SENATE COMMITTEE ON PUBLIC SAFETY
Senator Jesse Arreguín, Chair
2025 - 2026 Regular

Bill No:	AB 2108	**Hearing Date:**	June 30, 2026
Author:	Sharp-Collins		
Version:	April 20, 2026		
Urgency:	No	**Fiscal:**	Yes
Consultant:	ML		

Subject: ***Diversion: retail theft***

HISTORY

Source: Californians for Safety and Justice

Prior Legislation: SB 1282 (Smallwood-Cuevas), failed on the Senate Floor, 2024
AB 2294 (Jones-Sawyer), Ch. 856, Stats. of 2022
AB 1065 (Jones-Sawyer), Ch. 803, Stats. of 2018
AB 3234 (Ting), Ch. 334, Stats. of 2020.
AB 994 (Lowenthal), vetoed, 2013
AB 1844 (Fletcher), Ch. 219, Stats. of 2010

Support: ACLU California Action; California Attorneys for Criminal Justice California Public Defenders Association; California Retailers Association; Californians for Safety and Justice; Ella Baker Center for Human Rights; Local 148 Los Angeles County Public Defender's Union; Smart Justice California

Opposition: American Petroleum and Convenience Store Association; Building Owners and Managers Association of California; California Association of Highway Patrolmen; California Business Properties Association; California Business Roundtable; California District Attorneys Association; California Hotel & Lodging Association; California Police Chiefs Association; California State Sheriffs' Association; Chief Probation Officers' of California; NAIOP California Orange County Sheriff's Department; Peace Officers Research Association of California San Diego County District Attorney's Office

Assembly Floor Vote: 41 - 22

PURPOSE

The purpose of this bill is to require 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.

Existing law divides theft into two degrees, petty theft and grand theft. (Pen. Code, § 486.)

Existing law states that petty theft is punishable by a fine not exceeding $1,000, by imprisonment in the county jail not exceeding six months, or by both. (Pen. Code, § 490.)

Existing law punishes grand theft as an alternate felony-misdemeanor (“wobbler”). (Pen. Code, § 487.)

Existing law defines grand theft as when the money, labor, or real or personal property taken is of a value exceeding $950, except as specified; other cases of theft are petty theft. (Pen. Code, §§ 487-488.)

Existing law 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. (Pen. Code, § 459.5, subd. (a).)

Existing law states that every person who buys or receives 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, is guilty of an alternate felony-misdemeanor when the value of the property exceeds $950, or guilty of a misdemeanor when the value of the property is $950 or less. (Pen. Code, § 496.)

Existing law states that every person who maliciously defaces with graffiti or other inscribed material, damages, or destroys any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism. (Pen. Code, § 594, subd. (a).)

Existing law punishes vandalism as follows:

- 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.
- If the amount of defacement, damage, or destruction is $400 or more, vandalism is punishable as a county jail-eligible felony, by imprisonment in county jail not exceeding one year, or by a fine of not more than $10,000.
- If the amount of defacement, damage, or destruction is $10,000 or more, vandalism is punishable by a fine of not more than $50,000, or by both that fine and imprisonment as a wobbler. (Pen. Code, § 594, subd. (b).)

Existing law 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:

- Any offense for which the defendant, if convicted, would be required to register as a sex offender;
- Any offense involving domestic violence; or,
- An offense of stalking. (Pen. Code, § 1001.95, subds. (a) & (e).)

Existing law 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).)

Existing law 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).)

Existing law 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 reinstituted. States that 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).)

Existing law 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. States that the program may be conducted by the prosecuting attorney's office or the county probation department. (Pen. Code, § 1001.81, subd. (a).)

Existing law 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 prefiling 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).)

Existing law 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:

- 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;
- 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;
- 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;
- 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,
- 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).)

Existing law 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:

- Completion of the program requirements such as community service or courses reasonably required by the prosecuting attorney.
- 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).)

Existing law 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).)

This bill states 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, and it appears to the prosecuting attorney that:

- The offense charged did not involve a crime of violence or threatened violence; and,
- There is no evidence of a contemporaneous violation related to theft other than a violation of the offenses listed above.

This bill requires that the prosecuting attorney review a defendant's file to determine whether the defendant is eligible for diversion. Requires that the prosecuting attorney file with the court, or state for the record, a declaration of a determination of defendant's eligibility pursuant to the above factors providing the grounds for whether the defendant is eligible. Requires that information shall be made available to the defendant and their attorney.

This bill specifies that this procedure is intended to allow the court to set the hearing for pretrial diversion at the arraignment.

This bill 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.

This bill authorizes a court to order a defendant referred to pretrial diversion to comply with terms, conditions, or programs that the court deems appropriate.

This bill states that at the end of the period of diversion, if the defendant has complied with the imposed terms and conditions, the court shall dismiss the action against the defendant.

This bill 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.

This bill prohibits a record pertaining to an arrest resulting in successful completion of diversion from, without the defendant's consent, being 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.

This bill prohibits diversion for persons who have been charged with petty theft or shoplifting with a prior offense.

This bill provides that this bill does not limit diversion eligibility under any other law.

This bill makes conforming changes.

COMMENTS

1. Need for This Bill

The author writes:

> 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. Theft Offenses

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 is the entry into an inhabited structure 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, punished as a 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, were forgery, making or delivering a check with insufficient funds, petty theft, and receiving stolen property. (Pen. Code, §§ 473, 476a, 490.2, 496.) 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, and, pertinent to this bill, limited the application of petty theft when someone had a prior theft conviction. (Pen. Code, § 459.5; Pen. Code, § 666.)

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.) 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).)

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.) Third, Proposition 36 further enacted sentencing enhancements when a person takes, damages, or destroys property of at least $50,000 in the commission of a felony. (Pen. Code, § 12022.6.) Finally, Proposition 36 also allowed a sentencing enhancement of one, two, or three years to be applied when an offender acts in concert with two or more persons to take, attempt to take, damage, or destroy property, in the commission or attempted commission of a felony. (Pen. Code, § 12022.65.)

3. Diversion

Diversion is the suspension of criminal proceedings for a prescribed time period with certain conditions, so a defendant may complete programming. 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 judgment). 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 pleaded guilty, would be sentenced.

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

Existing law 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.)

4. Effect of This Bill

This bill creates a new pretrial diversion program specific to shoplifting, forgery, grand theft, petty theft, petty theft under $50, receiving stolen property, or vandalism, for defendants who meet the statutory eligibility requirements. 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. The proponents of the bill argue that since the existing theft diversion statute in Penal Code section 1001.81 is permissive, it is inconsistently applied among counties.

This bill requires the prosecuting attorney 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 "contemporaneous" violation relating to theft other than a violation of the offenses listed above. The prosecuting attorney must file with the court, or state for the record, a declaration of a determination of defendant's eligibility pursuant to the above factors. Upon a declaration that the defendant is eligible, the court would be authorized to set a hearing for pretrial diversion at arraignment. The court would have discretion to grant diversion and to order the defendant to comply with terms, conditions, and programs the court deems appropriate.

Similar to other diversion programs, if a person is successful in completing the ordered terms, conditions, or programs, the charges are dismissed and the arrest cannot be used against the person, except for in an application for a position 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.

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

5. Argument in Support

ACLU California Action writes:

> Diversion reduces the need for prosecutors, judges, and probation resources, resulting in meaningful cost savings to the state. It is crucial that California takes proactive steps to create diversion programs where they do not exist in order to increase rehabilitation and save limited state resources. Increased diversion should allow individuals struggling with poverty who are pushed into crimes of necessity to avoid overly harsh imprisonment that only serves to further cycles of poverty.

6. Argument in Opposition

The Orange County Sheriff's Department writes:

> In the first year of implementation, Orange County has led the state in enforcement, with more than 10,000 bookings and charges filed under Proposition 36. The impact of these efforts is reflected in our public safety outcomes. Across the thirteen cities and unincorporated areas served by the Orange County Sheriff's Department, crime declined significantly from 2024 to 2025, including a 13% reduction in overall crime, a 26% decrease in burglaries, a 21% drop in thefts, and a 33% decline in vehicle thefts.
>
> AB 2108 would upend this progress by returning to limited accountability for those who commit property crime. Under this proposed bill nearly every thief will qualify for diversion. The bill would make those who commit petty theft, shoplifting, grand theft, receiving stolen property, and vandalism eligible for diversion. Perhaps most concerning is the fact that the bill fails to disqualify offenders with prior theft convictions. This is a direct attack on Proposition 36's provisions that target career criminals.

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