

Date of Hearing: May 13, 2026

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Buffy Wicks, Chair
AB 2108 (Sharp-Collins) – As Amended April 20, 2026

Policy Committee: Public Safety Vote: 5 - 2

Urgency: No State Mandated Local Program: Yes Reimbursable: Yes

SUMMARY:

This bill establishes a theft diversion program requiring the prosecuting attorney to review a defendant's file to determine whether the defendant is eligible for diversion whenever a case is before the court for specified theft-related and vandalism offenses.

Specifically, this bill:

- 1) Applies to cases involving shoplifting, forgery, grand theft, petty theft, petty theft of property valued at under \$50, receiving stolen property, and vandalism.
- 2) Makes a defendant eligible for diversion if the offense charged did not involve violence or threatened violence and there is no evidence of a contemporaneous theft-related violation other than the listed offenses.
- 3) Requires the prosecuting attorney, after reviewing the defendant's file, to file a declaration with the court (or state for the record) stating the grounds for the eligibility determination, and to make that information available to the defendant and their attorney, with the intent of allowing the court to set the diversion hearing at arraignment.
- 4) Authorizes the court, upon referral, to order the defendant to comply with terms, conditions, or programs the court deems appropriate, including workforce development, vocational training, and employment placement programs.
- 5) Provides that successful completion results in dismissal of the charge and the arrest is deemed never to have occurred, with limited exceptions for peace officer applications.
- 6) Excludes from eligibility persons charged with petty theft with a prior, as provided by Proposition 36.
- 7) Provides that the sole remedy for a defendant found ineligible is a postconviction appeal.

FISCAL EFFECT:

- 1) Costs (local funds, General Fund) of an unknown but potentially significant amount to county prosecuting attorneys' offices to review defendant files for diversion eligibility and file written declarations or make oral records of those determinations in every case involving the listed theft and vandalism offenses. General Fund costs will depend on whether the duties

imposed by this bill constitute a reimbursable state mandate, as determined by the Commission on State Mandates.

- 2) Cost pressures (Trial Court Trust Fund) of \$2.7 million to \$13.7 million annually to the trial courts, per the Judicial Council, for additional hearings generated by this bill, including a suitability hearing at arraignment, at least one check-in hearing during the diversion period, and a final hearing to determine successful completion or termination. The wide range reflects significant uncertainty about the volume of cases referred to diversion, which depends on charging practices by district attorneys statewide; per the Judicial Council, thousands of cases per year could enter the program. The bill does not cap the duration of diversion or restrict the number of times a person may be granted diversion, which the Judicial Council notes could result in repeat participation that compounds court workload over time. It generally costs approximately \$1,000 to operate a courtroom for one hour. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund may create a demand for increased funding for courts from the General Fund. The state budget provides annual General Fund backfills to the Trial Court Trust Fund to offset revenue reductions, totaling approximately \$117.3 million in 2025-26. The Judicial Council's estimate does not include the workload to adjudicate postconviction appeals from defendants found ineligible, which would represent additional cost pressure of an unknown amount.
- 3) Potential offsetting cost savings (Trial Court Trust Fund, local funds, General Fund). Diversion is generally understood to produce cost savings that partially or fully offset the new workload imposed by the bill, by removing cases from traditional prosecution before formal plea and reducing associated trial, hearing, and custody costs. The Senate and Assembly Appropriations analyses of AB 1231 (Elhawary), of this legislative session, a recent felony-diversion bill, identified analogous savings to trial courts, county jails, and potentially CDCR. Those analyses cited San Francisco data showing average per-case savings of approximately \$4,000 when cases were resolved through behavioral health court (\$12,101) or drug court (\$9,757) rather than traditional prosecution (\$16,379), and projected that diverting 10% of felony filings could save the courts over \$70 million annually. The savings analogy is directional rather than precise here because AB 2108 covers a different (and largely lower-cost) offense set: most theft and vandalism filings under this bill are misdemeanors or low-level wobblers rather than felonies, and the bill expressly excludes petty theft with a prior under Penal Code Section 666.1, further limiting prison-track cases. CDCR savings, if any, would therefore be modest and limited to the subset of grand theft and receiving stolen property cases that would otherwise have resulted in a prison commitment. The net fiscal effect on the courts and counties depends on the diversion success rate and the offset between new eligibility-review workload and reduced trial/hearing/custody costs.

The Legislative Analyst's Office recently warned of General Fund structural deficits of around \$35 billion per year beginning in the 2027-28 fiscal year.

COMMENTS:

- 1) **Purpose.** 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) **Background.** Existing law authorizes, until January 1, 2031, county prosecuting attorneys' offices and probation departments to create permissive theft diversion or deferred entry of judgment programs (Penal Code Section 1001.81), and authorizes courts to offer misdemeanor diversion over the objection of the prosecutor for most non-violent offenses (Penal Code Section 1001.95). Proposition 36 (2024) made several changes to theft laws, including creating a new petty-theft-with-a-prior offense under Section 666.1 punishable by up to three years for individuals with two prior theft convictions, and allowing more generous aggregation of stolen property values to reach the \$950 grand theft threshold.

This bill creates a new, parallel theft diversion program that, unlike section 1001.81, requires every prosecuting attorney statewide to review eligibility for every case involving the listed offenses and make a record of the determination. The bill preserves prosecutorial discretion in the eligibility determination itself but mandates the review-and-declaration process. The court retains discretion whether to grant diversion and what terms to impose. According to the Public Safety Committee's analysis this bill differs from other recently enacted diversion programs, because it does not specify a maximum term of diversion or set forth procedures for what occurs if a defendant fails to successfully complete the terms — raising the prospect of ongoing court supervision workload and potential litigation over termination procedures. The bill excludes from eligibility persons charged under section 666.1, the offense enacted by Proposition 36 to address repeat theft offenders. However, as noted by the policy analysis, because charging decisions are within the prosecuting attorney's discretion, a prosecutor could charge a repeat offender with petty theft under section 490.2 rather than section 666.1, rendering the defendant eligible for diversion under this bill notwithstanding prior theft convictions. Opponents argue this effectively reopens loopholes voters sought to close through Proposition 36.

Analysis Prepared by: Shiran Zohar / APPR. / (916) 319-2081