



## Superior Court of California County of Orange

### PROCEDURAL GUIDELINES MILITARY DIVERSION PROGRAM

#### Statutory Overview of Military Diversion Program, Penal Code section 1001.80:

The military diversion program, codified in Penal Code section 1001.80<sup>1</sup>, which went into effect on January 1, 2015, establishes a pretrial diversion program for current and former members of the U.S. military, who may be suffering from PTSD, traumatic brain injury, sexual trauma, substance abuse or mental health problems, as a result of their service. For a person covered by the statute, the court may place the person in a pretrial diversion program. These procedural guidelines provide guidance on the procedures followed by the Orange County Superior Court when addressing defendants who may fall under the statute.

The defendant must consent and waive time. (Subd. (b).)

If the court places the defendant in a pretrial diversion program, and he or she performs satisfactorily during the period of diversion, the criminal charges will be dismissed. (Subd. (c).) The period of diversion "*shall be no longer than two years.*" (Subd. (h).) During the period of diversion, the service provider must provide reports to the court and parties "*not less than every six months.*" If the defendant is performing "*unsatisfactorily*" or "*is not benefitting from the treatment and services provided,*" the court shall hold a hearing and determine if diversion should end and criminal proceedings resumed. (Subd. (c).)

If the court decides to divert a defendant, the court is required to assess the defendant and determine whether he or she should be ordered to participate in federal or community-based treatment programs, with a demonstrated history of treating the range of mental health problems covered by the statute. (Subd. (e).) Preference is given to programs that have a demonstrated history of successfully treating veterans. (Subd. (f).)

If a defendant successfully completes the diversion program, "*the arrest upon which the diversion was based shall be deemed never to have occurred.*" (Subd. (i).) But there is an exception permitting disclosure if the person applies for a job as a peace officer. (Subd. (j).)

#### Determination of Eligibility and Decision to Divert:

1. Defendants desiring diversion should timely file and serve a motion or petition for diversion pursuant to section 1001.80.
  - a. Petitions/motions are to be set in the justice center where the matter is venued under the Court's standard packaging rules for motions;
  - b. Petitions/motions are calendared for hearing in the same manner as other criminal motions (e.g. 1538.5, motions to dismiss, etc.);
  - c. Service of petitions/motions must be made on the prosecutorial agency;
  - d. Defense counsel should attach all evidence to support a finding of eligibility, and why the defendant is suitable for diversion.

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<sup>1</sup> All future statutory references are to Penal Code section 1001.80.

2. The justice center in which a petition/motion to divert a defendant is set to be heard may conduct a hearing to determine eligibility and whether the court should exercise its discretion to divert the defendant.
  - a. If the court denies the request to divert the defendant, then the case remains on the standard litigation track, as any other misdemeanor;
  - b. If the court decides to divert the defendant and place him or her in a pretrial program, the court will (1) obtain the defendant's waiver of his or her speedy trial right; (2) order criminal proceedings suspended; and (3) order the defendant to appear in CCB-1, on a Friday, at 8:30 a.m., for the determination of the requirements of the diversion program.
3. Companion cases: If the decision is made to divert the defendant, standard case packaging rules for defendants before collaborative courts will apply.
  - a. All pending felony and misdemeanor probation violations, adjudicated felony and misdemeanor cases, and unadjudicated misdemeanor matters are to be packaged and sent to CCB-1, along with the diversion matter.
  - b. CCB-1 may order unadjudicated cases back to the originating justice center for further proceedings, if deemed appropriate.

**Placement in a Treatment Program and Monitoring Performance:**

If the decision is made to divert the defendant, the judge in department CCB-1, will order defendant placed in a specific treatment program, and monitor his or her performance. It is anticipated that the following procedures will be followed:

1. The court will determine the requirements of the pretrial diversion program, and order the defendant to participate in a federal, county or community treatment program;
2. The court will receive and file reports on the defendant's progress in the diversion program;
3. The court will oversee defendant's performance and determine if he or she is performing unsatisfactorily or satisfactorily.
4. If the defendant is performing unsatisfactorily or is not benefiting from the diversion program, the court will conduct a hearing to determine whether criminal proceedings should be reinstituted. If the court orders criminal proceedings reinstituted, the defendant's case[s] will be transferred back to the originating court.
5. The court will determine if the defendant has performed satisfactorily during the period of diversion, and if so, order the criminal charges dismissed, and order reports to be filed with the Department of Justice.

**SUPERIOR COURT, COUNTY OF ORANGE**  
**Military Diversion Program (Penal Code, section 1001.80)**  
**Eligibility Assessment Resources Guide for Defendants**

California's military diversion program, establishes a *pretrial* diversion program for current and former members of the U.S. military who are charged with a misdemeanor offense. Under Penal Code, section 1001.80, subdivision (a), the military diversion program applies to defendants accused of a *misdemeanor* offense, who "*was, or currently is, a member of the United States military*", and who "*may be suffering from sexual trauma, traumatic brain injury [TBI], post-traumatic stress disorder [PTSD], substance abuse, or mental health problems as a result of his or her military service.*" (Subdivision (a), section 1001.80., emphasis added) If a defendant meets this criteria, the Court "*may*" place him or her into a pretrial diversion program.

The purpose of this Eligibility Assessment Resources Guide is to provide defendants and their counsel with resources that may be able to assist in assessing whether the defendant is eligible to be considered for diversion. These resources are not exhaustive or exclusive. Defendants and their counsel may seek to establish eligibility through other organizations, agencies and means. A determination that a defendant meets the criteria for eligibility by any person, agency or organization, including those listed below, is not binding on the Court and may be subject to a contested evidentiary hearing.

**DD-214 - Certificate of Release or Discharge from Active Duty:**

A Report of Separation is generally issued when a service member performs active duty or at least 90 consecutive days of active duty training. The Report of Separation contains information normally needed to verify military service for benefits, retirement, employment and membership in veterans' organizations. The DD-214, the Report of Separation issued in most recent years, may assist in establishing whether the defendant is a former member of the U.S. Military.

The DD-214 or other Report of Separation can be obtained from:

- United States National Archives and Records Administration  
<http://www.archives.gov/veterans/military-service-records>
- VA Long Beach Community Resource and Referral Center  
888 W. Santa Ana Blvd., Ste. 150, Santa Ana, CA  
(844) 838-8300

### **United States Veterans Administration:**

Honorably discharged veterans may seek the assistance of the VA in determining eligibility under the military diversion program. With the appropriate signed release for medical information, the VA will also be able to provide the defendant with a written assessment of his or her condition and a suggested treatment plan.

The assistance of the VA can be obtained from:

- VA Long Beach Community Resource and Referral Center  
888 W. Santa Ana Blvd., Ste. 150, Santa Ana, CA  
(844) 838-8300
- VA Long Beach Medical Center, Building 8, Room 101  
5901 E. 7<sup>th</sup> Street, Long Beach, CA  
(562) 826-8000
- [www.myhealth.va.gov](http://www.myhealth.va.gov)

### **Orange County Health Care Agency:**

For defendants that have an other than honorable discharge from the military, the Health Care Agency, or another provider to which it will make a referral, may be able to provide an assessment of eligibility. With the appropriate signed release for medical information, the Health Care Agency or other provider will also be able to provide the defendant with a written assessment of his or her condition and a suggested treatment plan.

The Health Care Agency can be reached through:

- Elana Bishop  
(714) 850-8451
- OC Links 855-625-4657
- <http://ochealthinfo.com/bhs/about/amhs/clinics>

### **Active Duty Military:**

At this time, the Orange County Superior Court has not determined the resources available for assessing the eligibility of active duty military personnel. Defendants or their counsel may wish to contact the defendant's commanding officer for guidance.

### **Reserve:**

At this time, the Orange County Superior Court has not determined the resources available for assessing the eligibility of defendants in the Reserves. Defendants or their counsel may wish to contact the defendant's commanding officer for guidance.