

CONCURRENCE IN SENATE AMENDMENTS

AB 1231 (Elhawary)

As Amended September 5, 2025

Majority vote

SUMMARY

Enacts the Safer Communities Through Opportunities Act which authorizes a court to grant pretrial diversion for certain felony offenses, except as specified, for a period of up to 24 months, if the court determines that the defendant is suitable for diversion pursuant to specified factors.

Senate Amendments

- 1) Specify the court may, in its discretion, opt to conduct a hearing to determine whether a defendant shall be granted diversion.
- 2) State that any statement, information, or progress reports concerning the defendant's diversion plan or other records related to diversion treatment or eligibility shall not be used in any other proceeding without the defendant's consent unless that information is relevant evidence admissible under the California Constitution. This applies even if diversion is denied or subsequently revoked.
- 3) Strike all provisions relating to single agency and dual agency supervision.
- 4) Require the court to consider specified aggravating factors that indicate diversion is inappropriate.
- 5) Require the programs or services ordered in the diversion plan to be provided only to the extent that existing resources are available.
- 6) Provide that the diversion plan shall describe the frequency of regular status reports on the defendant's progress in the diversion plan. At a minimum, a progress report shall be provided every three months and shall be submitted to the court, the defense, and the prosecution
- 7) Defines "unsatisfactory performance in the diversion plan" to mean significant noncompliance with the diversion plan.
- 8) State that at a hearing to determine whether the criminal proceedings should be reinstated, the court shall consider whether a modified diversion plan with additional reasonably available terms, conditions, or services can address the circumstances resulting in the hearing.
- 9) Make technical nonsubstantive changes.

COMMENTS

As passed by the Assembly: This bill would enact the Safer Communities Through Opportunities Act which authorizes a court to grant pretrial diversion for certain felony offenses, except as specified, for a period of up to 24 months, if the court determines that the defendant is suitable for diversion pursuant to specified factors.

Major Provisions:

- 1) Authorized the court to exercise its discretion to grant pretrial diversion for a non-violent, non-serious felony punishable either as a county-jail eligible felony or as an alternate felony-misdemeanor ("wobbler"), and specifically excludes the following offenses from eligibility:
 - a) Any offense alleged to have caused great bodily injury or serious bodily injury;
 - b) Any offense alleged to have involved the personal use of a firearm in the commission of an offense, pursuant to Section 12022.5 or Section 12022.53;
 - c) A felony driving under the influence offense;
 - d) Any offense for which a person, if convicted, would be required to register as a sex offender;
 - e) Any offense involving domestic violence;
 - f) A violation of stalking; or,
 - g) Use or deployment of a weapon of mass destruction.
- 2) Stated that a defendant may request diversion at any time prior to the start of a trial and the court may, in its discretion, and after considering the positions of the defense and prosecution, grant pretrial diversion to a defendant if the court determines that the defendant is suitable for diversion, as provided.
- 3) Stated 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.
- 4) Provided that applicable considerations for the court may include mitigating factors including the defendant's trauma, victimization, and youth or other mitigating factors listed in Rule of 4.423 of the California Rules of Court.
- 5) Specified that 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.
- 6) Stated that 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 defined.
- 7) Stated 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.
- 8) Authorized a court to order the defendant to comply with terms, conditions, or programs that the court finds appropriate for the needs of the defendant and based on the recommendations from the defendant, a social worker, a behavioral health worker, or health care professional. The court may also consider the perspective of the prosecutor, pretrial services office, or

probation department, or sexual assault counselor, human trafficking caseworker, or a domestic violence counselor where appropriate, in assessing any recommendation.

- 9) Stated that the diversion plan ordered by the court shall include any conditions necessary to mitigate an unreasonable risk of danger to public safety.
- 10) Provided that upon a court granting diversion, any bail, bond or undertaking, or deposit in lieu thereof on behalf of the defendant shall be exonerated.
- 11) Defined the following terms:
 - a) "Dual agency supervision" means 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.
 - b) "Single agency supervision" means 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.
 - c) "Treatment agency" may 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.
- 12) Required the 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.
- 13) Required the treatment agency to provide progress reports to the court, defense and prosecution under single agency supervision, or to the probation department under dual agency supervision every three months regarding compliance information required by the court, and requires the probation department to submit copies of the report to the court, defense, and prosecution within 5 judicial days of receipt of the report.
- 14) Provided that while courts may order the defendant to participate in diversion plan services by government or community-based providers, nothing in this section is intended to reduce employment by government agencies.
- 15) Stated that a defendant whose charges have been diverted, who would otherwise be required to make full restitution if they were not diverted, shall be required to make full restitution, however, 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.
- 16) Required the court, in determining whether dismissal is warranted upon completion of the proposed diversion plan, to consider unpaid restitution only if nonpayment was willful and not due solely to indigence or inability to pay. 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.

- 17) Authorized a 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 hearing shall follow the evidentiary rules applicable to a probation violation hearing
- 18) Required the court to dismiss the criminal allegations if at the end of the period of diversion if the defendant has complied with the imposed terms and conditions and the arrest upon which the diversion was based shall be deemed to have never occurred.
- 19) Stated that an order to seal records pertaining to an arrest has not effect on a criminal justice agency's ability to access and use those sealed records.
- 20) Stated that nothing in this bill is intended to conflict with Marsy's Law or a victim's right to participate in these proceedings.
- 21) Specified that the provisions of this bill shall be implemented only to the extent that it does not conflict with an initiative statute

According to the Author

"AB 1231 would allow judges to grant diversion programs and services, rather than solely rely on traditional punishment. This keeps our communities safe, gets people back into the workforce or connected with behavioral health services as needed, ultimately lowering costs to the state."

Arguments in Support

According to *Vera Institute of Justice*, the sponsor of this bill, "As a recipient of diversion, I cannot stress enough how life changing this type of relief is for people navigating the justice system. As a youth survivor of sexual assault, and as someone who lacked supportive resources, I developed a substance use disorder as an unhealthy coping mechanism. I soon found myself in jail. However, after speaking with my public defender and the judge overseeing my case, I was able to enroll in diversion instead of solely facing punishment and incarceration as a result of my trauma. I enrolled in an adult school office technology program, which became my foundation for higher education, meaningful employment, and deeper engagement in my community. I went on to attend community college, the University of California, Berkeley, and now advocate for criminal justice reform as a Senior Program Associate at Vera California. Diversion unequivocally saved my life.

"The research also shows that community-based diversion programs have improved public safety for Californians statewide. Participants in California's diversion programs come into contact with the justice system at a significantly lower rate (15.3 percent) compared to similar people leaving state prisons (41.9 percent). Diversion programs that offer targeted, light-touch services such as job training, education, housing, treatment for substance use and mental health, empower people to address their underlying needs, which reduces future contact with the criminal legal system.

"Moreover, evidence shows diversion programs are key to reducing racial disparities in the criminal legal system. To this day, Black and brown Californians are arrested at disproportionately higher rates than white people in nearly all of California's 58 counties. Expanded judicial discretion to grant diversion would likely decrease these racial disparities, helping even more Californians avoid the severe, long-term collateral consequences of

incarceration—such as barriers to employment, housing, and education—that increase recidivism. As a Native and Latina youth, receiving diversion gave me the opportunity to overcome the generational cycle of incarceration and educate myself.

"Diversion programs, which tap into existing community services, are also much more cost-effective than prisons and traditional court processing. This is particularly true in rural areas like the Central Valley, where resources are historically limited, and expanded diversion programming provides crucial opportunities for people to achieve stability, thereby enhancing public safety. My experience demonstrates this potential: having access to local resources and counselors in the Central Valley, who believed in me, enabled me to avoid further incarceration and become the advocate I am today."

Arguments in Opposition

According to *Chief Probation Officers of California*, "Several diversion and DEJ statutes and programs already exist around various offenses or collaborative court models. The Legislature has recognized that certain individuals may benefit from these pathways such as with substance use, mental health, veterans courts while concurrently retaining other judicial pathways for addressing the myriad of felony offenses where diversion or DEJ may not be deemed suitable.

"We are concerned that the expansion of felony diversion, particularly considering the structure of the bill to establish tiers of single and dual agency supervision will create significant confusion, create court inefficiencies, and is not in the best interest of public safety. For example, this would establish processes whereby a treatment agency, which may be an entity with no connection to the court or court orders, could be overseeing the treatment and reporting to the court on someone with a felony offense. Additionally, it would propose to have the defendant develop their own diversion plan and make recommendations for who should supervise them based on the new proposed multi-agency model.

"While we recognize the role that specific collaborative court programs can play in helping people to get connected to services through court ordered treatment and accountability, this bill goes beyond that model to apply diversion to a broad list of felony offenses and creates new procedures that create ambiguity and are not in the best interest of public safety, accountability and rehabilitation."

FISCAL COMMENTS

According to the Senate Appropriations Committee:

- 1) 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 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

- 2) 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.
- 3) 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

VOTES:

ASM PUBLIC SAFETY: 5-2-2

YES: Schultz, Mark González, Haney, Harabedian, Sharp-Collins

NO: Alanis, Lackey

ABS, ABST OR NV: Nguyen, Ramos

ASM APPROPRIATIONS: 11-3-1

YES: Wicks, Arambula, Calderon, Caloza, Elhawary, Fong, Mark González, Hart, Pacheco, Pellerin, Solache

NO: Dixon, Ta, Tangipa

ABS, ABST OR NV: Sanchez

ASSEMBLY FLOOR: 42-25-12

YES: Addis, Aguiar-Curry, Ahrens, Alvarez, Arambula, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Caloza, Carrillo, Connolly, Elhawary, Fong, Garcia, Gipson, Mark González, Haney, Harabedian, Hart, Jackson, Kalra, Lee, Lowenthal, McKinnor, Muratsuchi, Ortega, Pellerin, Quirk-Silva, Ransom, Celeste Rodriguez, Rogers, Schultz, Sharp-Collins, Valencia, Ward, Wicks, Wilson, Zbur, Rivas

NO: Alanis, Ávila Farías, Bains, Castillo, Chen, Davies, DeMaio, Dixon, Ellis, Flora, Gallagher, Jeff Gonzalez, Hadwick, Hoover, Irwin, Lackey, Macedo, Pacheco, Patterson, Michelle Rodriguez, Blanca Rubio, Sanchez, Ta, Tangipa, Wallis

ABS, ABST OR NV: Calderon, Gabriel, Krell, Nguyen, Papan, Patel, Petrie-Norris, Ramos, Schiavo, Solache, Soria, Stefani

UPDATED

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