

Behavioral Health Court Mental Health Diversion (“BHC Diversion”)

Referral to BHC Diversion for Evaluation

This document is an agreement to refer Defendant to the BHC Team, so they can decide whether BHC Diversion is appropriate. This is not an agreement that Defendant will be granted BHC Diversion. This is not an agreement that Defendant is, in fact, eligible or suitable for mental health diversion.

Defendant: _____

Case Number(s): _____

SECTION I: Referral Basics

1. BHC Diversion is a grant funded mental health diversion program for Defendants charged with a felony. The program has specific admission requirements, program rules, and treatment plans.
2. Referrals to BHC Diversion require the agreement of prosecution and defense.
3. Instead of requesting a referral to BHC Diversion, Defendants can petition for mental health diversion by utilizing the traditional diversion procedures established by the Court.
4. **MANDATORY DISQUALIFYING FACTORS**
 - a. Current Charges:
 - Murder or voluntary manslaughter.
 - Offenses that require PC 290 registration, including violations of PC 314.
 - Rape.
 - Lewd or lascivious act on a child under 14 years of age.
 - Assault with intent to commit rape, sodomy, or oral copulation, PC 220.
 - Commission of rape or sexual penetration in concert with another, PC 264.1.
 - Continuous sexual abuse of a child, PC 288.5.
 - Violations of subdivision (b) or (c) of PC 11418.
 - Offenses that involve use of a firearm.
 - b. Prior Convictions:
 - “Super-strikes” pursuant to PC 1170.18(b).
 - Offenses that require current PC290 registration.
 - Offenses that require current Arson registration.
5. **POTENTIAL DISQUALIFYING FACTORS (only accepted on a case-by-case basis):**
 - a. Current Charges:
 - Strike offenses.
 - Stalking.
 - Offenses with vulnerable victims (e.g., child abuse, domestic violence, and elder abuse).
 - Violation of a protective order or stay away order.
 - Offenses that could result in restitution orders above \$5,000.
 - Driving Under the Influence of Alcohol/Drugs.

b. Prior Convictions:

- Strike offenses.
- Stalking.
- Offenses with vulnerable victims (e.g., child abuse, domestic violence, and elder abuse).

SECTION II: Completed by Attorney for Defendant

I, _____, declare as follows:

1. I currently represent Defendant _____ in criminal case number(s) _____.
2. I have reviewed “Section I” of this referral agreement.
3. BHC Diversion is Defendant's preferred choice for mental health diversion, as opposed to the traditional procedures established by the Court.
4. I believe Defendant is qualified for BHC Diversion because:
 - a. Defendant is charged with a felony.
 - b. Defendant is a San Diego County resident.
 - c. Defendant is mentally competent.
 - d. There has never been a final finding of “mentally incompetent” pursuant to PC1370(a)(1)(B) in the current case.
 - This requirement only applies to the current case in which Defendant seeks BHC Diversion. Findings of incompetence in previous court cases does not affect Defendant’s eligibility in the current case.
 - This requirement only applies to the final judgement of incompetence after a court hearing under PC1370. This “final judgement” is different than the initial decision to “suspend criminal proceedings” pursuant to PC1368.
 - e. Defendant was recently evaluated and diagnosed by _____, a qualified mental health expert, who can offer the following expert opinions under oath:
 - Defendant currently suffers from one of the following mental illnesses:
 - ☐ Schizophrenia,
 - ☐ Schizoaffective disorder, or
 - ☐ Bipolar I disorder;
 - Defendant's mental disorder was a significant factor in the commission of the charged offense(s); and
 - Defendant's symptoms of the mental disorder motivating the criminal behavior in the charged offense(s) would respond to mental health treatment.
 - f. Defendant will not pose an unreasonable risk of danger to public safety, as defined in PC1170.18, if treated in the community.
 - g. Defendant consents to BHC Diversion and waives the right to a speedy trial.
 - h. Defendant agrees to comply with BHC Diversion’s standardized requirements, rules, and treatment plans as a condition of diversion.
 - i. Defendant is not charged with the following in the instant offense(s):
 - Murder or voluntary manslaughter.

- Offenses that require PC 290 registration, including violations of PC 314.
- Rape.
- Lewd or lascivious act on a child under 14 years of age.
- Assault with intent to commit rape, sodomy, or oral copulation, PC 220.
- Commission of rape or sexual penetration in concert with another, PC 264.1.
- Continuous sexual abuse of a child, PC 288.5.
- Violations of subdivision (b) or (c) of PC 11418.
- Offenses that involve use of a firearm.

j. Defendant has not been convicted of the following:

- “Super-strikes” pursuant to PC 1170.18(b).
- Offenses that require current PC290 registration.
- Offenses that require current Arson registration.

- I understand that the prosecution may require a preliminary hearing bindover before Defendant can be accepted into BHC Diversion, as outlined below in “Section III, Declaration Bullet Point #4.” If additional evidence is obtained during this preliminary hearing to support additional charges, allegations, or enhancements, I agree that prosecution can withdraw their referral to BHC Diversion and withdraw all offers stated in this contract.
- I understand that admittance into BHC Diversion requires approval of the BHC Court Team.
 - If Defendant is not accepted into BHC Diversion, I understand that Defendant will be evaluated for possible admittance into the BHC Probation Program.
 - To participate in the BHC Probation Program, I understand Defendant would need to plead guilty to the offer(s) listed below in “Section III, Declaration Bullet Point #5” and would need to be placed on formal felony probation.
- If Defendant is not accepted into either BHC Diversion or the BHC Probation Program, I understand that Defendant will be sent back to the original Court that referred Defendant to BHC Diversion.
 - Upon returning to the original Court, I understand that Defendant will have the opportunity at the first hearing to plead guilty to the offer listed below in “Section III, Declaration Bullet Point #6” unless additional evidence was obtained during a preliminary hearing to warrant additional charges, allegations, or enhancements.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Diego, California, on _____.

(date)

Respectfully Submitted,

By:

(signature)

_____, **Attorney for Defendant.**

(print name)

SECTION III: Completed by Deputy Prosecuting Attorney

I, _____, declare as follows:

1. I am prosecuting criminal case number(s)_____.
2. I have reviewed “Sections I and II” of this referral agreement.
3. Before Defendant can be referred to BHC Diversion for evaluation,
 - ☐ In case number_____, a preliminary hearing bindover
 - ☐ is required and will be scheduled for _____. Unless additional evidence is obtained to warrant new charges, allegations, or enhancements, this case will be subsequently referred to BHC Diversion for evaluation.
 - ☐ is not required, so this case can be immediately referred to BHC Diversion for evaluation.
 - ☐ In case number_____, a preliminary hearing bindover
 - ☐ is required and will be scheduled for _____. Unless additional evidence is obtained to warrant new charges, allegations, or enhancements, this case will be subsequently referred to BHC Diversion for evaluation.
 - ☐ is not required, so this case can be immediately referred to BHC Diversion for evaluation.
4. If Defendant is not accepted into BHC Diversion, I understand that Defendant will be evaluated for possible admittance into the BHC Probation Program.
 - a. I understand participation in the BHC Probation Program would require that Defendant plead guilty to charges/priors that are probation eligible.
 - b. If Defendant is not accepted into BHC Diversion, the following offer(s) will be available to Defendant for purposes of post-plea acceptance into the BHC Probation Program UNLESS additional evidence was obtained during the preliminary hearing to warrant new charges, allegations, or enhancements:
 - ☐ In case number_____, the offer will be_____.
 - ☐ In case number_____, the offer will be_____.

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5. If Defendant is not accepted into either BHC Diversion or the BHC Probation Program, the following plea agreement offer(s) will be available to Defendant at the first hearing after being denied admittance to the programs UNLESS additional evidence was obtained during the preliminary hearing to warrant new charges, allegations, or enhancements:

☐ Same offers as listed directly above in Section III, Declaration Bullet Point #5.

☐ In case number _____, the offer will be _____.

☐ In case number _____, the offer will be _____.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Diego, California, on _____.

(date)

Respectfully Submitted,

By: _____

(signature)

_____, **Deputy Prosecuting Attorney.**

(print name)

SECTION IV: Completed by Defense Counsel, Prosecutor, and Referring Judge

The parties have reviewed Sections II and III above, and we agree to the terms set forth therein. The parties stipulate Defendant can be referred to BHC Diversion once all the terms set forth in this agreement have been satisfied.

Attorney for Defendant

Date

Deputy Prosecuting Attorney

Date

SO ORDERED.

Judge of the Superior Court

Date