
MENTAL HEALTH DIVERSION

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Scope of Presentation

- Rules for Mental Health Diversion
- 2023 New Law Changes
- Diagnosis with Mental Health Professional
- Critical Cases
- Questions?

Mental Health Diversion

- Penal Code section 1001.36
 - DSM mental disorder
 - Symptoms can be abated with treatment
 - Nexus – disorder played significant part

Steps to be approved

- Burden rests on the defense
- Evidence of disorder – diagnosis w/in 5 yrs
- Exam of defendant, records, police reports
- Expert opinion – condition can be abated

Treatment Plan

- Inpatient or outpatient
- As detailed as possible
- One – two years

Violations

- Misdemeanor with violence
- Felony
- Criminal conduct
- Not performing well – not in compliance

Successful Completion

- Dismiss charges
- Arrest never happened
- Court records and reports sealed
- May state that no arrest and no diversion

Mental Health Diversion 2023

- New Eligibility Criteria
 - ~~(b)(1)A Pretrial diversion may be granted~~
 - [D] is eligible ... if all
 - **If both** of the following ... are met:
 - » ~~(A)(1) The court is satisfied that the defendant suffers from~~
 - » [D] has been diagnosed with a mental disorder as identified in the ...[DSM]
 - » Evidence of [D's] mental disorder shall be provided by [D] and shall include a ~~recent~~
 - » Shall include a diagnosis or treatment for a diagnosed mental disorder **within the last five years by a qualified mental health expert....**

Mental Health Diversion 2023

- New Eligibility Criteria
 - (B)(2) ~~The court is satisfied~~
 - [D's] mental disorder was a significant factor in the commission of the charged offense.
 - If [D] has been diagnosed with a mental disorder, **the court shall find that** [D's] mental disorder was a **significant factor** in the commission of the ~~charged offense. A court may conclude that a defendant's mental disorder was a significant factor in the commission of the charged offense if, after reviewing~~
 - Significant factor in the commission of the offense **unless there is clear and convincing evidence** that it was not a motivating factor, causal factor, or contributing factor to [D's] involvement in the alleged offense.

Key Elements of Evaluation

- “Qualified Mental Health Experts”
 - “Qualified mental health expert” includes, but is not limited to, a psychiatrist, psychologist, a person described in Section 5751.2 of the W&I Code, or a person whose knowledge, skill, experience, training, or education qualifies them as an expert.
- History
- Diagnosis
- NEXUS

Recent Case Law

- “Clear & Convincing Evidence”
 - Clear and convincing evidence requires a finding of high probability; the evidence must be so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re White* (2018) 21 Cal. App. 5th 18) (*Katie V. v. Superior Court* (2005) 130 Cal. App. 4th 586)

Recent Case Law

- **People v. Whitmill** (2022) 86 Cal. App. 5th 1138 – Error to deny when no substantial evidence to support the trial court's finding that defendant posed an unreasonable risk of committing a super strike if treated in the community.
- **People v. Bunas** (2022) 79 Cal. App. 5th 840 - Relying on the violent circumstances of the charged offenses to deny mental health diversion under Pen. Code, § 1001.36, was not error because the trial court could consider the circumstances in determining eligibility.
- **People v. Banner** (2022) 77 Cal. App. 5th 226 - Counsel was not ineffective under the Sixth Amendment, U.S. Const., 6th Amend., in not seeking diversion because defendant could not prove prejudice without showing mental illness was a significant factor. (**NEW STANDARD MAY CHANGE THIS**)
- Future Opinion: **People v. Braden - S268925**
Opinion Due soon - Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: What is the latest point at which a defendant may request mental health diversion under Penal Code section 1001.36?

THANK YOU!

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