

THIRD READING

Bill No: AB 2273
Author: Bains (D)
Amended: 8/19/26 in Assembly
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 6-0, 6/23/26
AYES: Arreguín, Seyarto, Caballero, Cortese, Pérez, Wiener

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/13/26
AYES: Cervantes, Seyarto, Cabaldon, Dahle, Grayson, Richardson, Wahab

ASSEMBLY FLOOR: 68-0, 5/18/26 - See last page for vote

SUBJECT: Crimes: Scrivner Act

SOURCE: Author

DIGEST: This bill 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.

Senate Floor Amendments of 8/19/26 include double jointing language.

ANALYSIS:

Existing law:

- 1) Allows a court, in its discretion, and after considering the positions of the defense and prosecution, to grant pretrial mental health diversion to a defendant charged with a misdemeanor or a felony if the defendant specified eligibility and suitability requirements. (Penal [Pen.] Code, § 1001.36, subd. (a).)

- 2) Provides that a defendant is eligible for mental health diversion if both of the following criteria are met:
 - 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 and pedophilia. Requires the defense to produce evidence of the defendant's mental disorder which must include a diagnosis or treatment 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. (Pen. Code, § 1001.36, subd. (b).)
- 3) Requires the court, for any defendant who meet the eligibility criteria, to consider whether the defendant is suitable for mental health diversion. (Pen. Code, § 1001.36, subd. (c).)
- 4) Provides that a defendant is suitable for mental health diversion if all of the following criteria are met:
 - a) 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.
 - b) 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;
 - c) The defendant agrees to comply with treatment as a condition of diversion; or the defendant has been found to be an appropriate candidate for diversion in lieu of commitment for restoration of competency treatment and, as a result of the defendant's mental incompetence, cannot agree to comply with treatment.
 - d) The defendant will not pose an unreasonable risk of danger to public safety—i.e., unreasonable risk of committing a super strike offense—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, subds. (c)(1)-(4).)

- 5) Contains a presumption that the defendant's diagnosed mental disorder was a significant factor in the commission of the offense unless there is 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. Authorizes a court to consider any relevant and credible evidence, including, but not limited to, police reports, preliminary hearing transcripts, witness statements, statements by the defendant's mental health treatment provider, medical records, records or reports by qualified medical experts, or evidence that the defendant displayed symptoms consistent with the relevant mental disorder at or near the time of the offense. (Pen. Code § 1001.36, subd. (b)(2).)
- 6) 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).)
- 7) States that at any stage of the proceedings, the court may require the defendant to make a prima facie showing that the defendant will meet the minimum requirements of eligibility for diversion and that the defendant and the offense are suitable for diversion. (Pen. Code, § 1001.36, subd. (e).)
- 8) Provides that the hearing on the prima facie showing is informal and may proceed on offers of proof, reliable hearsay, and argument of counsel. Authorizes the court to summarily deny the request for diversion or grant any other relief as may be deemed appropriate if a prima facie showing is not made. (Pen. Code, § 1001.36, subd. (e).)
- 9) Defines "pretrial diversion" for purposes of mental health diversion as the postponement of prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, to allow the defendant to undergo mental health treatment, subject to the following conditions:
 - a) 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;
 - b) The provider of the mental health treatment program in which the defendant has been placed must provide regular reports to the court, the defense, and the prosecutor on the defendant's progress in treatment; and,

- c) A defendant may be diverted no longer than two years if it is a felony, and one year if it is a misdemeanor. (Pen. Code, § 1001.36, subd. (f).)
- 10) Requires the court to hold a hearing, after proper notice, to determine whether the criminal proceedings should be reinstated, the treatment should be modified, or the defendant should be conserved, if any of the following circumstances exist:
- a) The defendant is charged with an additional misdemeanor allegedly committed during the pretrial diversion and that reflects the defendant's propensity for violence;
 - b) The defendant is charged with an additional felony allegedly committed during the pretrial diversion;
 - c) The defendant is engaged in criminal conduct rendering him or her unsuitable for diversion; or,
 - d) A qualified mental health expert opines that: the defendant is performing unsatisfactorily in the assigned program; or the defendant is gravely disabled, as defined. (Pen. Code, § 1001.36, subd. (g).)
- 11) Requires the court to dismiss the criminal charges if the defendant has performed satisfactorily in diversion. Provides that 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).)
- 12) Provides that upon successful completion of diversion, if the court dismisses the charges, the arrest upon which the diversion was based shall be deemed never to have occurred. Requires the court to order access to the record of the arrest restricted, as specified. Provides that the defendant who successfully completes diversion may indicate in response to any question concerning the defendant's prior criminal record that the defendant was not arrested or diverted for the offense, except on an application for a position as a peace officer. (Pen. Code, § 1001.36, subds. (h) & (j).)
- 13) Prohibits plea bargaining if the indictment or information charges the defendant with specified violent sex crimes 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. Requires the district attorney to state on the record why a sentence under one of

those sections was not sought at the time of presenting the agreement to the court. (Pen. Code, § 1192.7, subd. (a)(3).)

- 14) 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.)
- 15) 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.)

This bill:

- 1) Requires the prosecution, in cases for which 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, to 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.
- 4) Provides that it shall be known, and may be cited, as the Sexual Contact and Rape Investigation, Victims' New Enforcement Rights Act or the SCRIVNER Act.

Background

In 2018, the Legislature enacted Penal Code sections 1001.35 and 1001.36 which created a pretrial diversion program for certain defendants with mental health disorders. (Committee (Com.) on Budget, Chapter 34, Statutes of 2018.) Pretrial diversion “allows for the suspension of criminal proceedings and potential dismissal of charges upon successful completion of mental health treatment.” (*Sarmiento v. Superior Court* (2024) 98 Cal.App.5th 882, 890 (*Sarmiento*)). The statute expressly states the purpose of this legislation was to “[i]ncrease[] diversion of [such] individuals” based on concerns that “incarceration only serves to aggravate [their] preexisting conditions and does little to deter future lawlessness.” (Sen. Com. on Public Safety, Analysis of Sen. Bill No. 215 (2017–2018 Reg. Sess.) as amended Jan. 3, 2018, p. 4.) Certain offenses are ineligible for pretrial diversion, including murder, rape, and registerable sex offenses, among others. (Pen. Code, § 1001.36, subd. (d).)

Under current law, Penal Code section 1001.36, subdivision (b), provides that a defendant is eligible for mental health diversion if both of the following criteria are met: the defendant suffers from a qualifying mental disorder, as evidenced by a diagnosis or treatment for a diagnosed mental disorder within the last five years by a qualified mental health expert; and, the disorder played a significant role in the commission of the charged offense. The second prong is presumptively satisfied unless there is clear and convincing evidence that the disorder was “not a motivating factor, causal factor, or contributing factor to the defendant’s involvement in the alleged offense.” (Pen. Code, § 1001.36, subd. (d).)

Once eligibility is established, a trial court must consider whether the defendant is suitable for pretrial diversion. (Pen. Code, § 1001.36, subd. (c).) A defendant is suitable if: (1) in the opinion of a qualified mental health expert, the defendant’s mental health disorder would respond to treatment; (2) the defendant consents to diversion and agrees to waive their speedy trial rights; (3) the defendant agrees to comply with treatment requirements; and (4) the defendant will not pose an unreasonable risk of danger to public safety as defined in Penal Code section 1170.18 (i.e., an unreasonable risk of committing certain violent felonies known as super strikes), if treated in the community. (Pen. Code, § 1001.36, subd. (c)(1)-(4).)

The maximum period of diversion is two years if the defendant is charged with a felony, and one year if the defendant is charged with a misdemeanor. (Pen. Code, § 1001.36, subd. (f).) If the defendant performs satisfactorily in diversion, the trial court must dismiss the criminal charges that were the subject of the criminal proceedings at the time of the initial diversion. (Pen. Code, § 1001.36, subd. (h).)

Existing law gives the trial court discretion to grant diversion if the minimum standards are met, and, correspondingly, to refuse to grant diversion even though the defendant meets all of the requirements. (J. Richard Couzens, *Mental Health Diversion Under Penal Code Sections 1001.35 and 1001.36* (May 2024), p. 14 <<https://capcentral.org/wp-content/uploads/2023/12/Judge-Couzens-Mental-Health-Diversion-MAY-2024.pdf> ; see also *Vaughn v. Superior Court* (2024) 105 Cal.App.5th 124, 134.) But this “residual” discretion must be exercised “consistent with the principles and purpose of the [mental health diversion].” (*People v. Qualkinbush* (2022) 79 Cal.App.5th 879, 891, quoting *Wade v. Superior Court* (2019) 33 Cal.App.5th 694, 710; see also *Sarmiento, supra*, 98 Cal.App.5th at p. 892.) A court abuses its discretion when it makes an arbitrary or capricious decision by applying the wrong legal standard. (*Vaughn, supra*, 105 Cal.App.5th at p. 135.)

This bill requires the prosecution, 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, to state on the record why those charges are not being sought and whether they have conferred with the victim about the charges filed. This bill also 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. Notably, this bill states that the failure to bring prosecution within 30 days does not preclude prosecution at a later date.

FISCAL EFFECT: Appropriation: No Fiscal Com.:Yes Local:Yes

According to the Senate Appropriations Committee:

Potentially moderate to significant one time trial court costs if a DOJ investigation results in criminal charges. The universe of cases triggering this requirement is expected to be very small. (Trial Court Trust Fund, General Fund)

Minor costs to county prosecuting attorneys' offices to state on the record the grounds for not charging an enumerated offense statutorily excluded from mental health diversion when the facts alleged in the accusatory pleading or disclosed at the preliminary hearing would constitute that offense, and to confer with the victim about the charges filed. 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 (General Fund).

SUPPORT: (Verified 8/19/26)

California Police Chiefs Association
Los Angeles County District Attorney's Office
Peace Officers Research Association of California

OPPOSITION: (Verified 8/19/26)

ACLU California Action
Initiate Justice

ASSEMBLY FLOOR: 68-0, 5/18/26

AYES: Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Caloza, Carrillo, Castillo, Chen, Connolly, Davies, DeMaio, Ellis, Fong, Gabriel, Garcia, Gipson, Jeff Gonzalez, Mark González, Hadwick, Haney, Harabedian, Hart, Hoover, Irwin, Jackson, Johnson, Krell, Lackey, Lowenthal, Macedo, McKinnor, Muratsuchi, Nguyen, Ortega, Pacheco, Papan, Patel, Patterson, Pellerin, Petrie-Norris, Ramos, Ransom, Michelle Rodriguez, Rogers, Blanca Rubio, Sanchez, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Ta, Tangipa, Valencia, Wallis, Ward, Wilson, Zbur, Rivas

NO VOTE RECORDED: Bryan, Calderon, Dixon, Elhawary, Flora, Gallagher, Kalra, Lee, Quirk-Silva, Celeste Rodriguez, Stefani, Wicks

Prepared by: Stephanie Jordan / PUB. S. /
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