

Date of Hearing: April 14, 2026  
Deputy Chief Counsel: Stella Choe

## ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Nick Schultz, Chair

AB 2108 (Sharp-Collins) – As Amended March 19, 2026

**As Proposed to be Amended in Committee**

**SUMMARY:** Requires a prosecuting attorney, whenever a defendant is charged with specified theft-related offenses, to review a defendant's file to determine whether they are eligible for the theft diversion program established by this bill. Specifically, **this bill:**

- 1) Provides that consideration for theft diversion shall apply whenever a case is before any court where the defendant is charged with shoplifting, forgery, grand theft, petty theft, petty theft under \$50, receiving stolen property, or vandalism.
- 2) Makes a defendant eligible for diversion if both of the following apply to the defendant:
  - a) The offense charged did not involve a crime of violence or threatened violence; and,
  - b) There is no evidence of a contemporaneous violation related to theft other than a violation of the offenses listed above.
- 3) States that a declaration of a determination of defendant's eligibility pursuant to the above factors shall be filed with the court, or stated for the record providing the grounds for whether the defendant is eligible and that information shall be made available to the defendant and their attorney.
- 4) Specifies that this procedure is intended to allow the court to set the hearing for pretrial diversion at the arraignment.
- 5) Provides that the only remedy for a defendant who is found ineligible for pretrial diversion pursuant to this bill's provisions is a postconviction appeal.
- 6) Authorizes a court to order a defendant referred to pretrial diversion to comply with terms conditions, or programs that the court deems appropriate.
- 7) States that if the defendant has complied with the imposed terms and conditions, at the end of the period of diversion, the court shall dismiss the action against the defendant.
- 8) Provides that upon successful completion, the arrest upon which diversion was imposed shall be deemed to have never occurred and the defendant may indicate in response to any question concerning their prior record that they were not arrested.
- 9) Prohibits a record pertaining to an arrest resulting in successful completion of diversion shall not, without the defendant's consent, be used in any way that could result in the denial of any

employment, benefit, license, or certificate, except for an application for a position as a peace officer.

- 10) Prohibits diversion for persons who have been charged with petty theft or shoplifting with a prior offense.
- 11) Provides that this bill does not limit diversion eligibility under any other law.
- 12) Makes conforming changes.

**EXISTING LAW:**

- 1) Divides theft into two degrees, petty theft and grand theft. (Pen. Code, § 486.)
- 2) States that petty theft is punishable by a fine not exceeding \$1,000, by imprisonment in the county jail not exceeding six months, or both. (Pen. Code, § 490.)
- 3) Punishes grand theft as an alternate felony-misdemeanor (“wobbler”). (Pen. Code, § 487.)
- 4) Defines grand theft as when the money, labor, or real or personal property taken is of a value exceeding \$950 dollars, except as specified; other cases of theft are petty theft. (Pen. Code, §§ 487-488.)
- 5) Defines “shoplifting” as entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed \$950 dollars. (Pen. Code, § 459.5, subd. (a).)
- 6) States that every person who prohibits buying or receiving any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, and punishes the offense as an alternate felony-misdemeanor when the value of the property exceeds \$950, or as a misdemeanor when the value of the property is \$950 or less. (Pen. Code, § 496.)
- 7) States that every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism:
  - a) Defaces with graffiti or other inscribed material;
  - b) Damages; or,
  - c) Destroys. (Pen. Code, § 594, subd. (a).)
- 8) Punishes vandalism as follows:
  - a) If the amount of defacement, damage, or destruction is \$400 or more, vandalism is punishable by as a county jail-eligible felony or in a county jail not exceeding one year, or by a fine of not more than \$10,000, or if the amount of defacement, damage, or

destruction is \$10,000 or more, by a fine of not more than \$50,000, or by both that fine and imprisonment.

- b) If the amount of defacement, damage, or destruction is less than \$400, vandalism is punishable by imprisonment in a county jail not exceeding one year, or by a fine of not more than \$1,000, or by both that fine and imprisonment, unless the defendant has specified priors then the vandalism may be punished by imprisonment and a fine of up to \$5,000. (Pen. Code, § 594, subd. (a).)
- 9) Authorizes a judge of the superior court in which a misdemeanor case is being prosecuted, at the judge's discretion and over the objection of a prosecuting attorney, to offer diversion to a defendant except if the defendant is charged with any of the following offenses:
- a) Any offense for which the defendant, if convicted, would be required to register as a sex offender;
  - b) Any offense involving domestic violence; or,
  - c) An offense of stalking. (Pen. Code, § 1001.95., subds. (a) & (e).)
- 10) States that a judge may continue a diverted case for a period not to exceed 24 months and order the defendant to comply with terms, conditions, or programs that the judge deems appropriate based on the defendant's situation. (Pen. Code, § 1001.95., subd. (b).)
- 11) States that if the defendant has complied with the imposed terms and conditions, at the end of the period of diversion, the judge shall dismiss the action against the defendant. (Pen. Code, § 1001.95., subd. (c).)
- 12) States that if it appears that the defendant is not complying with the terms and conditions of diversion, after notice to the defendant, the court shall hold a hearing to determine whether the criminal proceedings should be reinstated. If the court finds that the defendant has not complied with the terms and conditions of diversion, the court may end the diversion and order resumption of the criminal proceedings. (Pen. Code, § 1001.95, subd. (d).)
- 13) Authorizes, until January 1, 2031, the city or county prosecuting attorney or county probation department to create a diversion or deferred entry of judgment (DEJ) program for persons who commit a theft offense or repeat theft offenses. The program may be conducted by the prosecuting attorney's office or the county probation department. (Pen. Code, § 1001.81, subd. (a).)
- 14) States that if a county creates a theft diversion or DEJ program, on receipt of a case or at arraignment, the prosecuting attorney shall either refer the case to the county probation department to conduct a pre-filing investigation report to assess the appropriateness of program placement or, if the prosecuting attorney's office operates the program, determine if the case is one that is appropriate to be referred to the program. (Pen. Code, § 1001.81, subd. (c).)
- 15) Provides that in determining whether to refer a case to the program, the probation department or prosecuting attorney shall consider, but is not limited to, all of the following factors:

- a) Any prefiling investigation report conducted by the county probation department or nonprofit contract agency operating the program that evaluates the individual's risk and needs and the appropriateness of program placement;
  - b) If the person demonstrates a willingness to engage in community service, restitution, or other mechanisms to repair the harm caused by the criminal activity and address the underlying drivers of the criminal activity;
  - c) If a risk and needs assessment identifies underlying substance abuse or mental health needs or other drivers of criminal activity that can be addressed through the diversion or DEJ program;
  - d) If the person has a violent or serious prior criminal record or has previously been referred to a diversion program and failed that program; and,
  - e) Any relevant information concerning the efficacy of the program in reducing the likelihood of participants committing future offenses. (Pen. Code, § 1001.81, subd. (c)(1)-(5).)
- 16) Authorizes the prosecuting attorney to enter into a written agreement with the person to refrain from, or defer, prosecution on the offense or offenses on the following conditions:
- a) Completion of the program requirements such as community service or courses reasonably required by the prosecuting attorney.
  - b) Making adequate restitution or an appropriate substitute for restitution to the establishment or person from which property was stolen at the face value of the stolen property, if required by the program. (Pen. Code, § 1001.81, subd. (e).)
- 17) Specifies that repeat theft offenses for purposes of the above diversion or DEJ program means being cited or convicted for misdemeanor or felony theft from a store or from a vehicle two or more times in the previous 12 months and failing to appear in court when cited for these crimes or continuing to engage in these crimes after release or after conviction. (Pen. Code, § 1001.81, subd. (f).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "Voters passed Proposition 36 to address individuals caught in cycles of repeat theft and more serious criminal activity by increasing penalties, including the possibility of state prison sentences. That measure was aimed at chronic and organized offenders. However, Proposition 36 did not establish a tailored approach for people accused of less serious, non-recurrent shoplifting. This bill fills that gap by ensuring the justice system can identify who would be better served by early intervention and targeted programming."

- 2) **Diversion Generally:** Diversion is the suspension of criminal proceedings for a prescribed time period with certain conditions. A defendant may not be required to admit guilt as a prerequisite for placement in a pretrial diversion program. If diversion is successfully completed, the criminal charges are dismissed and the defendant may, with certain exceptions, legally answer that he or she has never been arrested or charged for the diverted offense. If diversion is not successfully completed, the criminal proceedings resume, however, a hearing to terminate diversion is required.

Diversion programs may be pre-plea or post-plea (often called deferred entry of judgement). Pre-plea programs allow a defendant to participate in the program without admitting guilt. In post-plea programs, the defendant must first admit guilt before participating in the program. The main difference between the two types of diversion is that in a pre-plea program, if the defendant does not successfully complete the program, criminal proceedings resume and the defendant has the option to plead guilty or pursue a defense against their case. In a post-plea diversion program, if a defendant does not successfully complete the program, the defendant having already plead guilty, would be sentenced.

In recent years, the Legislature has enacted several pre-plea diversion programs such as military diversion (SB 1227 (Hancock), chapter 658, statutes of 2013), mental health diversion (SB 215 (Beall), chapter 1005, statutes of 2017), diversion for primary caretakers (SB 394 (Skinner), chapter 593, statutes of 2019), and court-initiated misdemeanor diversion (AB 3234 (Ting), chapter 334, statutes of 2020). Drug diversion was enacted as a pre-plea program and changed to a post-plea program in 1997 (SB 1369 (Kopp), chapter 1132, statutes of 1996), then in 2017 changed back to a pre-plea program (AB 208 (Eggman), chapter 778, statutes of 2017).

Existing law also authorizes a city or county prosecuting attorney or county probation department, until January 1, 2031, to create a diversion or deferred entry of judgment program for persons who commit a theft offense or repeat theft offenses and specifies that the prosecuting attorney is to determine who to refer to the program and who is appropriate for placement in the program. For purposes of the program, “repeat theft offenses” means being cited or convicted for misdemeanor or felony theft from a store or vehicle two or more times in the previous 12 months and failing to appear in court when cited for these crimes or continuing to engage in these crimes after release or after conviction. (Pen. Code, § 1001.81.)

This bill would create a new diversion program specific to theft-related and vandalism offenses for defendants who meet the statutory eligibility requirements. Specifically, the prosecuting attorney is required to review a defendant’s file to determine whether a defendant meets the eligibility requirements, specifically that the crime does not involve violence or threatened violence or any other pending theft-related or vandalism violations. The court would have discretion to grant discretion and to order the defendant to comply with terms, conditions and programs the court deems appropriate. The proponents of the bill argue that since the theft diversion statute in Penal Code section 1001.81 is permissive, it is inconsistently applied among counties.

The bill is intended to flag certain non-violent, non-organized, theft-related and vandalism offenses for potential diversion but to leave courts’ discretion to grant diversion intact. Similar to other diversion programs, if a person is successful in completing the ordered terms, conditions or programs the charges would be dismissed and the arrest cannot be used

against the person, except for in an application as a peace officer. Unlike some of the more recently enacted diversion programs, there is not a specified maximum term of diversion nor any language on what is to occur if a person does not successfully complete the terms.

- 3) **Background on Theft Laws:** Existing law punishes theft in a variety of ways. Theft itself is generally classified into two categories: either grand theft, meaning the value of the property exceeds \$950 unless a lower threshold is otherwise specified, or petty theft which refers to all other types of theft that do not meet the \$950 threshold, with specified exceptions. (Pen. Code, § 487.) Petty theft is punishable as a misdemeanor; grand theft is generally punishable as either a felony or misdemeanor. (Pen. Code, § 489.) Burglary generally involves entry into a location to commit larceny or other felony. This crime is punishable as either a felony or misdemeanor depending on the circumstances. (Pen. Code, § 459.) Buying or receiving stolen property knowing the property to be stolen is also a separate offense. The punishment can be either punished as misdemeanor or felony based on the value of the property. (Pen. Code, § 496.)

Proposition 47, approved by voters on November 4, 2014, directed that theft crimes of \$950 or less shall be considered petty theft and be punished as a misdemeanor, with limited exceptions for individuals with specified prior convictions. Among the theft crimes made misdemeanors by Proposition 47, where the value of the property is \$950 or less, are forgery (Pen. Code, § 473), making or delivering a check with insufficient funds (Pen. Code, § 476a), petty theft (Pen. Code, § 490.2), and receiving stolen property (Pen. Code, § 496). (See *People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) Proposition 47 also created the new offense of shoplifting, a misdemeanor, where the value of the property taken or intended to be taken is \$950 or less (Pen. Code, § 459.5; *People v. Sherow* (2015) 239 Cal.App.4th 875, 879); and, pertinent to this bill, limited the application of petty theft with a prior theft conviction. (Pen. Code, § 666; *People v. Rivera, supra*, 233 Cal.App.4th at p. 1091.)

Prior to Proposition 47, Penal Code section 666 (the petty theft with a prior provision) provided that every person who has been convicted three or more times of petty theft, grand theft, financial crimes against elders, vehicle theft, burglary, carjacking, robbery, or a felony violation of receiving stolen property and has served any time in custody for those offenses, upon a new conviction for petty theft may be punished alternatively with either a felony or misdemeanor, also known as a wobbler. Proposition 47 repealed this part of Penal Code section 666 and limited its application to persons who have previously been convicted of a “super strike,” financial abuse of an elder, or an offense requiring sex offender registration.

After the passage of Proposition 47, the Legislature created the crime of “organized retail theft” which includes shoplifting schemes undertaken by two or more persons who have organized themselves to commit shoplifting for financial gain. (Pen. Code, § 490.4; AB 1065 (Jones-Sawyer), Ch. 803, Stats. 2018.) The punishment ranges from one year in the county jail (misdemeanor) to 16 months, or two, or three years in the county jail (felony), depending on the specific circumstances. The Legislature also clarified when offenses could be aggregated to meet the \$950 threshold for grand theft to require the acts to be motivated by one intention, one impulse, and one plan. (Pen. Code, § 487, subd. (e); AB 2356 (Rodriguez), Ch. 22, Stats. 2022.)

In 2024, Proposition 36 was approved by voters which made several changes to theft laws. First, the initiative targeted repeat theft offenders, by making a conviction for petty theft,

where that person has two prior theft convictions, punishable by imprisonment in county jail for up to one year or by 16 months, or two or three years; and it made a second or subsequent conviction of petty theft with two priors punishable by imprisonment in the county jail not exceeding one year or by imprisonment in state prison. (Pen. Code, § 666.1, subd. (a).) Second, the initiative made it easier to aggregate the value of stolen property in order to trigger the \$950 grand theft threshold. As discussed above, prior law authorized the value of stolen property to be aggregated to charge grand theft where the acts were motivated by one intention, one impulse, and one plan. (Pen. Code, § 487, subd. (e).) However, Proposition 36 authorized a more generous method of aggregation by stating that, in multiple cases of theft, the value of property may be aggregated into a single charge, with the sum of the value of all property or merchandise being the value considered in determining the degree of theft. (Pen. Code, § 490.3.)

This bill specifies that for specified theft offenses, including shoplifting, forgery, grand theft, petty theft, petty theft under \$50, receiving stolen property, and vandalism, the prosecuting attorney shall determine whether a person is eligible for the diversion program created by this bill. If the district attorney determines that the person meets the eligibility requirements, they would be required to file a declaration with the court stating the grounds for eligibility. If the prosecuting attorney determines the defendant to be ineligible, that information shall also be made available to the defendant and their attorney. Upon a declaration that the defendant is eligible, the court would be authorized to set a hearing for pretrial diversion at arraignment. If the court grants diversion, the court may order the defendant to comply with terms conditions, or programs that the court deems appropriate. If the defendant successfully completes diversion, the court is required to dismiss the charge and the defendant would generally be granted similar benefits received in other diversion cases.

A person who is charged with petty theft with a prior, as enacted by Proposition 36, would be ineligible for diversion. Opposition argues that exclusion still erodes Proposition 36 because it would allow the dismissal of priorable offenses for purposes of petty theft with a prior.

- 4) **Committee Amendments:** The bill will be amended in committee to specify that a court may consider all available workforce programs, including, but not limited to, workforce development, vocational training and employment placement programs.
- 5) **Argument in Support:** According to *Californians for Safety and Justice*, the sponsor of this bill, “Under current law, there is not a consistent framework across all 58 counties for theft diversion. This inconsistency allows for an inequitable diversion consideration process that lacks equal opportunity for defendants to be considered for diversion on a case-by-case basis. AB 2108 mirrors and builds upon the success seen with drug diversion through Penal Code § 1000 and brings a familiar structure and needed uniformity to the use of diversion in appropriate theft cases. This bill provides more access for defendants to be connected with appropriate resources or programs to help foster their success in the community.

“AB 2108 is a smart public safety solution that builds upon existing successful diversion infrastructure, while establishing appropriate guardrails and maintaining the discretion of the court. “

- 6) **Argument in Opposition:** According to *California District Attorneys’ Association*, “Proposition 36 passed statewide with approximately 67% of the vote and received majority

approval in every California county (with 65% in San Diego County). Voters were clear: repeat theft offenders should face meaningful consequences, and the cycle of endless, consequence-free theft needed to end. AB 2108 moves in the opposite direction.

“The bill creates a sweeping and overly broad diversion eligibility scheme for theft-related offenses, including petty theft, shoplifting, grand theft, receiving stolen property, and vandalism, while conspicuously failing to disqualify individuals with prior theft convictions. This omission is not incidental. It directly conflicts with the core purpose of Proposition 36, which specifically targets repeat offenders. By ignoring prior theft history, AB 2108 reopens the very loopholes voters sought to close.

“While the bill attempts to preserve Proposition 36 by excluding individuals “charged pursuant to Section 666.1,” this protection is illusory. AB 2108 does not exclude individuals who qualify as repeat offenders under Proposition 36—it only excludes those actually charged under that section. This creates a clear pathway to avoid Proposition 36 entirely through charging decisions, thereby diverting repeat offenders rather than holding them accountable. In practice, this bill invites the erosion of Proposition 36 on a case-by-case basis across the state.”

#### 7) **Related Legislation:**

- a) AB 2582 (Schultz) would require a person who commits prostitution with intent to receive compensation, money, or anything of value from another person to, for a first or second violation of those provisions, be offered a diversion program, if a program for which the defendant is eligible is available. AB 2582 is pending a hearing in the Assembly Appropriations Committee.
- b) AB 2217 (Zbur) would reauthorize, upon appropriation by the Legislature, law enforcement assisted prebooking diversion for specified offenses. AB 2217 is pending a hearing in the Assembly Appropriations Committee.
- c) AB 1231 (Elhawary) would authorize a court to exercise its discretion to grant pretrial diversion for felony offenses, except as specified. AB 1231 is pending vote on the Assembly Floor.
- d) AB 2297 (Stefani) would apply the general restitution statute applicable to defendants who are convicted of crimes to also apply to defendants who enter a diversion program. AB 2297 is pending a hearing in Assembly Appropriations Committee.
- e) AB 2698 (Ellis) would authorize the Office of Youth and Community Restoration to establish a grant program subject to appropriation by the Legislature, for counties to establish youth peer courts. AB 2698 is pending a hearing in the Assembly Appropriations Committee.

#### 8) **Prior Legislation:**

- a) SB 1282 (Smallwood-Cuevas), of the 2023-2024 Legislative Session, would have authorized felony pretrial diversion, with specified exceptions. SB 1282 failed passage on the Senate Floor.

- b) AB 2294 (Jones-Sawyer), Chapter 856, Statutes of 2022, re-authorized until January 1, 2031, the prosecuting attorney's office or county probation department to create a diversion or DEJ program for persons who commit theft offenses.
- c) AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018, relevant to this bill, authorized until January 1, 2021, the prosecuting attorney's office or county probation department to create a diversion or DEJ program for persons who commit theft offenses.
- d) AB 3234 (Ting), Chapter 334, Statutes of 2020, authorized a judge in the superior court in which a misdemeanor is being prosecuted to offer misdemeanor diversion to a defendant over the objection of a prosecuting attorney, except as specified.
- e) AB 994 (Lowenthal), of the 2013-2014 Legislative Session, would have required each county to establish and maintain a pretrial diversion program, to be administered by the district attorney of that county, and authorizes either the district attorney or the superior court to offer diversion to a defendant. AB 994 was vetoed.
- f) AB 1844 (Fletcher), Chapter 219, Statutes of 2010, amended petty theft with a prior to require three prior theft-related convictions.

**REGISTERED SUPPORT / OPPOSITION:****Support**

ACLU California Action  
All of US or None (HQ)  
California Public Defenders Association  
California Retailers Association  
Californians for Safety and Justice  
Center on Juvenile and Criminal Justice  
Legal Services for Prisoners With Children  
Los Angeles Regional Reentry Partnership (LARRP)  
San Francisco Public Defender  
San Quentin Skunkworks  
Smart Justice California, a Project of Beyond Impact

**Oppose**

Arcadia Police Officers' Association  
Brea Police Association  
Burbank Police Officers' Association  
California Association of Highway Patrolmen  
California District Attorneys Association  
California Narcotic Officers' Association  
California Police Chiefs Association  
California Reserve Peace Officers Association  
Claremont Police Officers Association  
Corona Police Officers Association

Culver City Police Officers' Association  
Fullerton Police Officers' Association  
Murrieta Police Officers' Association  
Newport Beach Police Association  
Palos Verdes Police Officers Association  
Placer County Deputy Sheriffs' Association  
Pomona Police Officers' Association  
Riverside Police Officers Association  
Riverside Sheriffs' Association

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