

SPECIAL DIRECTIVE 21-02

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: GEORGE GASCÓN   
District Attorney

SUBJECT: THE MENTAL HEALTH DIVISION'S REVISED PROTOCOLS

DATE: APRIL 29, 2021

Effective immediately, this Special Directive revises the protocol outlined in Special Directive 19-01 delineating the responsible supervising Head Deputy/designee for pretrial mental health diversion motions and operations in the Office of Diversion and Reentry (ODR) Courts that are supervised by the Mental Health Division (MHD).

**Misdemeanors - Mental Health Diversion (P.C. §1001.36)**

MHD will no longer handle misdemeanor mental health diversion motions. All misdemeanor motions made in a Branch and Area Office will be handled by the supervising Head Deputy, or her/his designee, and the decision will be final.

When evaluating a defense motion for pre-trial mental health diversion, deputies must familiarize themselves with the statutory requirements enumerated in PC §1001.36, as well as our obligations pursuant to Marsy's law. If the statutory requirements to PC §1001.36 have been established and the deputy cannot articulate specific public safety concerns, the deputy will submit or join in the defense motion.

The case name, case number, the position taken on the motion by the responsible deputy, and the Court's ruling on the motion must be forwarded to MHD for statistical tracking.

**Felonies – Office of Diversion & Reentry Courts**

For all future and existing felony cases that are pending in the ODR Courts that are supervised by MHD, if the originating court's Head Deputy/designee agrees with the defendant's plea and sentence to ODR, that decision will be final and MHD will relay that information to the court. If the court finds that the defendant is not appropriate for ODR, the case will return to the originating court for handling.

If the Head Deputy/designee does not agree with an ODR resolution because of a specific public safety concern, then the MHD Head Deputy/designee will be consulted and review the case. The MHD Head Deputy/designee will make the final determination on whether to submit on the defendant's request for ODR. If the court finds that the defendant is not appropriate for the ODR court, the case will return to the originating court for handling.

**Felonies – Mental Health Diversion (P.C. §1001.36)**

In all felony pretrial mental health diversion motions, if the Head Deputy/designee decides to submit on a motion made within its Branch or Area Office, that decision is final. If the decision is to oppose the pretrial mental health diversion motion, the MHD Head Deputy/designee will make the final decision on whether submission on the mental health diversion motion is appropriate.

When evaluating a defense motion for pre-trial mental health diversion, deputies must familiarize themselves with the statutory requirements enumerated in PC §1001.36, as well as our obligations pursuant to Marsy’s law. If the statutory requirements to PC §1001.36 have been established and the deputy cannot articulate specific public safety concerns, the deputy will submit or join in the defense motion.

In all cases where the Branch and Area Head Deputy/designee has made the decision to submit, the case name, case number, and the court’s ruling on the motion must be forwarded to MHD for statistical tracking.

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