

Date of Hearing: August 3, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

SB 1223 (Becker) – As Amended June 29, 2022

Policy Committee: Public Safety

Vote: 5 - 2

Urgency: No

State Mandated Local Program: No

Reimbursable: No

SUMMARY:

This bill changes the eligibility criteria for mental health diversion.

Specifically, this bill:

- 1) Changes the criteria for a court to consider mental health diversion by:
 - a) Providing that a defendant must be diagnosed with a mental health disorder within five years, as specified, in order to be eligible for mental health diversion.
 - b) Creating a presumption that a mental health disorder was a significant factor in the commission of an offense unless there is clear and convincing evidence that the mental disorder did not cause the offense to be committed.
- 2) Authorizes a court to consider an outlined treatment plan that deals with the defendant's mental disorder when deciding whether the defendant poses an unreasonable risk of danger to society.
- 3) States a defendant may be diverted no longer than two years if the offense at issue is a felony, and one year if it is a misdemeanor.
- 4) States that if the defendant is referred to a county mental health agency and the agency declares it is unable to provide services to the defendant, the declaration is not evidence that the defendant is unsuitable for diversion. Allows the declaration to be submitted via letter.

FISCAL EFFECT:

Possibly reimbursable costs (local funds and General Fund (GF)) of an unknown, but potentially significant amount in excess of \$150,000 annually to county behavioral health departments to participate in court processes for possibly a greater number of people granted mental health diversion. According to the County Behavioral Health Directors Association (CBHDA), county behavioral health programs are funded through multiple sources that are earmarked for services or other treatment related reasons. The cost of staff spending time in courtrooms to advise on these cases comes from limited discretionary spending. As this bill will likely significantly increase the amount of time staff spends in this advisory role, this new state mandate needs to recognize these increased costs along with the increased costs of newly eligible individuals

served by the county behavioral health system. Costs to the GF will depend on whether the duties imposed by this bill constitute a reimbursable state mandate, as determined by the Commission on State Mandates.

COMMENTS:

1) **Purpose.** According to the author:

SB 1223 will ensure that more Californians receive mental health support and resources they need by safely increasing the use of mental health diversion in appropriate cases. It is researched and recommended by the Committee on the Revision of the Penal Code after finding that mental health diversion has been substantially underutilized. SB 1223 preserves judicial discretion and is consistent with what other states have done.

- 2) **AB 1810 (Committee on Budget), Chapter 34, Statutes of 2018.** AB 1810 created a mental health diversion program with a focus on reducing the number of people referred to the Department of State Hospitals as incompetent to stand trial. AB 1810 provided funding to local health departments through the Department of Public Health. AB 1810 authorized mental health diversion where: (a) the court is satisfied that the defendant suffers from a mental disorder including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, and excluding antisocial personality disorder, borderline personality disorder, and pedophilia; (b) the court is satisfied that the defendant's mental disorder played a significant role in the commission of the charged offense; (c) the defendant's symptoms motivating the criminal behavior would respond to mental health treatment, in the opinion of a qualified mental health expert; (d) the defendant consents to diversion and waives his or her right to a speedy trial, except those found to be incompetent to stand trial; (e) the defendant agrees to comply with treatment as a condition of diversion; and (f) the court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety if treated in the community.

This bill changes those criteria by allowing a court to consider diversion for any person diagnosed with a mental health disorder in the past five years and creates a presumption in favor of the conclusion that the mental health disorder was a significant factor in the commission of the crime. According to the Penal Code Revision Commission (PCRC), eligibility for mental health diversion should be broadened. PCRC states in its 2021 report:

LA County has only diverted a few hundred people using the law. Yet an estimated 61% of people in the LA County jail system's mental health population were found to be appropriate for release into a community-based diversion program, according to a recent study by the RAND Corporation. Other more specialized mental health diversion statutes in California do not require such a specialized showing, including military pre-trial diversion and veteran diversion, nor do several other states with mental health diversion statutes (namely, Florida and Illinois). Instead, these

statutes recognize that in most cases, a person's diagnosed mental disorder is connected to the offense.

3) **Argument in Support.** According to Disability Rights California:

SB 1223 creates a rebuttable presumption that there is a nexus between a person's mental health condition and the charged offense. Importantly, SB 1223 preserves judicial discretion and does not require courts to grant diversion, even if such a finding is made. SB 1223 additionally brings the mental health diversion statute into accord with existing law by establishing a 12-month limit on the period for misdemeanor diversion, thereby decreasing costs and making the mental health diversion period equivalent to the probation period for misdemeanor cases.

Analysis Prepared by: Kimberly Horiuchi / APPR. / (916) 319-2081