SENATE COMMITTEE ON PUBLIC SAFETY

Senator Jesse Arreguín, Chair
2025 - 2026 Regular

Bill No:	AB 46	**Hearing Date:**	March 17, 2026
Author:	Nguyen		
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Urgency:	No	**Fiscal:**	Yes
Consultant:	SJ		

Subject: ***Diversion***

HISTORY

Source: Sacramento County District Attorney's Office; California District Attorney's Association; San Diego County District Attorney's Office; Riverside County District Attorney's Office; San Diego County District Attorney's Office; Orange County District Attorney's Office; Marin County District Attorney's Office; Placer County District Attorney's Office; El Dorado County District Attorney's Office; San Joaquin County District Attorney's Office; Yolo County District Attorney's Office; Santa Cruz County District Attorney's Office

Prior Legislation: SB 483 (Stern), held in Assembly Appropriations, 2025
AB 433 (Krell), failed passage in Assembly Public Safety, 2025
SB 1323 (Menjivar), Ch. 646, Stats. of 2024
AB 1412 (Hart), Ch. 687, Stats. of 2023
SB 1223 (Becker), Ch. 735, Stats. of 2022
SB 666 (Stone), failed passage in Senate Public Safety, 2020
SB 215 (Beall), Ch. 1005, Stats. of 2018
AB 1810 (Com. on Budget), Ch. 34, Stats. of 2018

Support: Arcadia Police Officers' Association; Brea Police Association; Burbank Police Officers' Association; California Association of School Police Chiefs; California Coalition of School Safety Professionals; California Narcotic Officers' Association; California Police Chiefs Association; California Reserve Peace Officers Association; California State Sheriffs' Association; Chief Probation Officers' of California; Claremont Police Officers Association; Corona Police Officers Association; Culver City Police Officers' Association; Fullerton Police Officers' Association; Los Angeles School Police Management Association; Los Angeles School 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; Sacramento County Sheriff Jim Cooper

Opposition: ACLU California Action; California Attorneys for Criminal Justice; California Public Defenders Association; Californians for Safety and Justice; Californians United for a Responsible Budget; Center for Empowering Refugees and Immigrants; Communities United for Restorative Youth Justice; Community Works West; County of Los Angeles Board of Supervisors; County Behavioral

Health Directors Association; Courage California; Drug Policy Alliance; Ella Baker Center for Human Rights; Empowering Women Impacted by Incarceration; Fresno County Public Defender; Friends Committee on Legislation of California; Immigrant Legal Resource Center; Initiate Justice; Initiate Justice Action; Justice2Jobs Coalition; La Defensa; LA County Public Defenders Union, Local 148; Los Angeles County Public Defender's Office; New Light Wellness; San Francisco Public Defender; Silicon Valley De-Bug; South Bay People Power; Vera Institute of Justice; An individual

Assembly Floor Vote: 56 - 7

PURPOSE

The purpose of this bill is to make various changes to the mental health diversion law, including changing the public safety standard for finding a particular defendant suitable for diversion.

Existing law, known as Marsy's Law, enumerates a number of rights to victims of crime, including the right to have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant; to reasonable notice of all public proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings; to restitution; to be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender; and to be informed of their enumerated rights, among others. (Cal. Con., art. I, § 28.)

Existing law provides that the purpose of mental health diversion is to promote the following:

- Increased diversion of individuals with mental disorders to mitigate the individuals' entry and reentry into the criminal justice system while protecting public safety;
- 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,
- Providing diversion that meets the unique mental health treatment and support needs of individuals with mental disorders. (Pen. Code, § 1001.35.)

Existing law 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. (Pen. Code, § 1001.36, subd. (a).)

Existing law provides that a defendant is eligible for mental health diversion if both of the following criteria are met:

- 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.
- The defendant's mental disorder was a significant factor in the commission of the charged offense, as provided. (Pen. Code, § 1001.36, subd. (b).)

Existing law 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).)

Existing law provides that a defendant is suitable for mental health diversion if all of the following criteria are met:

- 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.
- 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;
- 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.
- The defendant will not pose an unreasonable risk of danger to public safety—i.e., unreasonable risk of committing a super strike offense[1]—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).)

Existing law 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).)

Existing law 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).)

[1] The violent felonies known as "super strikes" include murder, attempted murder, solicitation to commit murder, assault with a machine gun on a police officer, possession of a weapon of mass destruction, and any serious felony punishable by death or life imprisonment, and specified sex offenses. (Pen. Code, §§ 667, subd. (e)(2)(C)(iv) & 1170.18, subd. (c).)

Existing law 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).)

Existing law 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).)

Existing law 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:

- 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;
- 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,
- 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).)

Existing law 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:

- The defendant is charged with an additional misdemeanor allegedly committed during the pretrial diversion and that reflects the defendant's propensity for violence;
- The defendant is charged with an additional felony allegedly committed during the pretrial diversion;
- The defendant is engaged in criminal conduct rendering him or her unsuitable for diversion; or,
- 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).)

Existing law 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).)

Existing law 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).)

Existing law prohibits a record pertaining to an arrest resulting in successful completion of diversion, or any record generated as a result of the defendant's application for or participation in diversion, from being used, without the defendant's consent, in any way that could result in the denial of any employment, benefit, license, or certificate. (Pen. Code, § 1001.36, subd. (i).)

This bill provides that the court has discretion to grant or deny diversion in all cases when exercised consistently with the eligibility and suitability provisions of the statute.

This bill provides that the defendant must have been diagnosed with a mental disorder within five years prior to the offense for the presumption that the mental disorder was a significant factor in the commission of the offense to apply.

This bill requires that the qualified mental health expert opine that the proposed mental health diversion plan is clinically appropriate to address the symptoms of the defendant's mental disorder that caused, contributed to, or motivated the charged offense.

This bill changes the public safety standard when determining a defendant's suitability for mental health diversion to require that the defendant will not pose a substantial and undue risk to the physical safety of another person, if treated in the community.

This bill requires the court to consider the victim's rights under subdivision (b) of Section 28 of Article I of the California Constitution.

This bill requires a court to orally state the reasons for a denial of mental health diversion on the record.

This bill requires that the court is satisfied that the recommended mental health treatment is consistent with the underlying purpose of mental health diversion.

COMMENTS

1. Need For This Bill

According to the author:

> AB 46 is about restoring balance to the court's decision-making process. Judges should have the discretion to decide when mental health diversion is appropriate in each case, especially in serious cases where public safety is at stake. Right now, the law ties their hands.
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> In *People v. Whitmill* (2022), the Court of Appeal made it clear*:*
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> "The statute clearly limits the discretion of courts to find in any particular case that mental health diversion creates a public safety risk… Our decision is compelled by the policy decision made by our elected representatives. We are duty-bound to enforce the law as written, whether or not we agree with the public safety risk the law accepts as permissible."

> As it stands, even if a judge believes diversion is not appropriate, they may still be forced to grant it. That's not justice. It's not fair to victims, and it's not fair to communities who expect the courts to keep them safe. I support mental health treatment and second chances, but I also believe judges need the ability to look at the facts, consider the seriousness of the case, and make a decision that reflects both accountability and rehabilitation.
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> AB 46 puts that trust back in the courts. It says we believe in judicial discretion, and it says that when the stakes are this high, we need to make sure judges are equipped to do their job.

2. Mental Health Diversion

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. (Com. on Budget, Ch. 34, Stats. 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.) For example, in *People v. Whitmill* (2022) 86 Cal.App.5th 1138, 1151, the Court of Appeal reversed the denial of mental health diversion because substantial evidence did not support finding that the defendant posed an unreasonable risk to public safety. The Court of Appeal reasoned it was "unclear" how the trial court determined that the expert opinion did not find a low risk for future dangerousness when the doctor expressly concluded that the appellant fit the mental health eligibility criteria. (*Ibid.*) In *People v. Pacheco* (2022) 75 Cal.App.5th 207, on the other hand, the Court of Appeal held the trial court properly denied mental health diversion to a defendant who started a brush fire. The court concluded the defendant, who suffered from schizophrenia and was addicted to methamphetamine, posed an unreasonable risk of danger to public safety. A clinical psychologist opined that if the defendant returned to using methamphetamine, he would become unstable and psychotic and be likely to reoffend, and the record supported that he would not refrain from using methamphetamine if treated in the community.

3. Competency in Criminal Proceedings and Growing Incompetent to Stand Trial (IST) Population

The Due Process Clause of the U.S. Constitution prohibits the criminal prosecution of a defendant who is not mentally competent to stand trial. A defendant is IST if, as a result of a mental health disorder or developmental disability, the defendant cannot understand the nature of the criminal proceedings or assist counsel in their defense in a rational manner. (Pen. Code, § 1367, subd. (a).) The law specifies procedures for inquiring into and determining mental competence, including suspending criminal proceedings. (Pen. Code, §§ 1368, 1369.)

If a felony defendant is found mentally incompetent to stand trial, the court may grant the defendant treatment through mental health diversion if the court finds the defendant is an appropriate candidate and the defendant is found eligible for mental health diversion. (Pen. Code, §§ 1370, subd. (a)(1)(B)(iii), 1001.36, subd. (c)(2).). Otherwise, where restoring the defendant to competence is in the interests of justice, the court must order the defendant delivered to the Department of State Hospitals (DSH) or other treatment facility or placed on outpatient status for treatment to regain competency. (Pen. Code, § 1370, subd. (a)(1)(C)(i).)

California has seen a significant increase over the last decade in the number of individuals with serious mental illness who become justice-involved and deemed IST on felony charges. Courts have repeatedly held:

> It is ultimately the state's responsibility to ensure compliance with the law by providing an adequate number of state hospital beds or other authorized placements to safely house and treat those committed under its own statutes. California's appellate courts have repeatedly urged the legislative and executive

> branches to remedy this long-standing problem. (*In re Lerke* (2024) 107 Cal.App.5th 685, 702, citing *Stiavetti v. Clendenin* (2021) 65 Cal.App.5th 691, 737 (*Stiavetti*).)

Due to increasingly long waiting periods to be admitted to DSH for treatment, the American Civil Liberties Union sued DSH in 2015. (See *Stiavetti, supra,* 65 Cal.App.5th 691.) In *Stiavetti*, the appellate court held that the long waitlist for competency restoration treatment violated the due process rights of people found to be IST. (*Id*. at p. 737.) The Court ordered DSH to begin substantive restoration services within 28 days of being placed on the list. **(***Id*. at p. 730.) The court's order is being implemented in phases.

In 2021, the Legislature charged the California Health & Human Services Agency and DSH to convene an IST Solutions Workgroup to identify actionable solutions that address this increasing population. The IST Workgroup released a report in November 2021 that outlined system improvements and one of the changes discussed was mental health diversion:

> By FY 2017-18, DSH recognized that the demand for IST treatment services was not going to be met by capacity created within the State Hospital system. At this time the department began working to establish treatment pathways in the community with the long-term goal of decreasing demand for State Hospital services by connecting more people with Serious Mental Illness into ongoing community care. The Budget Act of 2018 included funding for two major new programs to help DSH realize this vision.
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> The Budget Act of 2018 allocated $13.1 million for DSH to contract with the Los Angeles County Office of Diversion and Reentry (ODR) for the first community-based restoration (CBR) program in the state. In this program, ODR subcontracts for housing and treatment services for IST patients in the community. Most IST patients in this program live in unlocked residential settings with wraparound treatment services provided on site. The original CBR program provided funding for 150 beds; investments in the LA program since 2018 has increased the program size to 515 beds. In addition, DSH has received funding to implement additional CBR programs across the state. The Budget Act of 2021 included ongoing funding to add an additional 252 CBR beds in counties outside of Los Angeles, bringing the total number of funded CBR beds to 767.
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> The Budget Act of 2018 also allocated DSH $100 million (one-time) to establish the DSH Felony Mental Health Diversion (Diversion) pilot program. Of this funding, $99.5 million was earmarked to send directly to counties that chose to contract with DSH to establish a pilot Diversion program (the remaining $500,000 was for program administration and data collection support at DSH). Assembly Bill 1810 (2018) established the legal (Penal Code (PC) 1001.35-1001.36) and programmatic (Welfare & Institutions Code (WIC) 4361) infrastructure to authorize general mental health diversion and the DSH-funded Diversion program. The original Diversion pilot program includes 24 counties who have committed to serving up to 820 individuals over the course of their three-year pilot programs….

(Incompetent to Stand Trial Solutions Workgroup, *Report of Recommended Solutions* (Nov. 2021), pp.17-18 <https://www.chhs.ca.gov/wp-

content/uploads/2021/12/IST_Solutions_Report_Final_v2.pdf>.) The report noted that IST restoration of competency is not an adequate long-term treatment plan. The Workgroup looked at the three-year post discharge recidivism rates using the Department of Justice's criminal offender record information data and found that recidivism rates are still high—about 70% rearrest post discharge—which shows that whatever circumstances led to an individual's prior arrest have likely not changed and most IST patients are stuck cycling through the criminal justice system and DSH. The solutions identified by the report included expanding community-based treatment and diversion options for felony ISTs that will help end the cycle of criminalization by connecting patients to comprehensive behavioral health treatment.

This bill would give courts broader authority to deny diversion by changing the public safety standard in existing law. Removing diversion as an option will likely result in more people proceeding with the IST process with the goal of restoration of competency, presenting additional challenges for a system that is under a court order to provide services within a shortened time frame in order to meet constitutional standards.

4. Effect of This Bill

This bill makes several changes to the mental health diversion statute. First, this bill states that the court has discretion to grant or deny diversion in all cases when exercised consistently with the eligibility and suitability provisions of the statute. Second, this bill provides that the defendant must have been diagnosed with a mental disorder within five years of the offense for the presumption that the mental disorder was a significant factor in the commission of the offense to apply. While a defendant would still be eligible for mental health diversion if the diagnosis was not within five years of the current offense, the presumption that the mental disorder was a significant factor in commission of the offense would only apply if that diagnosis was in the five years preceding the offense.

This bill additionally amends the standard of risk to public safety for purposes of determining a defendant's suitability for diversion. Under existing law, the standard is "unreasonable risk of public safety" which currently requires a showing that there is a likelihood that if the defendant is granted diversion, the defendant will commit one of the enumerated "super strike" violent felonies. This bill instead provides that a defendant could be found unsuitable for diversion if that person's treatment in the community would "pose a substantial and undue risk to the physical safety of another person." By providing a redefined risk to public safety standard, the bill gives courts more discretion to determine unsuitability of a person who otherwise meets the statutory eligibility requirements.

This bill also makes changes to another suitability factor by requiring that the qualified mental health expert opine that the proposed mental health diversion plan is clinically appropriate to address the symptoms of the defendant's mental disorder that caused, contributed to, or motivated the charged offense. This bill refines a third suitability factor by requiring the defendant to agree to comply with the *proposed* treatment plan as a condition of diversion. This bill additionally requires that the court is satisfied that the recommended mental health treatment is consistent with the underlying purpose of mental health diversion. These changes incorporate language from and capture the spirit of SB 483 (Stern) which did not advance out of the Assembly last year and would have required the defendant to agree that the recommended treatment plan will meet their specialized needs and that the court is satisfied that the recommended mental health treatment is consistent with the underlying purpose of mental health diversion.

Finally, this bill requires a court to orally state the reasons for a denial of mental health diversion on the record, and requires the court to consider the victim's rights under Marsy's Law. Notably, under Marsy's Law, victims are provided with enumerated rights, such as the right to be informed of certain proceedings, the right to restitution, and the right to be heard upon request at proceedings. (Cal. Const., art. I, § 28.) Because Marsy's Law is enshrined in the state Constitution, courts are already required to consider victim's rights; however, this bill explicitly directs courts to consider the victim's rights when considering whether to grant mental health diversion.

5. Argument in Support

The Sacramento District Attorney's Office, one of the bill's co-sponsors, writes:

> Changes to Mental Health Diversion under Penal Code section 1001.36 are needed as recent amendments have led to disastrous results that have undermined public safety.
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> Courts have repeatedly expressed frustration at their lack of ability to exercise their judicial discretion when determining a defendant's amenability for the diversion program. Furthermore, upon acceptance into the program, defendants are released back into the community with minimal supervision and high likelihood of recidivism. Despite these flaws with the Mental Health Diversion program, the result can still lead to the expungement of their criminal records. The victims receive no protection or assurance they will ever be free from further victimization.
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> AB 46 is a commonsense solution to the negative consequences the Mental Health Diversion statute has created. It gives discretion back to the court to determine an individual defendant's amenability and suitability for treatment. It allows prosecutors the ability to object to applicants that pose a risk to public safety without having to prove the defendant will commit a super strike.

6. Argument in Opposition

According to the California Public Defenders Association:

> AB 46 would unnecessarily create a barrier to mental health diversion by changing the public safety standard to the person will not pose "*a substantial and undue risk to the physical safety of another person",* if treated in the community from the existing standard "an unreasonable risk of danger to public safety, as defined in Section 1170.18."
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> This amendment would severely restrict mental health diversion by creating unworkable eligibility standards. This misguided approach would force courts to imprison mentally ill Californians instead of providing treatment—despite clear evidence that diversion reduces recidivism by over 30% compared to prison. The bill would increase costs, worsen public safety outcomes, and return California to the failed practice of mass incarceration of the mentally ill while ensuring that

noncitizens suffering from mental illness will be torn from their families and deported.

Under current mental health diversion law, a court can only grant diversion if a defendant has been diagnosed with a mental disorder, that mental disorder was a significant factor in the commission of the charged offense, a treatment program is available, and the defendant can be safely treated in the community. Before issuing such an order, courts are required to consider public safety, as well as the opinions of qualified mental health experts, in order to determine if a diversion grant is appropriate. (Pen. Code § 1001.36.)

The law never *requires* courts to grant diversion, it merely gives the court the ability, where appropriate, to use its informed discretion to divert mentally disordered Californians out of the criminal system and into the mental health treatment system.

The mental health diversion law has been wildly successful - recidivism rates for mental health diversion graduates are more than 30% *lower* than for defendants sent to state prison.

The statute has similarly saved states and counties hundreds of millions of dollars, not only be reducing recidivism rates, but by removing the need for costly trials, lowering incarceration rates, and reducing reliance on State Hospital beds for Incompetent to Stand Trial (IST) defendants.

AB 46 would nonetheless remove the ability of judges to order mentally ill Californians into treatment unless the defense can somehow "prove" that the individual will not be a risk to another person if treated in the community – a standard which will effectively prevent courts from diverting almost any person ever.

Consider, for example, a typical mental health diversion case: A young person suffering from schizophrenia is charged with punching their parent while off their medication. The parent desperately wants their child to be ordered into treatment through the mental health diversion program. Under AB 46, however, unless the defense can prove that the child isn't a risk to the parent, who is imploring the court to grant diversion, the court is powerless to order them into treatment. Because the defense and court don't have crystal balls and therefore cannot "prove" that a person will never reoffend, that child will end up with a criminal record and no treatment.

The absurdity of this rule is particularly evident when one considers the fact that if a court is barred from using the mental health diversion statute, its only remaining options are probation (where the defendant will *still* be released into the community, but now with the added burden of a criminal record and without dedicated mental health treatment), or prison (where the defendant is warehoused for a few years only to be released back into the community, again with a criminal record and without treatment). In both of these alternative scenarios, outcomes are *worse*, both for the individual and his family, and the safety of the community at large. Additionally, if the child is a noncitizen they could also suffer the cruel

consequence of deportation after being convicted of the misdemeanor battery or felony assault against their parent if it were deemed to be a crime of moral turpitude because the parent was injured.

The failure to understand that mental health diversion is the option with the best chances of success for the community and the individual is exactly what is wrong with AB 46. Instead of allowing the court to use its informed judgment to make the best possible decision based on the facts of an individual case, AB 46 tries to simply remove treatment as an option, unless the court can guarantee that treatment will work perfectly, forever. Because no such guarantees are possible in medicine or criminal law, however, and because the other options (probation and prison) generally have worse outcomes, AB 46 is simply horrendous public policy and promises only a return to the mass imprisonment of mentally ill Californians.

…

AB 46 will also impose massive costs on California's courts, criminal justice system participants, and the State Hospital system at a time when budget deficits already threaten basic services.

…

Finally, AB 46 is bad public policy because it fails to recognize that imprisoning and prosecuting mentally ill Californians should always be the *last* choice. Imprisoning a mentally ill person is not only cruel and costly−it is pointless because it does nothing to address the underlying causes of their actions. AB 46 would nonetheless prevent courts from ordering mentally ill Californians into treatment – even when the judge with the most knowledge about the case concludes that diversion is far more likely to protect public safety.

-- END --