

THIRD READING

Bill No: SB 1373
Author: Grove (R), et al.
Amended: 4/15/26
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 5-0, 4/21/26

AYES: Arreguín, Seyarto, Caballero, Pérez, Wiener

NO VOTE RECORDED: Cortese

SENATE APPROPRIATIONS COMMITTEE: 7-0, 5/14/26

AYES: Cervantes, Seyarto, Cabaldon, Dahle, Grayson, Richardson, Wahab

SUBJECT: Mental health diversion

SOURCE: Author

DIGEST: This bill makes various changes to the mental health diversion law, including adding to the list of offenses for which a person is excluded from mental health diversion eligibility and adding to the list of factors may take into consideration when determining a defendant's risk to public safety.

ANALYSIS:

Existing law:

- 1) 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, and restitution, among others. (California Constitution, art. I, § 28.)
- 2) 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).)

- 3) 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).)
- 4) Requires the court, for any defendant who meets the eligibility criteria, to consider whether the defendant is suitable for mental health diversion. (Pen. Code, § 1001.36, subd. (c).)
- 5) 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 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).)

- 6) 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. (Pen. Code § 1001.36, subd. (b)(2).)
- 7) 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).)
- 8) 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. 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: 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).)
- 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. (Pen. Code, § 1001.36, subds. (h) & (j).)

This bill:

- 1) 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.
- 2) Adds the following offenses to the list of offenses for which a person is excluded from mental health diversion eligibility: child abuse and endangerment, if charged as a felony; assault of a child under eight years of age resulting in the death of the child; human trafficking; corporal injury that causes great bodily injury; and inflicting cruel or inhuman corporal punishment on a child resulting in an injury, if charged as a felony.
- 3) Changes the public safety standard from "the defendant will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community" to "the defendant will not pose a substantial and undue risk of danger to public safety if treated in the community."
- 4) Adds to the list that the court may consider in making its decision regarding to the public safety risk to include: the defendant's prior history in a pretrial

diversion plan, the degree of danger posed to the community as evidenced by the defendant's prior violence and criminal history, and the severity of injuries to victims.

- 5) Requires the court to consider the victim's rights, as specified.
- 6) Requires the court to conduct an additional hearing if it intends to summarily grant diversion or any other relief.

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. (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.) 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.

This bill makes several changes to the mental health diversion statute. First, 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.

Next, this bill adds to the list of offenses for which a person is excluded from mental health diversion eligibility. Specifically, this bill excludes the following offenses from eligibility for mental health diversion:

- Child abuse and endangerment, if charged as a felony.
- Assault of a child under eight years of age resulting in the death of the child.
- Human trafficking.
- Corporal injury that causes great bodily injury.
- Inflicting cruel or inhuman corporal punishment on a child resulting in an injury, if charged as a felony.

This bill also changes the public safety standard from “the defendant will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community” to “the defendant will not pose a substantial and undue risk of danger to public safety if treated in the community.” This bill adds to the list that the court may consider in making its decision regarding the defendant’s public safety risk to include: the defendant’s prior history in a pretrial diversion plan, the degree of danger posed to the community as evidenced by the defendant’s prior violence and criminal history, and the severity of injuries to victims.

Finally, this bill requires the court to conduct an additional hearing if it intends to summarily grant diversion or any other relief.

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

According to the Senate Appropriations Committee:

Costs (local funds, General Fund) to the counties and the Department of Corrections and Rehabilitation of an unknown but significant amount to incarcerate people who otherwise could have been diverted and received mental health treatment. The Department of Corrections and Rehabilitation (CDCR) estimates the average annual cost to incarcerate one person in state prison to be

approximately \$138,000 for FY 2026-27. The average annual cost to incarcerate one person in county jail is approximately \$77,252 per year based on the average in California's four largest counties in 2021, with cost ranging up to \$90,000. Actual incarceration costs will depend on the number of convictions and the length of each sentence. Although county incarceration costs are generally not considered reimbursable state mandates pursuant to Proposition 30 (2012), 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 2011 public safety realignment.

Cost pressures to the courts, to the extent this bill decreases the number of defendants deemed eligible and suitable for mental health diversion. Such defendants must go through typical criminal court proceedings instead, which are generally longer and more resource-intensive for courts than diversion proceedings. At an estimated cost of \$1,300 for one hour of court time, a five day trial would cost more than \$50,000. Although courts are not funded on the basis of workload, increased cost pressures on the Trial Court Trust Fund may create a demand for increased funding for courts from the General Fund. The FY 2026-27 Budget proposes \$70 million General Fund to backfill declining revenue to the Trial Court Trust Fund.

SUPPORT: (Verified 5/14/26)

Arcadia Police Officers' Association
Association for Los Angeles Deputy Sheriffs
Brea Police Association
Burbank Police Officers' Association
California Association of School Police Chiefs
California Coalition of School Safety Professionals
California District Attorneys Association
California Massage Therapy Council
California Narcotic Officers' Association
California Police Chiefs Association
California Reserve Peace Officers Association
California State Sheriffs' Association
Central Valley Justice Coalition
Chief Probation Officers' of California
Chino Police Department
City of Chino
City of Exeter

City of McFarland
City of Tulare
Claremont Police Officers Association
Community Action Partnership of Kern
Corona Police Officers Association
County of Tulare
Crime Victims United
Culver City Police Officers' Association
emPOWERment Dess Perkins Foundation
Farmersville Police Department
Fresno County District Attorneys Office
Fresno Police and Fire Chaplaincy
Fresno Police Department
Fullerton Police Officers' Association
Kern Coalition Against Human Trafficking
Kern County Sheriff's Office
Kern County Supervisor Chris Parlier
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Merced County District Attorney's Office
Monterey County District Attorney's Office
Murrieta Police Officers' Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Sheriffs' Association
Riverside Sheriffs' Association
Sacramento County Sheriff Jim Cooper
San Diego County District Attorney's Office
San Luis Obispo County District Attorney
The California Baptist Capitol Ministry
The Open Door Network
Tulare County District Attorney's Office
Tulare County Fire Department
Woodlake Police Department
20 individuals

OPPOSITION: (Verified 5/14/26)

ACLU California Action
All of Us or None
California Association of Alcohol and Drug Program Executives
California Attorneys for Criminal Justice
California Public Defenders Association
Californians United for a Responsible Budget
County Behavioral Health Directors Association
Drug Policy Alliance
Ella Baker Center for Human Rights
Fair Chance Project
Justice2Jobs Coalition
La Defensa
Legal Services for Prisoners With Children
Los Angeles County Public Defender's Union, Local 148
San Francisco Public Defender
Sister Warriors Freedom Coalition
Smart Justice California
Vera Institute of Justice
1 individual

Prepared by: Stephanie Jordan / PUB. S. /
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