendant’s criminal charges that were the subject of the criminal proceedings at the time of the initial diversion.

SUCCESSFUL COMPLETION



Satisfactory performance means the defendant:

- has “substantially complied” w/ the requirements of diversion AND
- has avoided “significant” new violations of the law “unrelated to the defendant’s mental health condition” AND
- has a plan in place for “long-term” mental health care.

RESTITUTION



Upon request, the court shall conduct a hearing to determine whether restitution is owed, however:

- Defendant’s inability to pay restitution due to indigence or mental disorder “shall not” be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion. PC 1001.36(c)4

MISCELLANEOUS



- Arrest record sealed
- Use & access to MH records limited

Q & A



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Q&A

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