

Date of Hearing: April 21, 2026
Deputy Chief Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 2273 (Bains) – As Introduced February 19, 2026

As Proposed to be Amended in Committee

SUMMARY: Requires a prosecutor to state on the record why specified charges were not sought when facts constituting offenses that would be statutorily excluded from mental health diversion are alleged in the complaint or disclosed at a preliminary hearing but the defendant is not charged with those offenses. Specifically, **this bill:**

- 1) States that when the facts alleged in the accusatory pleading or disclosed in the preliminary hearing transcript would constitute any of the excluded enumerated offenses that make a defendant categorically ineligible for mental health diversion, and the defendant has not been charged with those offenses, the prosecution shall state on the record why those charges are not being sought and whether they have conferred with the victim about the charges filed.
- 2) Requires the Department of Justice (DOJ), upon completion of an investigation of a person who holds an elected office in which the department determines the person committed specified crimes relating to rape, that the victim was a minor, and that the case is appropriate for prosecution, to bring criminal charges against that person within 30 days.
- 3) Specifies that a failure to bring charges within 30 days does not preclude prosecution at a later date.

EXISTING LAW:

- 1) States that the purpose of mental health diversion is to promote the following:
 - a) Increased diversion of individuals with mental disorders to mitigate the individuals' entry and reentry into the criminal justice system while protecting public safety;
 - b) Allowing local discretion and flexibility for counties in the development and implementation of diversion for individuals with mental disorders across a continuum of care settings; and,
 - c) Providing diversion that meets the unique mental health treatment and support needs of individuals with mental disorders. (Pen. Code, § 1001.35.)
- 2) Authorizes a court to, after considering the positions of the defense and prosecution, grant pretrial mental health diversion to defendant charged with a misdemeanor or a felony if the defendant meets the following eligibility and suitability requirements:

- a) The defendant suffers from a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder, borderline personality disorder, and pedophilia, and the defense produces evidence of the defendant's mental disorder which must include a diagnosis by a qualified mental health expert within the last five years;
 - b) The defendant's mental disorder was a significant factor in the commission of the charged offense, as provided;
 - c) In the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder motivating the criminal behavior would respond to mental health treatment;
 - d) The defendant consents to diversion and waives their right to a speedy trial, unless a defendant has been found to be an appropriate candidate for diversion in lieu of commitment due to their mental incompetence and cannot consent to diversion or give a knowing and intelligent waiver of their right to a speedy trial;
 - e) The defendant agrees to comply with treatment as a condition of diversion; and,
 - f) The defendant will not pose an unreasonable risk of danger to public safety, as defined, if treated in the community. In making this determination, the court may consider the opinions of the district attorney, the defense, or a qualified mental health expert, and may consider the defendant's treatment plan, violence and criminal history, the current charged offense, and any other factors that the court deems appropriate. (Pen. Code, § 1001.36, subs. (a)-(c).)
- 3) Contains a presumption that the defendant's mental disorder was a significant factor in the commission of the offense, which can be rebutted with clear and convincing evidence. (Pen. Code, § 1001.36, subd. (b)(2).)
 - 4) Excludes defendants from mental health diversion eligibility if they are charged with murder, voluntary manslaughter, an offense requiring sex-offender registration (except for indecent exposure), or offenses involving weapons of mass destruction. (Pen. Code, § 1001.36, subd. (d).)
 - 5) States that if the defendant has performed satisfactorily in diversion, at the end of the period of diversion, the court shall dismiss the defendant's criminal charges that were the subject of the criminal proceedings at the time of the initial diversion. A court may conclude that the defendant has performed satisfactorily if the defendant has substantially complied with the requirements of diversion, has avoided significant new violations of law unrelated to the defendant's mental health condition, and has a plan in place for long-term mental health care. (Pen. Code, § 1001.36, subd. (h).)
 - 6) Provides that if the indictment or information charges the defendant with specified violent sex crimes, plea bargaining is prohibited unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or

dismissal would not result in a substantial change in sentence. At the time of presenting the agreement to the court, the district attorney shall state on the record why a sentence under one of those sections was not sought. (Pen. Code, § 1192.7, subd. (b)(3).)

- 7) Entitles victims, as part of the Victims' Bill of Rights, to reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding, the arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite the defendant, and, upon request, to be notified of and informed before any pretrial disposition of the case. (Cal. Const., art I, § 28.)
- 8) Establishes the Attorney General (AG) as the chief law officer of the state and states that whenever in the opinion of the AG any law of the State is not being adequately enforced in any county, it shall be the duty of the AG to prosecute any violations of law of which the superior court shall have jurisdiction, and in such cases the Attorney General shall have all the powers of a district attorney. (Cal. Const., art. V, § 13.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** None received.
- 2) **Background on Mental Health Diversion:** 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.

In 2018, the Legislature enacted a law authorizing pretrial diversion of eligible defendants with mental disorders. Under the mental health diversion law, in order to be eligible for diversion, 1) the defendant must suffer from a mental disorder, except those specifically excluded, 2) that played a significant factor in the commission of the charged offense; 3) in the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder causing, contributing to, or motivating the criminal behavior would respond to mental health treatment; 4) the defendant must consent to diversion and waive the right to a speedy trial; 5) the defendant must agree to comply with treatment as a condition of diversion; and 6) the court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety, as defined, if treated in the community. (Pen. Code, § 1001.36, subds. (b)-(c).) The law also states that a defendant is not eligible if they are charged with specified crimes, including murder, voluntary manslaughter, specified sex crimes and any crime requiring sex offender registration. (Pen. Code, § 1001.36, subd. (d).)

In 2022, the Legislature amended the mental health diversion law to, among other things restate that granting diversion is in the trial court's discretion in subdivision (a) (the original law provided the court's discretion in subdivision (h)) and to require the court to find that the

defendant's mental disorder was a significant factor in the commission of the offense unless there is clear and convincing evidence that it was not.¹ The cited reason for this change was a recommendation from the Committee on the Revision of the Penal Code.² One of the Committee's recommendations, after staff's exhaustive research and receiving public testimony from expert witnesses including crime victims, law enforcement leaders, judges, and criminal defense experts and advocates, was to strengthen the mental health diversion law by increasing its use in appropriate cases, with include consideration of risk to public safety. Specifically, the Committee recommended that the law be changed to simplify the procedural process for obtaining diversion by presuming that a defendant's diagnosed "mental disorder" has a connection to their offense. A judge could deny diversion if that presumption was rebutted or for other reasons currently permitted under the law, including finding that the individual would pose an unreasonable risk to public safety if placed in a diversion program.³

In addition to the eligibility requirements of the defendant, mental health treatment program must meet the following requirements: 1) the court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant; 2) the defendant may be referred to a program of mental health treatment utilizing existing inpatient or outpatient mental health resources; 3) and the program must submit regular reports to the court and counsel regarding the defendant's progress in treatment. (Pen. Code, § 1001.36, subd. (f).) The court has the discretion to select the specific program of diversion for the defendant. The county is not required to create a mental health program for the purposes of diversion, and even if a county has existing mental health programs suitable for diversion, the particular program selected by the court must agree to receive the defendant for treatment. (Pen. Code, § 1001.36, subd. (f)(1)(A).)

The diversion program cannot last more than two years for a felony and cannot last for more than a year on a misdemeanor. (Pen. Code, § 1001.36, subd. (f)(1)(C).) If there is a request for victim restitution, the court shall conduct a hearing to determine whether restitution is owed to any victim as a result of the diverted offense and, if owed, order its payment during the period of restitution. (Pen. Code, § 1001.36, subd. (f)(1)(D).)

The stated purpose of the diversion program is "to promote all of the following: . . . Allowing local discretion and flexibility for counties in the development and implementation of diversion for individuals with mental disorders across a continuum of care settings." (Pen. Code, § 1001.35, subd. (b).) The law states that courts have discretion to grant diversion if the minimum standards are met, and, correspondingly, refuse to grant diversion even though the defendant meets all of the requirements⁴:

¹ SB 1223 (Becker), Ch. 735, Stats. 2022.

² The Committee on the Revision of the Penal Code was established within the Law Review Commission through SB 94, Ch. 25, Stats. 2019 to study the Penal Code and recommend statutory reforms.

³ *Annual Report and Recommendations 2021*, Committee on Revision of the Penal Code, http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2021.pdf, p. 17 (accessed Apr. 9, 2025).

⁴ J. Couzens, *Memorandum RE: Mental Health Diversion Under Penal Code Sections 1001.35-1001.36* [revised] (May 2024), p. 14.

There may be times because of the defendant's circumstances, where the interests of justice do not support diversion of the case. The defendant's criminal or mental health history may reflect an unsuitability of the crime or the defendant for diversion. It may be that because of the defendant's level of disability there is no reasonably available and suitable treatment program for the defendant. The defendant's treatment history may indicate the prospect of successfully completing a program is quite poor. Conduct in prior diversion programs may indicate the defendant is now unsuitable. (See § 1001.36, subd. (k) [the court may consider past performance on diversion in determining suitability].) The court may consider whether the defendant and the community will be better served by the regimen of mental health court. (See §1001.36, subd. (f)(1)(A)(ii) [the court may consider interests of the community in selecting a program].) The court is not limited to excluding persons only because of the risk of committing a "super strike." (*Qualkinbush, supra*, 79 Cal.App.5th at pp. 888-889.) In exercising its discretion to grant or deny mental health diversion under subdivision (a), the court may consider any factor relevant to whether the defendant is suitable for diversion. (See *Qualkinbush, supra*, 79 Cal.App.5th at pp. 889-890.)

(J. Couzens, *Memorandum RE: Mental Health Diversion* (Pen. Code, §§ 1001.35-1001.36) (AB 1810 & SB 215) [revised] (May 2024), p. 4, fn. omitted.) While the court retains discretion to deny or grant diversion even where the defendant meets the threshold requirements for diversion (Pen. Code, § 1001.36, subd. (a)), this discretion must be exercised "consistent with the principles and purpose of the governing law." (*Sarmiento v. Superior Court* (2024) 98 Cal.App.5th 882, 892.)

When exercising its discretion to deny diversion, the court's conclusion that a defendant is not suitable for diversion must be supported by substantial evidence based on the individual facts of the case. If the facts do not support such a conclusion, the court's denial may be overturned under an abuse of discretion standard which is a deferential standard: "A court abuses its discretion when it makes an arbitrary or capricious decision by applying the wrong legal standard, or bases its decision on express or implied factual findings that are not supported by substantial evidence." (*Id.* at pp. 901-901, citing *People v. Moine* (2021) 62 Cal.App.5th 440, 449.)

As discussed above, existing law specifies factors for a court to determine a defendant's eligibility for diversion. Upon determination that a defendant is eligible (diagnosis of a mental disorder within the last five years, the mental disorder was a significant factor in the commission of the charged offense, and the charge is not one of the excluded offenses), the court must then consider factors to determine whether the defendant is suitable (expert opinion that defendant's symptoms would respond to treatment, defendant consents and waives right to speedy trial, defendant agrees to comply with treatment as a condition of diversion, and the defendant will not pose an unreasonable risk of danger to public safety, as defined). In determining the public safety risk, the court may consider any information that the court deems appropriate including the opinion of the district attorney and the defendant's violence. (Pen. Code, § 1001.36, subd. (c)(4).)

This existing language is broad enough to allow various evidence, such as uncharged conduct either related to the case or unrelated prior history, to be considered in determining whether a defendant is suitable for mental health diversion.

- 3) **Uncharged Conduct:** Generally, a person may not receive increased punishment based on uncharged and unproven conduct because this violates the Sixth Amendment notice and jury trial guarantees. (*Apprendi v. New Jersey* (2000) 530 U.S. 466.) This procedural protection is ingrained in our sentencing laws for purposes of imposing a term higher than the middle term in a statutory triad and in imposing longer sentences from enhancements. (Pen. Code, § 1170, subd. (b).) An implied plead and prove requirement has also been recognized by courts in other aspects of a person's sentence such as a denial of probation. (*People v. Lo Cicero* (1969) 71 Cal.2d 1186, 1191.)

This bill, as written, would have made a person ineligible for mental health diversion if the court determines that the facts alleged in the accusatory pleading or disclosed in the preliminary hearing transcript, police reports, or other evidence would constitute any of the enumerated offenses statutorily prohibited from diversion, regardless of whether the prosecution formally charges or ultimately proceeds on those offenses. Including such facts in a complaint or a preliminary hearing that does not result in those charges being filed raises the question of why the prosecuting attorney did not file charges supported by that evidence. Allowing evidence that the defendant may have committed one of the statutorily excluded offenses to be used against the defendant without providing procedural protections to allow the defendant to defend against those claims raises serious due process concerns.

As proposed to be amended in this committee, the bill would instead state that when the facts alleged in the accusatory pleading or disclosed in the preliminary hearing transcript would constitute any of the enumerated offenses that make a defendant categorically ineligible for mental health diversion, and the defendant has not been charged with those offenses, the prosecution shall state on the record why those charges are not being sought and whether they have conferred with the victim about the charges filed.

- 4) **Impetus for this Bill:** The impetus for this bill comes from the case of Zachary Scrivner, a former Kern County Supervisor who was charged in February 2025 with three felony counts of Penal Code section 273a, subdivision (a), alleging child abuse, and two felony counts of Penal Code section 30605, subdivision (a), alleging possession of assault weapons.⁵ The prosecuting agency was the California DOJ who agreed to investigate the case due to a conflict of interest because the Kern County District Attorney Cynthia Zimmer is the defendant's aunt.⁶ At the time of the offense, Scrivner had served as Supervisor in Kern County for a period of 13 years before resigning in August of 2024, and served a prior term on the Bakersfield City Council.

According to the Kern County Sheriff's Office, the District Attorney had called the Sheriff and reported that Scrivner was experiencing a psychotic episode at his home.⁷ When deputies arrived at Scrivner's home, they found that he had fought with his children and was stabbed after allegations that he had sexually abused one of the children.⁸ Although information in DOJ's complaint alleged that Scrivner had committed a lewd act on one of his children who

⁵ <https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-felony-charges-filed-against-former-kern-county>

⁶ <https://bakersfieldnow.com/news/local/california-doj-agrees-to-review-investigation-into-zack-scrivner>

⁷ <https://www.latimes.com/california/story/2026-01-08/zack-scrivner-mental-health-diversion-lawmakers-angry-child-abuse>

⁸ *Ibid.*

was under the age of 14⁹ after he had consumed “alcohol, Ambien, benzos (benzodiazepines) and cocaine metabolites in his system,” he was charged with felony child abuse¹⁰ rather than lewd acts on a minor under the age of 14. The superior court judge overseeing the case granted the defense motion for Scrivner to enter into pretrial mental health diversion program based on a diagnosis that he is suffering from mental health disorders, including alcohol-use disorder, depression and anxiety.¹¹ The court noted that the prosecution offered no alternative to Scrivner’s medical diagnosis that had been submitted to the court in support of the motion.¹² During the period of diversion, Scrivner is required to continue with treatment at a psychiatric clinic, continue to see a psychiatric practitioner at a minimum of every 6 months, and comply with psychiatric medications as prescribed by treating medical professionals. He is also to refrain from drug and alcohol use and is subject to random drug tests.¹³ If he successfully completes the program, the charges would be dismissed.¹⁴

DOJ has filed a writ of mandate for the Court of Appeal to review the superior court’s grant of mental health diversion for Scrivner arguing that there is clear and convincing evidence that Scrivner’s mental health disorders were not a motivating, causal, or contributing factor¹⁵ in the weapons offenses.

Lawmakers have pushed to get answers from DOJ on why Scrivner was not charged with lewd acts on a child which would have made him statutorily ineligible for diversion, however to date, no clear answer has been provided.¹⁶

This bill would require, for purposes of mental health diversion, whenever the facts alleged in the accusatory pleading or disclosed in the preliminary hearing transcript would constitute any of the excluded offenses that make a defendant categorically ineligible for diversion, and the defendant has not been charged with those offenses, the prosecution shall state on the record why those charges are not being sought and whether they have conferred with the victim about the charges filed.

Additionally, due to concerns that the eventual charges against Scrivner filed by DOJ came much later than the community had anticipated, this bill requires DOJ, upon completion of an investigation of a person who holds an elected office in which DOJ determines the person committed specified crimes relating to rape, that the victim was a minor, and that the case is appropriate for prosecution, to bring criminal charges against that person within 30 days. However, the bill states that the failure to bring prosecution within the 30 days does not preclude prosecution at a later date.

- 5) **Committee Amendments:** The author has agreed to accept committee amendments that delete the bill’s changes to Penal Code section 288 and delete the requirement that uncharged

⁹ Penal Code section 288, subdivision (a).

¹⁰ Penal Code section 273a, subdivision (a).

¹¹ https://www.bakersfield.com/news/scrivner-granted-mental-health-diversion/article_1fb33d7d-9c7f-4e51-8e5b-4d8273c571e1.html

¹² Supra, footnote 7.

¹³ Supra, footnote 6.

¹⁴ Penal Code section 1001.36, subd. (h).

¹⁵ Penal Code section 1001.36, subdivision (

¹⁶ <https://www.kget.com/news/zack-scrivner-investigation/kern-county-lawmakers-join-in-bipartisan-push-for-more-scrivner-transparency/?ipid=promo-link-block3>

conduct would make the defendant ineligible for diversion. Instead, the amendments provide that when the facts alleged in the accusatory pleading or disclosed in the preliminary hearing transcript would constitute any of the excluded enumerated offenses that make a defendant categorically ineligible for diversion, and the defendant has not been charged with those offenses, the prosecution shall state on the record why those charges are not being sought and whether they have conferred with the victim about the charges filed.

- 6) **Argument in Support:** According to *California Police Chiefs Association*, “The bill also strengthens prosecutorial accountability and transparency by requiring the California Department of Justice to bring charges within 30 days in cases involving elected officials accused of serious sexual crimes against minors, when the evidence supports prosecution. This provision promotes public trust in the justice system and ensures timely action in high-profile and sensitive cases.”
- 7) **Argument in Opposition:** According to *California Public Defenders Association*, “AB 2273 would require the Department of Justice to file charges within 30 days in certain cases involving elected officials and minor victims. This provision appears to be tailored to a specific factual scenario and does not reflect a neutral, statewide standard. Because the bill provides that failure to comply with this deadline does not preclude prosecution, the provision risks being largely symbolic while introducing additional complexity and potential inconsistency into prosecutorial decision-making.

“CPDA recognizes the concerns that have motivated this bill, including the risk that serious underlying conduct may not be fully reflected in the charges filed in a given case. Those concerns can and should be addressed in a manner that preserves the integrity of California’s statutory framework.”

8) **Related Legislation:**

- a) AB 46 (Nguyen) would make various changes to the mental health diversion law including revising the public safety standard for purposes of determining suitability for diversion to instead require the court to find that the defendant will not pose a substantial and undue risk to the physical safety of another person if treated in the community. AB 46 is pending a hearing in Senate Appropriations Committee.
- b) AB 2275 (Bains) would make various changes to the mental health diversion law including making persons who have been found incompetent to stand trial ineligible for diversion as well as expanding the list of excluded charges. AB 2275 is pending a hearing in this committee.
- c) AB 2297 (Stefani) requires a court to order restitution to the victim or victims, if any, which shall be enforceable as if the order were a civil judgment, and paid in the order required under existing law, when a defendant participates in a diversion program, as specified. AB 2297 is pending a hearing in Assembly Appropriations Committee.
- d) SB 1373 (Grove) would make various changes to the mental health diversion law including revising the public safety risk standard to instead make the defendant suitable for diversion if they do not pose a risk of danger to public safety and would add to the list of things the court may specifically consider in making that determination, including the

defendant's prior history in a pretrial diversion plan and the severity of injury to the victim. SB 1373 is pending a hearing in Senate Public Safety Committee.

9) Prior Legislation:

- a) AB 433 (Krell), of the 2025-2026 Legislative Session, would have excluded additional crimes from eligibility for mental health diversion. AB 433 failed passage in this committee.
- b) SB 483 (Stern) would add another suitability factor for granting mental health diversion, requiring the court be satisfied that the recommended mental health treatment program is consistent with the purpose of diversion and will meet the defendant's specialized treatment need. SB 483 was held on the suspense file in Assembly Appropriations Committee.
- c) AB 1412 (Hart), Chapter 687, Statutes of 2023, removed borderline personality disorder as an exclusion for mental health diversion.
- d) AB 1323 (Menjivar), Chapter 646, Statutes of 2024, required a court to determine whether the restoration of the defendant's mental competence is in the interests of justice, and if it finds that it is not in the interests of justice, to hold a hearing to consider granting mental health diversion or other programs to the defendant.
- e) AB 455 (Quirk-Silva), Chapter 236, Statutes of 2023, authorized the prosecution to request an order from the court to prohibit a defendant subject to pretrial diversion from owning or possessing a firearm because they are a danger to themselves or others until they successfully complete diversion or their firearm rights are restored.
- f) SB 1223 (Becker), Chapter 735, Statutes of 2022, added a presumption for purposes of mental health diversion eligibility that the defendant's mental disorder was a significant factor in the commission of the offense which could be overcome by clear and convincing evidence that it was not a motivating factor, causal factor, or contributing factor to the defendant's involvement in the alleged offense.
- g) SB 666 (Stone), of the 2019-2020 Legislative Session, would have added offenses which would preclude an individual from being eligible for mental health diversion. SB 666 was held in the Senate Public Safety Committee.
- h) SB 215 (Beall), Chapter 1005, Statutes of 2018, specified ineligible offenses for mental health diversion and required the court to determine whether restitution is owed to any victim of the diverted offense.
- i) AB 1810 (Committee on Budget), Chapter 34, Statutes of 2018, created mental health diversion in statute and specified that when a defendant is determined to be IST, the court can find that they are an appropriate candidate for mental health diversion.

REGISTERED SUPPORT / OPPOSITION:

Support

California Police Chiefs Association
Peace Officers Research Association of California (PORAC)

Opposition

ACLU California Action
California Public Defenders Association
Ella Baker Center for Human Rights
Friends Committee on Legislation of California
Justice2jobs Coalition
LA Defensa
San Francisco Public Defender

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