

FAY ARFA, A LAW CORPORATION  
Fay Arfa, Attorney at Law  
State Bar No. 100143  
10100 Santa Monica Blvd., #300  
Los Angeles, CA 90067  
Tel.: (310) 841-6805  
Fax: (310) 841-0817  
info@bestdefender.com

Attorney for JOHN DOE

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

<b>THE PEOPLE OF CALIFORNIA,</b>	)	Case No.
	)	
Plaintiff,	)	<b>MOTION FOR</b>
	)	<b>MILITARY DIVERSION</b>
v.	)	<b>(Pen. Code, § 1001.80)</b>
	)	
<b>JOHN DOE,</b>	)	
	)	
Defendant.	)	
	)	

**TO THE COURT AND THE LOS ANGELES DISTRICT ATTORNEY:**

Defendant, JOHN DOE, through counsel, respectfully moves the  
Court to find the recommended inpatient or outpatient program of  
mental health treatment will meet the specialized mental health

1 treatment needs of the defendant, JOHN DOE (§ 1001.36, subd.  
2 (c)(1)(A)) and permit him to enroll in mental health diversion. (§  
3 1101.39)<sup>1</sup>  
4

5 This Motion is based on the points and authorities, argument,  
6 appendix and all papers, records, and evidence in JOHN DOE's file.  
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8 DATED: February 17, 2020

9 Respectfully submitted,  
FAY ARFA, A LAW CORPORATION

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11 */s Fay Arfa*

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Fay Arfa, Attorney for Defendant  
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26 <sup>1</sup>All references are to the Penal Code unless otherwise stated.

1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2           **I.     Mental Health Diversion**

3           **A.     The History**

4           Section 1001.80 was enacted in 2014 and amended in 2017.

5  
6 Military diversion represents a relatively new addition to the state's  
7 diversion programs, which generally authorize trial courts to divert  
8 eligible persons charged with qualifying offenses from the normal  
9 criminal process into treatment and rehabilitation. (*People v. Superior*  
10 *Court (On Tai Ho)* (1974) 11 Cal.3d 59, 61; *People v. Bishop* (1992) 11  
11 Cal.App.4th 1125, 1128.)

12  
13           The primary purpose of diversion is rehabilitation. (*Bishop, supra*,  
14 at p. 1130.) As described by the California Supreme Court in its  
15 analysis of California's drug diversion statute, “diversion is intended to  
16 offer a second chance to offenders who are minimally involved in crime  
17 and maximally motivated to reform, and the decision to divert is  
18 predicated on an in-depth appraisal of the background and personality  
19 of the particular individual before the court.” (*On Tai Ho, supra*, at p.  
20 66.)  
21

22           **B.     The Statute**

23           Under the California Penal code, military diversion applies to any  
24 person who was a member of the United States military and “may be  
25

1 suffering from sexual trauma, traumatic brain injury, post-traumatic  
2 stress disorder, substance abuse, or mental health problems as a result  
3 of his or her military service.” Cal. Penal Code § 1001.80 subd. (a)(1),  
4 (a)(2).

5  
6 If the court determines that a defendant charged with an  
7 applicable offense under this chapter is a person described in  
8 subdivision (a), the court, with the consent of the defendant and a  
9 waiver of the defendant’s speedy trial right, may place the defendant in  
10 a pretrial diversion program, as defined in subdivision (k). Cal. Penal  
11 Code § 1001.80 subd. (B)  
12

13 To qualify for pretrial diversion, Mr. JOHN DOE must get  
14 involved in a “. . . pretrial diversion program [that] shall utilize existing  
15 resources available to him to “address and treat those suffering from  
16 sexual trauma, traumatic brain injury, post-traumatic stress disorder,  
17 substance abuse, or mental health problems as a result of military  
18 service. (Pen. Code, § 1001.80 subd. k.)  
19

20 Under section 1001.80, criminal proceedings may be reinstated for  
21 a defendant found to be “performing unsatisfactorily in the assigned  
22 program” or who “is not benefiting from the treatment and services  
23 provided under the diversion program” (§ 1001.80, subd. (c)), but “[i]f  
24 the defendant has performed satisfactorily during the period of  
25  
26

1 diversion, ... the criminal charges shall be dismissed.” (Ibid.)

2       The statute addresses the type of program or treatment services a  
3 court may select for military diversion, whether federal or community  
4 based (id., subds. (d), (e)), directs the court to “give preference to a  
5 treatment program that has a history of successfully treating veterans  
6 who suffer” from the listed conditions as a result of military service (id.,  
7 subd. (f)), and authorizes collaboration with the state and federal  
8 departments of veterans affairs “to maximize benefits and services  
9 provided to a veteran” (id., subd. (g)).  
10

### 11       **C.     The Trial Court’s Discretion**

12       Section 1001.80 grants discretionary authority to the trial court. (§  
13 1001.80, subd. (b) [stating the court “may” place a defendant in military  
14 diversion upon determining the person, charged with a misdemeanor  
15 offense, meets the dual criteria for eligibility set forth in subd. (a)].)  
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1 medications, to help attenuate the more severe symptoms and increase  
2 personal insight and coping to decrease the negative effects of these  
3 conditions. (See Exhibit A)  
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5 JOHN DOE is Eligible for Military Diversion. According to VA  
6 clinical social worker \_\_\_\_\_. "Mr. JOHN DOE is eligible for  
7 VA medical, mental health, and substance abuse treatment. He is  
8 currently engaged in individual counseling service at the \_\_\_\_\_ Valley  
9 Vet Center. The \_\_\_\_\_ Valley Vet Center is located at  
10 \_\_\_\_\_  
11 \_\_\_\_\_.  
12

13 Proposed VA treatment plan pending Court approval:  
14

- 15 1. Veteran to abide by the conditions of Lancaster Court.
- 16 2. Maintain medical, mental health and medication  
17 compliance.
- 18 3. Abstain from illicit drugs and alcohol use.
- 19 4. Engage in individual and group counseling services at  
20 the \_\_\_\_\_ Valley Vet Center. (Frequency and  
21 duration per clinician's recommendation.

22 (See Exhibit A)  
23

24 "As a Combat Veteran, Mr. JOHN DOE is eligible to participate in  
25 both Combat PTSD individual and "Seeking Safety" group counseling  
26

1 services at the \_\_\_\_\_ Valley Vet Center. The Vet Centers are  
2 staffed by license psychologists, marriage and family therapists, and  
3 social workers. The Vet Centers provide the sense of community and  
4 camaraderie that service members develop in Military, allowing for a  
5 safe place to work on all reintegration problems.” (See Exhibit A)  
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8 Mr. JOHN DOE is retired and is stabile, being housed with his  
9 wife. (See Exhibit A)  
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CONCLUSION

Mr. JOHN DOE respectfully requests that this Court find that  
Mr. JOHN DOE is charged with an applicable misdemeanor offense and  
that he qualifies for a pretrial diversion program (Penal Code § 1001.80  
subd. (k)

DATED: February 17, 2020

Respectfully submitted,  
FAY ARFA, A LAW CORPORATION

*/s Fay Arfa*

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Fay Arfa, Attorney for Defendant

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I declare under penalty of perjury that the foregoing is true and correct. Executed on February 17, 2020 at Los Angeles, CA.

Fay Arfa, Attorney