

CONCURRENCE IN SENATE AMENDMENTS

AB 46 (Nguyen)

As Amended May 14, 2026

Majority vote

SUMMARY

Makes various changes to mental health diversion program including modifying the public safety consideration in determining suitability of a particular defendant for diversion.

Senate Amendments

- 1) State that if the court denies diversion, the court shall orally state the reasons on the record
- 2) Clarify that diversion is discretionary in all cases when exercised consistent with the eligibility and suitability provisions.
- 3) Require, for purposes of determining suitability of a defendant for diversion, that in the opinion of a qualified mental health expert, 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.
- 4) Amend the suitability criteria that a court must consider when determining whether to grant diversion in existing law that requires a court to find that the defendant will not pose an unreasonable risk of danger to public safety, as defined, to instead require a finding that the defendant will not pose a substantial and undue risk to the physical safety of another person.
- 5) Require that the court is satisfied that the recommended mental health treatment is consistent with the underlying purpose of mental health diversion
- 6) Include being rediagnosed with a mental disorder within five years for the presumption to apply that defendant's mental disorder was a significant factor in the commission of the offense.

COMMENTS

As passed by the Assembly: This bill made various changes to mental health diversion program including modifying the public safety consideration in determining suitability of a particular defendant for diversion.

Major Provisions

- 1) Amended the suitability criteria that a court must consider when determining whether to grant diversion in existing law that requires a court to find that the defendant will not pose an unreasonable risk of danger to public safety, as defined, and instead required that the defendant will not endanger public safety, as defined.
- 2) Defined "endanger public safety" to mean that the person's treatment in the community would likely result in physical injury or other serious danger to others.

- 3) Clarified that a defendant shall have been diagnosed with a mental disorder within the prior five years in order for the presumption to apply that the defendant's diagnosed mental disorder was a significant factor in the commission of the offense.
- 4) Specified that the court shall consider the victim's rights under Marsy's Law.
- 5) Restated that diversion is discretionary in all cases.

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."

Arguments in Support

According to the *Sacramento County District Attorney*, the sponsor of this bill, "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."

"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."

"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 to treatment. It allows prosecutors the ability to object to applicants that pose a risk to public safety and changes the unfair presumption of amenability for every applicant with a mental health diagnosis."

Arguments in Opposition

According to *Ella Baker Center for Human Rights*, "We oppose AB 46 because it will limit access to California's existing mental health diversion program, regardless of the circumstances of the case or of the person."

"California should continue to provide judges and prosecutors discretion to offer diversion in as wide a variety of cases as possible so that they can ensure safety, justice, and accountability. Diversion may not be suitable in many cases charged as an attempted murder, but removing the option is a step backward for California, eliminating much-needed flexibility and discretion. California already has rigorous screening factors in Penal Code 1000.36(c), including that the person does not present an unreasonable risk to public safety. This allows judges and prosecutors to make safer, more informed decisions than if their options were to be more broadly determined by charge type."

"Research shows diversion programs serve to reduce recidivism overall, which keeps us all safer. Diversion focuses on the drivers behind people's conduct, and it provides resources to address their unmet needs. Services such as treatment for substance use and mental health, job training, housing support, or education provide people with the means to thrive so that they are less likely to come into contact with the criminal legal system in the future. Diversion programs are particularly effective in cases of people suffering from mental illness. If someone with mental illness is a good candidate for diversion, judges and prosecutors should be allowed to pursue that option for the sake of public safety."

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"Finally, diversion programs reduce racial disparities in convictions and incarceration. Black and brown Californians remain more likely to be arrested because of over-policing, but if judges choose to extend the option to qualified candidates, diversion programs allow successful participants to avoid conviction histories. This means avoiding the long-term collateral consequences of incarceration includes difficulties accessing housing, employment, and education—consequences that are shown to increase recidivism in the United States."

FISCAL COMMENTS

According to Senate Appropriations Committee:

- 1) 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.
- 2) 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.

VOTES:

ASM PUBLIC SAFETY: 8-0-1

YES: Schultz, Alanis, Mark González, Bonta, Harabedian, Lackey, Nguyen, Ramos

ABS, ABST OR NV: Sharp-Collins

ASM APPROPRIATIONS: 13-1-1

YES: Wicks, Sanchez, Arambula, Calderon, Caloza, Dixon, Fong, Mark González, Pacheco, Pellerin, Solache, Ta, Tangipa

NO: Elhawary

ABS, ABST OR NV: Hart

ASSEMBLY FLOOR: 56-7-16

YES: Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Calderon, Carrillo, Castillo, Chen, Davies, DeMaio, Ellis, Fong, Gabriel, Gallagher, Gipson, Mark González, Hadwick, Haney, Harabedian, Hoover, Irwin, Krell, Lackey, Lowenthal, Macedo, Muratsuchi, Nguyen, Pacheco, Patel, Patterson, Petrie-Norris, Ramos, Michelle Rodriguez, Blanca Rubio, Sanchez, Schiavo, Schultz, Solache, Soria, Stefani, Ta, Tangipa, Valencia, Wallis, Wicks, Wilson, Zbur, Rivas

NO: Bryan, Elhawary, Garcia, Jackson, McKinnor, Ortega, Ransom

ABS, ABST OR NV: Bonta, Caloza, Connolly, Dixon, Flora, Jeff Gonzalez, Hart, Kalra, Lee, Papan, Pellerin, Quirk-Silva, Celeste Rodriguez, Rogers, Sharp-Collins, Ward

SENATE FLOOR: 34-0-6

YES: Allen, Alvarado-Gil, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Choi, Cortese, Gonzalez, Grayson, Grove, Hurtado, Jones, Laird, Limón, McGuire, McNeerney, Niello, Ochoa Bogh, Pérez, Reyes, Richardson, Rubio, Seyarto, Stern, Strickland, Umberg, Valladares, Wahab, Wiener

ABS, ABST OR NV: Dahle, Durazo, Menjivar, Padilla, Smallwood-Cuevas, Weber Pierson

UPDATED

VERSION: May 14, 2026

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FN: 0003140