
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anna Caballero, Chair
2025 - 2026 Regular Session

AB 1231 (Elhawary) - Criminal procedure: Safer Communities Through Opportunities Act

Version: July 1, 2025

Urgency: No

Hearing Date: August 18, 2025

Policy Vote: PUB. S. 4 - 1

Mandate: No

Consultant: Liah Burnley

Bill Summary: AB 1231 authorizes a court, in its discretion, to grant pre-trial diversion for specified non-violent, non-serious felony offenses.

Fiscal Impact:

- Unknown, potential costs to the state funded trial court system (Trial Court Trust Fund, General Fund) to adjudicate the diversion hearings specified in this bill. The fiscal impact of this bill to the courts will depend on many unknowns, including the numbers of people charged with an offense that request diversion and the factors unique to each case. An eight-hour court day costs approximately \$10,500 in staff in workload. If court days exceed 10, costs to the trial courts could reach hundreds of thousands of dollars. While the courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to fund additional staff and resources and to increase the amount appropriated to backfill for trial court operations.

However, diversion is a cost savings tool that could result in potential savings to the trial courts. By removing people from traditional prosecution before entering a formal plea, diversion programs have generally resulted in cost savings to the court through reduced costs associated with jury trials, hearings and other court appearances. For example, in San Francisco, for example, a traditional court case is estimated to cost \$16,379, but the cost of behavioral health court is \$12,101 and \$9,757 for drug court, with an average savings of about \$4,000 per case. In 2023–24, over 4.8 million cases were filed statewide in the including 179,821 felony cases. If diversion is successful in only 10% of these cases, the courts could save over \$70,000,000 per year.

- Unknown, potentially significant cost savings to county jails (local funds) to the extent people successfully complete diversion rather than serve terms in county jail. The average annual cost to incarcerate one person in county jail varies by county, but likely ranges from \$70,000 to \$90,000 per year. For example, in 2021, Los Angeles County budgeted \$1.3 billion for jail spending, including \$89,580 per incarcerated person. Actual incarceration costs to counties will depend on the number of convictions and the length of each sentence.
- Unknown, potentially significant cost savings to the California Department of Corrections and Rehabilitation (General Fund) to the extent people successfully complete diversion rather than serve terms in state prison. The Legislative Analyst's

Office (LAO) estimates the average annual cost to incarcerate one person in state prison is \$133,000. The annual cost of operating a mental health crisis bed at CDCR is around \$400,000. Thus, if even if just one person does not get sentenced to state prison for one year under this bill, it will result in significant cost savings to CDCR.

Background: Diversion is an alternative approach to resolving criminal charges against a defendant. Instead of allowing traditional criminal proceedings to move forward, a court may, in specified circumstances, order a defendant to participate in services, treatment, or other protocols for a set period of time. Generally, county behavioral health and social services agencies are responsible for providing services to a defendant participating in diversion, so the immediate costs for diversion are typically born by the counties. If the defendant complies with the court's requirements and successfully completes diversion, the criminal charges against the defendant are dismissed, avoiding significant incarceration costs to the county or state. If the defendant does not successfully complete diversion, the criminal proceedings against them resume and the defendant may enter a plea or go to trial.

California has a number of diversion programs that are specific to a defendant's experience or condition, including diversion for current and former members of the military, for people with serious mental health conditions, for people charged with certain drug offenses, and for certain primary caregivers. California law also permits a judge to order diversion for any defendant facing certain misdemeanor charges, regardless of whether the defendant fits into one of the above-listed categories.

Proposed Law:

- Allows a defendant accused of a specified felony offense to move the court for diversion at any time prior to the start of a trial.
- Excludes serious felonies.
- Excludes violent felonies.
- Excludes any offense alleged to have caused great bodily injury or serious bodily injury.
- Excludes any offense alleged to have involved the personal use of a firearm in its commission.
- Excludes specified DUI offenses.
- Excludes registerable sex offenses.
- Excludes domestic violence offenses.
- Excludes stalking.
- Excludes weapons of mass destruction offenses.
- Allows the court, in its discretion, to grant pretrial diversion to a defendant if the court determines that the defendant is suitable for that diversion under specified factors.

- States that the court shall not grant diversion unless it finds that the diversion plan mitigates any unreasonable risk of danger to public safety and finds that the defendant is likely to benefit from the services provided in the diversion plan.
- States that, in determining whether to grant diversion, the court may consider information provided by entities, including, but not limited to, defense counsel, the prosecution, probation or pretrial services, family or close contacts of the defendant, and service providers. In determining whether diversion is appropriate, applicable considerations may include the factors described in Section 1016.7 and Rule 4.423 of the California Rules of Court. The court may also consider the defendant's age and health conditions. A history of having survived human trafficking, domestic violence, or sexual assault shall be given great weight as mitigating factors that indicate diversion is appropriate.
- Provides that a defendant's request for diversion may proceed on offers of proof, reliable hearsay, and arguments of counsel and shall proceed prior to any trial or plea of guilty or no contest. If a court, in its discretion, opts to conduct a hearing on whether to grant diversion, a defendant shall submit to the court and serve on the prosecution a proposed diversion plan and shall recommend in that plan either dual agency supervision or single agency supervision, as described.
- States that, if the court has reduced a felony to a misdemeanor, the misdemeanor diversion provisions of shall be applicable.
- Requires a court to order single agency supervision, unless it finds that single agency diversion is not practical or that dual agency diversion is necessary to mitigate unreasonable risks to public safety.
- States that the treatment agency administering a diversion plan under single agency supervision shall report the defendant's progress to the court, the prosecution, and the defendant every three months. The treatment agency administering a diversion plan jointly with the county probation department under dual agency diversion shall submit a report to the probation department every three months regarding compliance information required by the court showing the defendant's progression in the diversion plan. Within five judicial days of receipt of the treatment agency's report, the probation department shall submit a report on the defendant's progress to the court appending the entire report from the treatment agency and serving copies on the defendant and prosecution.
- Provides that a court may order the defendant to comply with terms, conditions, or programs that the court finds appropriate for the strengths and needs of the defendant and based on the recommendations from the defendant, a social worker, a behavioral health worker, or health care professional.
- Allows the court to consider the perspective of the prosecutor, pretrial services office, or probation department in assessing any recommendations. If the defendant has a history of having survived human trafficking, domestic violence, or sexual assault, the diversion plan and proposal may rely on information or recommendations from a sexual assault counselor, a human trafficking caseworker, or a domestic violence counselor.

- The diversion plan ordered by the court shall include any conditions necessary to mitigate an unreasonable risk of danger to public safety.
- Allows the court to modify a diversion plan if it appears, following a hearing on the matter, that the defendant is not meeting the terms and conditions of the diversion program. The court may modify the diversion plan to provide for greater supervision by either the treatment agency or the probation department, or both. A hearing pursuant to this subdivision shall not be held until after notice has been given to the defendant. The hearing shall follow the evidentiary rules applicable to a probation violation hearing.
- States that, upon a court granting diversion, any bail, bond or undertaking, or deposit in lieu thereof on behalf of the defendant shall be exonerated.
- Requires, if the defendant has complied with the imposed terms and conditions, at the end of the period of diversion, the court shall dismiss the criminal allegations.
- Provides, upon successful completion of diversion, if the court dismisses the charges, the arrest upon which the diversion was based shall be deemed never to have occurred, and the court shall order access to the record of the arrest restricted.
- Provides that an order to seal records pertaining to an arrest made pursuant to this section has no effect on a criminal justice agency's ability to access and use those sealed records and information regarding sealed arrests.
- States that a defendant who is diverted, who would otherwise be required to make full restitution if they were not diverted, shall be required to make full restitution. A defendant's inability to pay restitution due to indigence shall not be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion. If diversion is completed, but the defendant has an outstanding restitution order balance, a case may be dismissed and the restitution payment shall be enforceable as if the order were a civil judgment.
- Allows the court to continue the criminal proceedings for a period not to exceed 24 months.
- States that a court may hold a hearing to determine whether criminal proceeding should be reinstated if any of the following circumstances exist:
 - The defendant is charged with a misdemeanor allegedly committed while the defendant is receiving pretrial diversion services that reflects the defendant's propensity for violence;
 - The defendant is charged with a felony allegedly committed while the defendant is receiving pretrial diversion services; and,
 - Unsatisfactory performance in the diversion plan that causes the court to believe that no reasonably available additional terms, conditions, or services can mitigate unreasonable risks to public safety.

- Provides that a hearing to reinstitute criminal proceedings may be initiated by the court or the prosecutor, or, in cases of dual agency supervision, the probation department and may proceed only after notice to the defendant. A hearing to reinstitute criminal proceedings shall not proceed until probable cause has been established in the subsequent felony allegations.
- Makes inadmissible diversion in any other proceeding any statement, information, or progress reports concerning the defendant's diversion plan, including, but not limited to, health information, evaluations, clinical or treatment notes, or services provided, or any other records related to treatment that were provided for the purpose of facilitating, or as a result of participation in, or completion of, diversion or for use in determining the defendant's eligibility for without the defendant's consent, unless that information is relevant evidence that is admissible under the standards described in the California Constitution. This applies even if diversion is denied or subsequently revoked.
- Defines "Dual agency supervision" as a court-approved, individually tailored diversion plan administered jointly by the treatment agency and by a county probation department or pretrial services department for a specified period of time. Under dual agency supervision, the treatment agency shall administer the treatment rehabilitation program.
- Defines "Single agency supervision" as a court approved, individually tailored diversion plan administered by a treatment agency, for a specified period of time. The treatment agency may include a government-sponsored or community-based job training services center or reentry service provider.
- Defines "Treatment agency" to include a government or community-based organization, including, but not limited to, a county health department, a county workforce development department, a behavioral health or reentry services provider, or a similar agency or community-based organization partnering with a county department. If the treatment agency is a community-based organization, the following shall apply:
 - The organization shall adhere to similar transparency, accountability, and outcome measure standards that apply to a government or county department;
 - The organization shall not pay wages and benefits to its most highly compensated executive and managerial employees that are significantly higher than the rates that would be paid to public employees performing similar job duties; and,
 - The court shall prioritize ordering services by an organization with a record of providing culturally competent and reasonable rehabilitative services.

Related Legislation: AB 46 (Nguyen) would make various changes to the mental health diversion program including the public safety standard criteria for finding a particular defendant suitable for diversion. AB 46 is pending in this Committee.

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