
SENATE COMMITTEE ON APPROPRIATIONS

Senator Sabrina Cervantes, Chair
2025 - 2026 Regular Session

AB 46 (Nguyen) - Diversion

Version: February 13, 2026

Urgency: No

Hearing Date: May 11, 2026

Policy Vote: PUB. S. 4 - 0, PUB. S. 5 - 0

Mandate: No

Consultant: Mark McKenzie

Bill Summary: This bill makes various changes to the mental health diversion statutes, including changing the public safety standard for finding a defendant suitable for diversion, as specified.

Fiscal Impact:

- This bill could result in additional cost pressures (Trial Court Trust Fund, General Fund) to the courts due to additional court time needed to determine eligibility for diversion. In addition, to the extent that it decreases the number of defendants deemed eligible and suitable for mental health diversion, defendants would go through typical criminal court proceedings instead, which are generally longer and more resource-intensive for courts than diversion proceedings. While the courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund may create a demand for increased funding for courts from the General Fund. See Staff Comments.
- This bill could result in additional incarceration costs (local funds, General Fund) to counties and the California Department of Corrections and Rehabilitation to the extent that it decreases the number of defendants deemed eligible and suitable for mental health diversion. The actual costs will depend on the number of defendants excluded from diversion who would instead be convicted and incarcerated as a result of this bill. The annual cost to incarcerate one person in county jail varies by county but can range from \$70,000 to \$90,000 per year, and the estimated 2026-27 average annual cost to incarcerate one person in state prison is \$138,000 (General Fund) based on an average daily population of 87,760 inmates. County incarceration costs are not subject to reimbursement by the state. However, overcrowding in county jails creates cost pressure on the General Fund because the state has historically granted new funding to counties to offset overcrowding resulting from public safety realignment.

Background: Mental health diversion is a form of pretrial diversion in which a judge suspends the criminal proceedings against a defendant while the defendant completes a mental health program. Existing law provides that the purpose of mental health diversion is to promote the following:

1. Increased diversion of individuals with mental disorders to mitigate the individuals' entry and reentry into the criminal justice system while protecting public safety;

2. 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,
3. Providing diversion that meets the unique mental health treatment and support needs of individuals with mental disorders.

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.

Existing law provides that a defendant is eligible for mental health diversion if both of the following criteria are met: (1) the defendant suffers from a qualifying mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (including bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder and pedophilia), which must have been diagnosed or treated within the previous five years; and (2) the defendant's mental disorder was a significant factor in the commission of the charged offense, as provided.

Proposed Law: SB 46 would revise the standards and procedures for a court to find that a defendant qualifies for mental health diversion. Specifically, this bill would:

- Explicitly provide 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.
- Require the defendant to 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.
- Require, in the opinion of the qualified mental health expert, 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.
- Change 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 (rather than posing "an unreasonable risk of danger to public safety").
- Require the court to consider the victim's rights under subdivision (b) of Section 28 of Article I of the California Constitution.
- Require the court to orally state the reasons for a denial of mental health diversion on the record.
- Require, as a condition of pretrial diversion, that the court is satisfied that the recommended mental health treatment is consistent with the underlying purpose of mental health diversion.

Related Legislation: SB 483 (Stern), which was held on the Assembly Appropriations Committee's Suspense File last year, would have authorized a court to deny pretrial diversion if it concludes that the defendant poses an unreasonable risk to the physical

safety of another, despite the proposed treatment program and terms and conditions of diversion. That bill also required the defendant to agree that the recommended treatment plan would meet their specialized needs.

Staff Comments: According to the analysis of this bill by the Senate Committee on Public Safety:

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).)

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.

In *People v. Whitmill* (2022), the Court of Appeal made it clear:

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.

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.”

This bill would increase workload and impose additional cost pressures on the trial courts. Specifically, the bill would require judges, when considering the suitability of a defendant for mental health diversion, to make additional specified findings as a prerequisite to granting diversion, using a revised public safety standard. Evaluating the effectiveness of a treatment program for each defendant's unique needs is complex and will require the expertise of behavioral health professionals. According to the Judicial Council, in 2023, there were 7,064 petitions for mental health diversion. If the court spends just one additional hour reviewing each defendant's needs and treatment program, and is required to make a finding that the program will meet those needs prior to granting pretrial diversion, the annual cost would be in the millions (assuming \$1,300 per court hour). Additionally, if fewer defendants are found suitable for diversion as a result of this bill, it could place significant cost pressures on the state-funded trial court system (Trial Court Trust Fund, General Fund) to adjudicate criminal trials.

Staff notes that trial court operations have cumulatively received over \$1 billion from the General Fund over the last five Budget Acts to improve service levels. The Governor's Proposed 2026-27 Budget includes \$70 million in ongoing support from the General Fund to continue to backfill the fund imbalance in the Trial Court Trust Fund and help pay for trial court operations. The Proposed Budget includes total funding of \$5.3 billion (\$3.3 billion General Fund and \$2 billion other funds) in 2026-27 for the Judicial Branch, of which \$3 billion is provided to support trial court operations.

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