

Date of Hearing: June 30, 2026

Deputy Chief Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Nick Schultz, Chair

SB 1373 (Grove) – As Amended June 16, 2026

SUMMARY: Makes various changes to the mental health diversion program. Specifically, **this bill:**

- 1) Amends 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 requires that the defendant will not pose a substantial and undue risk to the physical safety of another person if treated in the community.
- 2) Clarifies that a defendant shall have been diagnosed or rediagnosed with a mental disorder within 5 years of the current offense in order for the presumption in existing law to apply that the defendant's diagnosed mental disorder was a significant factor in the commission of the offense.
- 3) Specifies that the court may additionally consider the defendant's prior history in a pretrial diversion plan, the degree of danger posed to the community as evidenced by defendant's prior violence, and the severity of injuries to victims when determining whether the defendant poses a public safety risk making the defendant unsuitable for diversion.
- 4) Specifies that the court shall consider the victim's rights under Marsy's Law.
- 5) Excludes a person charged with any of the following from being considered by the court for mental health diversion:
 - a) Child abuse and endangerment, in violation of Penal Code Section 273a, if charged as a felony;
 - b) Assault of a child under 8 years of age resulting in death of the child, in violation of Penal Code Section 273ab;
 - c) Human trafficking, in violation of Section 236.1;
 - d) Corporal injury, in violation of Section 273.5, that causes great bodily injury; and,
 - e) Inflicting cruel or inhuman corporal punishment on a child resulting in an injury, in violation of Penal Code Section 273d, if charged as a felony.
- 6) States that if the court intends to summarily grant diversion or any other relief, the court shall, if requested by either party, conduct an additional hearing.

EXISTING LAW:

- 1) States that the purpose of mental health diversion is to promote the following:
 - a) Increased diversion of individuals with mental disorders to mitigate the individuals' entry and reentry into the criminal justice system while protecting public safety;
 - b) 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,
 - c) Providing diversion that meets the unique mental health treatment and support needs of individuals with mental disorders. (Pen. Code, § 1001.35.)
- 2) Authorizes a court to, after considering the positions of the defense and prosecution, grant pretrial mental health diversion to defendant charged with a misdemeanor or a felony if the defendant meets the following eligibility and suitability requirements:
 - 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, borderline personality disorder, and pedophilia, and the defense produces evidence of the defendant's mental disorder which must include a diagnosis 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;
 - c) In the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder motivating the criminal behavior would respond to mental health treatment;
 - d) 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;
 - e) The defendant agrees to comply with treatment as a condition of diversion; and,
 - f) The defendant will not pose an unreasonable risk of danger to public safety, as defined, 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. (a)-(c).)

- 3) Contains a presumption that the defendant's mental disorder was a significant factor in the commission of the offense, which can be rebutted with 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).)
- 4) 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).)
- 5) 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).)
- 6) Provides that the hearing on the prima facie showing shall be informal and may proceed on offers of proof, reliable hearsay, and argument of counsel. If a prima facie showing is not made, the court may summarily deny the request for diversion or grant any other relief as may be deemed appropriate. (*Ibid.*)
- 7) 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 defendant may be referred to a program of mental health treatment utilizing existing inpatient or outpatient mental health resources. Before approving a proposed treatment program, the court shall consider the request of the defense, the request of the prosecution, the needs of the defendant, and the interests of the community. The treatment may be procured using private or public funds, and a referral may be made to a county mental health agency, existing collaborative courts, or assisted outpatient treatment only if that entity has agreed to accept responsibility for the treatment of the defendant, and mental health services are provided only to the extent that resources are available and the defendant is eligible for those services; and,
 - c) The provider of the mental health treatment program in which the defendant has been placed shall provide regular reports to the court, the defense, and the prosecutor on the defendant's progress in treatment. (Pen. Code, § 1001.36, subd. (f).)
- 8) Requires the provider of the mental health treatment program in which the defendant has been placed to provide regular reports to the court, the defense, and the prosecutor on the defendant's progress in treatment. (Pen. Code, § 1001.36, subd. (f)(1)(B).)
- 9) States that an offense 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)(1)(C).)

- 10) States that if any of the following circumstances exist, the court shall, after proper notice, hold a hearing to determine whether the criminal proceedings should be reinstated, whether the treatment should be modified, or whether the defendant should be conserved and referred to the conservatorship investigator of the county of commitment to initiate conservatorship proceedings for the defendant:
- 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:
 - i) The defendant is performing unsatisfactorily in the assigned program; or
 - ii) 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. 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 any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years. (Pen. Code, § 273a, subd. (a).)
- 13) States that any person, having the care or custody of a child who is under eight years of age, who assaults the child by means of force that to a reasonable person would be likely to produce great bodily injury, resulting in the child's death, shall be punished by imprisonment in the state prison for 25 years to life. Nothing in this section shall be construed as affecting the applicability of murder. (Pen. Code, § 273ab, subd. (a).)
- 14) States that any person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services or with the intent to effect or maintain a violation of specified sexual acts, is guilty of human trafficking. (Pen. Code, § 236.1.)
- 15) Provides that a person who willfully inflicts corporal injury resulting in a traumatic condition upon a victim described below is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail

for not more than one year, or by a fine of up to \$6,000, or by both that fine and imprisonment:

- a) The offender's spouse or former spouse;
- b) The offender's cohabitant or former cohabitant;
- c) The offender's fiancé, or someone with whom the offender has, or previously had, an engagement or dating relationship, as defined; or,
- d) The mother or father of the offender's child. (Pen. Code, § 273.5, subs. (a)-(b).)

16) Defines "traumatic condition" for purposes inflicting corporal injury as a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force. For purposes of this section, "strangulation" and "suffocation" include impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck. (Pen. Code, § 273.5, subd. (d).)

17) States that any person who willfully inflicts upon a child any cruel or inhuman corporal punishment or an injury resulting in a traumatic condition is guilty of a felony and shall be imprisoned in county jail for two, four, or six years, or in a county jail for not more than one year, by a fine of up to \$6,000, or by both that imprisonment and fine. (Pen. Code, § 273d, subd. (a).)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Sponsor:** Author-sponsored
- 2) **Author's Statement:** According to the author, "California's Mental Health Diversion law was created with good intentions, to help individuals truly suffering from mental illness who do not pose a risk to public safety. Unfortunately, it has taken a dangerous turn. We are seeing violent offenders, including those accused of horrific crimes against children, exploit this law as a means to avoid accountability. Any mental health condition on the DSM5 is now eligible for diversion, even in cases involving child abuse resulting in death. Suspects can be diagnosed after their arrest, even by individuals who are not medical doctors, such as licensed marriage and family therapists."
- 3) **Incarceration of Offenders with Mental Disorders:** Studies show that people with mental disorders are overrepresented in jails and prisons.¹ According to a 2019 study, more than 30% of the state's prison and 23 % of the jail populations have a mental illness.² Not only have the numbers of inmates with mental illness increased, the severity of psychiatric

¹ Seth J. Prins, *The Prevalence of Mental Illnesses in U.S. State Prisons: A Systemic Review* (Jul. 2015).

² Stanford Justice Advocacy Project, *Confronting California's Continuing Prison Crisis: The Prevalence And Severity Of Mental Illness Among California Prisoners On The Rise* <https://law.stanford.edu/wp-content/uploads/2017/05/Stanford-Report-FINAL.pdf> [accessed Feb. 26, 2025].)

symptoms among inmates is also on the rise.³ This population tends to serve longer sentences than the general population⁴ and have a higher recidivism rate. Promoting treatment over incarceration has shown positive results in reducing recidivism:

“To avoid incarceration, individuals with serious mental illness need to be diverted from the legal system and offered rehabilitative resources. The homeless comprise a significant share of individuals who come to the attention of law enforcement. A recent review revealed that lifetime arrest rates of homeless individuals with serious mental illness ranged from 62.9% to 90.0%, compared with approximately 15.0% in the general population. For this population, stable housing is a major issue. A recent randomized trial comparing housing first with assertive community treatment with treatment as usual demonstrated significantly decreased rates of arrest among those receiving assertive community treatment at 2 years. These results suggest that efforts to provide stable, affordable, and safe shelter for homeless individuals may lead to lower rates of involvement in the justice system...

“When individuals with serious mental illness are brought to court attention, several models have demonstrated positive outcomes, including mental health courts, drug courts, and Veterans Treatment Courts. Although they serve different populations, the common goal of all these court formats is to address the causes of behavior that brought an offender to police attention. Mental health courts are becoming more common in different communities, each with slight variations; however, common features include a specialized court docket that emphasizes problem solving, community-based treatment plans that are designed and supervised by judicial and clinical staff, regular follow-up with incentives and sanctions related to treatment adherence, and clearly defined “graduation” criteria. A recent prospective study of 169 individuals showed that the likelihood of perpetrating violence during the following year was significantly lower among participants processed through a mental health court than among individuals in a matched comparison group who were processed through traditional courts (odds ratio, 0.39; 95% CI, 0.16-0.95; P = .04).”⁵

- 4) **Mental Health Diversion:** Diversion is the suspension of criminal proceedings for a prescribed time period with certain conditions. A defendant may not be required to admit guilt as a prerequisite for placement in a pretrial diversion program. If diversion is successfully completed, the criminal charges are dismissed and the defendant may, with certain exceptions, legally answer that he or she has never been arrested or charged for the diverted offense. If diversion is not successfully completed, the criminal proceedings resume, however, a hearing to terminate diversion is required.

In 2018, the Legislature enacted a law authorizing pretrial diversion of eligible defendants with mental disorders. Under the mental health diversion law, in order to be eligible for diversion, 1) the defendant must suffer from a mental disorder, except those specifically excluded, 2) that played a significant factor in the commission of the charged offense; 3) 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; 4) the defendant must consent to diversion and waive the right to a

³ *Id.* at p. 2.

⁴ *Id.* at p. 1.

⁵ Hirschtitt & Binder, *Interrupting the Mental Illness–Incarceration–Recidivism Cycle* (Feb. 21, 2017) 317 JAMA 695-696, fn. omitted.

speedy trial; 5) the defendant must agree to comply with treatment as a condition of diversion; and 6) the court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety, as defined, if treated in the community. (Pen. Code, § 1001.36, subds. (b)-(c).) The law also states that a defendant is not eligible if they are charged with specified crimes, including murder, voluntary manslaughter, specified sex crimes and any crime requiring sex offender registration. (Pen. Code, § 1001.36, subd. (d).)

In 2022, the Legislature amended the mental health diversion law to, among other things, restate that granting diversion is in the trial court's discretion in subdivision (a) (the original law provided the court's discretion in subdivision (h)) and to require the court to find that the defendant's mental disorder was a significant factor in the commission of the offense unless there is clear and convincing evidence that it was not.⁶ The cited reason for this change was a recommendation from the Committee on the Revision of the Penal Code.⁷ One of the Committee's recommendations, after staff's exhaustive research and receiving public testimony from expert witnesses including crime victims, law enforcement leaders, judges, and criminal defense experts and advocates, was to strengthen the mental health diversion law by increasing its use in appropriate cases, which includes consideration of risk to public safety. Specifically, the Committee recommended that the law be changed to simplify the procedural process for obtaining diversion by presuming that a defendant's diagnosed "mental disorder" has a connection to their offense. A judge could deny diversion if that presumption was rebutted or for other reasons currently permitted under the law, including finding that the individual would pose an unreasonable risk to public safety if placed in a diversion program.⁸

In addition to the requirements discussed above, the mental health treatment program must meet the following requirements: 1) 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; 2) the defendant may be referred to a program of mental health treatment utilizing existing inpatient or outpatient mental health resources; 3) and the program must submit regular reports to the court and counsel regarding the defendant's progress in treatment. (Pen. Code, § 1001.36, subd. (f).) The court has the discretion to select the specific program of diversion for the defendant. The county is not required to create a mental health program for the purposes of diversion, and even if a county has existing mental health programs suitable for diversion, the particular program selected by the court must agree to receive the defendant for treatment. (Pen. Code, § 1001.36, subd. (f)(1)(A).)

The diversion program cannot last more than two years for a felony and cannot last for more than one year for a misdemeanor. (Pen. Code, § 1001.36, subd. (f)(1)(C).) If there is a request for victim restitution, the court shall conduct a hearing to determine whether restitution is owed to any victim as a result of the diverted offense and, if owed, order its payment during the period of restitution. (Pen. Code, § 1001.36, subd. (f)(1)(D).)

⁶ SB 1223 (Becker), Ch. 735, Stats. 2022.

⁷ The Committee on the Revision of the Penal Code was established within the Law Review Commission through SB 94, Ch. 25, Stats. 2019 to study the Penal Code and recommend statutory reforms.

⁸ *Annual Report and Recommendations 2021*, Committee on Revision of the Penal Code, http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2021.pdf, p. 17.

The stated purpose of the diversion program is “to promote all of the following: . . . increased diversion of individuals with mental disorders to mitigate 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, emphasis added.) The law states that courts have discretion to grant diversion if the minimum standards are met, and, correspondingly, refuse to grant diversion even though the defendant meets all of the requirements⁹:

There may be times because of the defendant’s circumstances, where the interests of justice do not support diversion of the case. The defendant’s criminal or mental health history may reflect an unsuitability of the crime or the defendant for diversion. It may be that because of the defendant’s level of disability there is no reasonably available and suitable treatment program for the defendant. The defendant’s treatment history may indicate the prospect of successfully completing a program is quite poor. Conduct in prior diversion programs may indicate the defendant is now unsuitable. (See § 1001.36, subd. (k) [the court may consider past performance on diversion in determining suitability].) The court may consider whether the defendant and the community will be better served by the regimen of mental health court. (See §1001.36, subd. (f)(1)(A)(ii)) [the court may consider interests of the community in selecting a program].) The court is not limited to excluding persons only because of the risk of committing a “super strike.” (*Qualkinbush, supra*, 79 Cal.App.5th at pp. 888-889.) In exercising its discretion to grant or deny mental health diversion under subdivision (a), the court may consider any factor relevant to whether the defendant is suitable for diversion. (See *Qualkinbush, supra*, 79 Cal.App.5th at pp. 889-890.)

(J. Couzens, *Memorandum RE: Mental Health Diversion* (Penal Code §§ 1001.35-1001.36) (AB 1810 & SB 215) [revised] (May 2024), p. 4, fn. omitted.) While the court retains discretion to deny or grant diversion even where the defendant meets the threshold requirements for diversion (Pen. Code, § 1001.36, subd. (a)), this discretion must be exercised “consistent with the principles and purpose of the governing law.” (*Sarmiento v. Superior Court* (2024) 98 Cal.App.5th 882, 892.)

In *Sarmiento*, the defendant requested mental health diversion after she was charged with attempted robbery. (*Id.* at p. 886.) Although the trial court found defendant met many of the requirements for diversion, it denied her request, finding that her inability to remain drug free after prior treatment indicated she would not respond well to mental health treatment. (*Id.* at pp. 887, 890.) However, the undisputed evidence indicated the defendant never received any coordinated treatment for her two primary mental health diagnoses (PTSD and major depressive disorder from childhood sexual abuse), and the doctor’s report submitted in support of her request for diversion made clear that defendant was unable to remain sober

⁹ J. Couzens, *Memorandum RE: Mental Health Diversion Under Penal Code Sections 1001.35-1001.36* [revised] (May 2024), p. 14.

because her underlying mental health conditions were never addressed. The prosecutor presented no evidence to the contrary. (*Id.* at pp. 887-889.) Thus, there was insufficient evidence to conclude defendant’s symptoms would not respond to treatment. The evidence was also insufficient to support the trial court’s finding that the defendant’s recommended treatment plan would not meet her “specialized mental health treatment needs” (§ 1001.36, subd. (f)(1)(A)(i)) because she had a history of receiving prior substance abuse treatment and then reoffending. The appellate court found that this does not rationally support a conclusion that mental health treatment coupled with substance abuse treatment would not be sufficient, and the alleged failure of prior drug treatment plans says nothing about the adequacy of the current proposed treatment plan. (*Id.* at p. 893-895.)

The trial court in *Sarmiento* also relied on its discretion to find that the defendant posed an “unreasonable risk to public safety,” although it recognized that the term was expressly defined in the statute to mean a likelihood that if the defendant is granted diversion, she will commit one of the enumerated “super strike” violent felonies. (*Id.* at p. 895.) The court did not make a finding of such a likelihood and instead relied purely on its discretion without any further analysis. (*Ibid.*) In defining the parameters of the court’s discretion, the court held:

[W]hile it is clear a trial court retains “residual” discretion to deny diversion even if all the threshold requirements are met, that does not mean, as the court suggested here, that it could reject a request for diversion based on an alternative meaning of “public safety” inconsistent with the specific statutory definition in section 1001.36, subdivision (c)(4). In the guise of exercising its “residual” discretion, a court is not permitted to redefine public safety in a manner inconsistent with the Legislature’s expressed intent.

(*Id.* at p. 896.) Thus, when exercising its discretion to deny diversion, the court’s conclusion that a defendant is not suitable for diversion must be supported by substantial evidence based on the individual facts of the case. If the facts do not support such a conclusion, the court’s denial may be overturned under an abuse of discretion standard which is a deferential standard: “A court abuses its discretion when it makes an arbitrary or capricious decision by applying the wrong legal standard, or bases its decision on express or implied factual findings that are not supported by substantial evidence.” (*Id.* at pp. 901-901, citing *People v. Moine* (2021) 62 Cal.App.5th 440, 449.)

This bill revises the public safety standard for determining suitability of a defendant for mental health diversion. As discussed in *Sarmiento*, as well as other recent cases overturning a lower court’s decision to deny mental health diversion based on public safety concerns¹⁰, while the court retains residual discretion to deny diversion for a person who meets the eligibility and suitability threshold, the court’s discretion to deny diversion based on a danger to public safety is limited to whether there is a likelihood that if the defendant is granted diversion, they will commit one of the enumerated “super strike” violent felonies. This bill would instead require the court to consider whether the defendant will pose a substantial and undue risk to the physical safety of another person if treated in the community. This revised standard is intended to provide courts with more discretion to deny diversion where there is

¹⁰ See also *People v. Tourville* (2026) 120 Cal.App.5th 539.

substantial evidence that the defendant poses an undue risk to the physical safety of another person.

Existing law states that the court may consider specified information including the opinions of the district attorney, defense, or qualified mental health expert, the defendant's treatment plan, the defendant's violence and criminal history, the current charged offense, and *any factors that the court deems appropriate* in making this determination. (Pen. Code, §1001.36, subd. (c)(4), emphasis added.) This bill adds new specified factors for the court to consider in making this determination including 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 the severity of injuries to the victims. Because existing law already expressly permits the court to consider any factors that the court deems appropriate, it is unclear whether specifying additional factors will make a difference in the court's determination especially where courts would have considered those factors on its own.

5) **Competency in Criminal Proceedings and Growing Incompetent to Stand Trial (IST)**

Population: The Due Process Clause of the United States Constitution prohibits the criminal prosecution of a defendant who is not mentally competent to stand trial. Existing law provides that if a person has been charged with a crime and is not able to understand the nature of the criminal proceedings and/or is not able to assist counsel in his or her defense, the court may determine that the offender is IST. (Pen. Code § 1367.) When the court issues an order for a hearing into the present mental competence of the defendant, all proceedings in the criminal prosecution are suspended until the question of present mental competence has been determined. (Pen. Code, § 1368, subd. (c).)

In order to determine mental competence, the court must appoint a psychiatrist or licensed psychologist to examine the defendant. If defense counsel opposes a finding on incompetence, the court must appoint two experts: one chosen by the defense, one by the prosecution. (Pen. Code, § 11369, subd. (a).) The examining expert(s) must evaluate the defendant's alleged mental disorder and the defendant's ability to understand the proceedings and assist counsel, as well as address whether antipsychotic medication is medically appropriate. (Pen. Code, § 1369, subd. (a).)

Both parties have a right to a jury trial to decide competency. (Pen. Code, § 1369.) A formal trial is not required when jury trial has been waived. (*People v. Harris* (1993) 14 Cal.App.4th 984.) The burden of proof is on the party seeking a finding of incompetence. (*People v. Skeirik* (1991) 229 Cal.App.3d 444, 459-460.) In order to be competent to stand trial, "a defendant must have sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against him or her." (*People v. Oglesby* (2008) 158 Cal.App.4th 818, 827 citing *People v. Ramos* (2004) 34 Cal.4th 494, 507.) Because a defendant is initially considered competent to stand trial (*Medina v. California* (1992) 505 U.S. 437), usually this means that the defense bears the burden of proof to establish incompetence. Therefore, defense counsel must first present evidence to support mental incompetence. However, if defense counsel does not want to offer evidence to have the defendant declared incompetent, the prosecution may. Each party may offer rebuttal evidence. Final arguments are presented to the court or jury, with the prosecution going first, followed by defense counsel. (Pen. Code, § 1369, subds. (b)-(e).)

If after an examination and hearing the defendant is found IST, the criminal proceedings are suspended and the court shall order the defendant to be referred to DSH, or to any other available public or private treatment facility, including a community-based residential treatment system if the facility has a secured perimeter or a locked and controlled treatment facility, approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status, except as specified. (Pen. Code § 1368, subd. (c) and 1370, subd. (a)(1)(B).) The court may also make a determination as to whether the defendant is an appropriate candidate for mental health diversion pursuant to Penal Code section 1001.36.

California, similar to the rest of the nation, 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. A 2017 study conducted by the National Association of State Mental Health Program Directors Research Institute found that from 1999 to 2014, the overall number of forensic patients in state hospitals increased by 74% while the number of IST patients increased by 72% during that same period.¹¹ Due to increasingly long waiting period to be admitted to the Department of State Hospitals (DSH) for treatment, in 2015, the American Civil Liberties Union sued DSH. (See *Stiavetti v. Clendenin* (2021) 65 Cal.App.5th 691.) In *Stiavetti*, the appellate court held that the long waitlist for competency restoration treatment violates the due process rights of people found to be IST. (*Id.* at p. 737.) The Court ordered that DSH must 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, with the original target date being set on February 27, 2024 to meet the 28 day standard.

However, on October 6, 2023, the court modified the interim benchmarks and final target date for compliance with the 28-day standard as follows: March 1, 2024 – provide substantive treatment services within 60 days; July 1, 2024 – within 45 days; November 1, 2024 – within 33 days; and March 1, 2025 – within 28 days.¹²

In 2021, the Legislature charged the California Health & Human Services Agency and the DSH to convene an IST Solutions Workgroup to identify actionable solutions that address this increasing population.¹³ The IST Workgroup released a report in November 2021 that outlined system improvements and one of the changes discussed was mental health diversion¹⁴:

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

¹¹ Wik, A., Hollen, V., Fisher, W.H. (2017) Forensic Patients in State Psychiatric Hospitals: 1999-2016.

¹² See 24-25 Governor's Budget Estimate: Department of State Hospitals (Jan. 10, 2025), p. 2.

¹³ AB 133 (Committee on Budget), Chapter 143, Statutes of 2021.

¹⁴ *IST Solutions Workgroup Report of Recommended Solutions*, A report of recommended solutions presented to the California Health and Human Services Agency and the California Department of Finance in Accordance with Section 4147 of the Welfare and Institutions Code (Nov. 2021) pp. 17-18.

included funding for two major new programs to help DSH realize this vision.

The Budget Act of 2018 allocated \$13.1million 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.

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.

The report noted that IST restoration of competency is not an adequate long-term treatment plan. The Workgroup looked at the 3-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 looping through the criminal justice system and DSH.¹⁵ 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.¹⁶

This bill would give courts broader authority to deny diversion by revising the public safety standard for determining suitability for diversion in existing law. Additionally, this bill would prohibit a court from considering a person charged with child abuse and endangerment, if charged as a felony, assault of a child under 8 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, for

¹⁵ *Id.* at p. 11.

¹⁶ *Id.* at p. 28.

mental health diversion eligibility. As discussed above, mental health diversion is an alternative to IST finding and treatment. Removing diversion as an option when charged with additional specified offenses will likely result in more people proceeding with the IST process with and attempted restoration of competency. This will place more burdens on an already overburdened system that are currently under a court order to provide services within a shortened time frame in order to meet constitutional standards and has already been shown to not be a long-term solution for the individual or the community in addressing public safety.

- 6) **Effect of this Legislation:** This bill makes several changes to the mental health diversion statute. First, it revises the public safety standard for determining a defendant's suitability for diversion. Instead of requiring a finding that the person would pose an unreasonable risk to public safety, which is defined in existing law to mean a likelihood that if the defendant is granted diversion, they will commit one of the enumerated "super strike" violent felonies, this bill requires a court to find that the person does not pose a substantial and undue risk to the physical safety of another person if treated in the community. The bill also specifies additional factors for the court to consider when making the determination that the person poses a public safety risk including degree of danger posed on the community based on the defendant's prior violence and the severity of injuries to the victim.

The bill also expands the list of excluded charges and requires an additional hearing to be held if the court intends to summarily grant diversion or any other relief, and if requested by either party.

This bill contains much of the same language that is contained in AB 46 (Nguyen), which was introduced in 2025 and has moved through both houses of the Legislature and is now at the Governor's desk pending signature. A notable difference is that this bill contains new charges that would make a defendant ineligible for diversion. Along the way, AB 46 was amended multiple times after committee and stakeholder input, and it now includes the revision to the public safety standard and reinforcing the rights of victims under the California Constitution, which have both been adopted by this bill. AB 46, in its original form, would have excluded a person charged with attempted murder from eligibility for diversion.

As discussed above, the determination of whether to grant diversion requires both a consideration of whether the defendant is eligible, which includes whether the person has a qualifying diagnosed mental disorder that was a significant factor in the commission of the crime, and also includes whether the defendant is charged with specified crimes that makes them statutorily ineligible. If the defendant is eligible, the court shall then look at the defendant's suitability for diversion. This suitability determination includes, among other things, a determination that they would not pose an unreasonable risk to public safety, as defined. The court must also be satisfied that the recommended mental health treatment program, either inpatient or outpatient, will meet the specialized mental health treatment needs of the defendant and require the treatment program to submit regular reports to the court, the defense, and the prosecutor on the defendant's progress in treatment. If it appears the defendant is performing unsatisfactorily in the treatment program or the defendant is arrested or charged for new offenses, the court may reinstate criminal proceedings. While the statute expressly provides courts with discretion to grant diversion, case law and anecdotal

evidence from various judges indicated that that the statutory limitations on this discretion may need to be revisited by the Legislature.

AB 46 was amended in this committee to remove the provision making a person charged with attempted murder ineligible for diversion and instead focus on providing more discretion to courts to deny a defendant based on public safety concerns. Another bill, AB 433 (Krell) from 2025, would have made several additional charges ineligible for diversion, many of which are also excluded by this bill. AB 433 failed passage in this committee.

7) Arguments in Support:

- a) According to the *Tulare County District Attorney's Office*, "Mental Health Diversion was intended to provide treatment for individuals whose diagnosed mental disorders meaningfully contributed to lower-level criminal conduct. However, statutory expansions have widely broadened eligibility. The program now permits individuals charged with serious and violent crimes, including attempted murder and other egregious offenses, to seek diversion, even when significant public safety concerns remain.

"SB 1373 closes these gaps by clarifying that the most serious and violent offenses are not eligible for diversion and by ensuring repeat offenders are not permitted to cycle through the program. The bill restores meaningful judicial discretion to deny diversion where public safety is at risk and provides prosecutors with appropriate procedural tools to fully and fairly evaluate eligibility claims.

"SB 13 73 reaffirms that diversion should not function as a substitute for accountability in serious cases. It strengthens statutory guardrails, prioritizes community safety, and refocuses resources on those for whom diversion was originally intended."

- b) According to *Peace Officers' Research Association of California*, "SB 1373 strengthens California's mental health diversion framework by establishing clearer eligibility standards and adding important safeguards. The bill narrows eligibility by excluding individuals charged with specified serious offenses and those with certain prior convictions, and ensures that qualifying mental health diagnoses are recent and relevant to the current offense. The bill also provides courts with clearer guidance in determining whether a defendant is suitable for diversion, including consideration of public safety risks and the circumstances of the offense.

"These changes help preserve access to diversion for individuals who can benefit from treatment, while reinforcing accountability and ensuring that the program is applied in a manner that protects public safety."

8) Arguments in Opposition:

- a) According to *Smart Justice California*, "Both Public Safety Committees have already made significant modifications to California's mental health diversion statute by each passing AB 46 (Nguyen). The current version of AB 46 is the result of extensive negotiations between Smart Justice California, the Chairs of both the Senate and Assembly Public Safety Committees, the Sacramento District Attorney, mental health

experts, other criminal legal system stakeholders, and the bill’s author, Assemblymember Stephanie Nguyen. AB 46 makes critical changes to address public safety concerns related to California’s mental health diversion statute by: 1) Changing the public safety standard to allow for broader denial of mental health diversion; 2) Clarifying that diversion is discretionary in all cases, consistent with the eligibility and suitability provisions of the statute; 3) Narrowing the eligibility criteria to require that the defendant be diagnosed with a mental disorder within 5 years of the current offense; and 4) Requiring the court to consider the victim’s rights under Article 1, Section 28 (b) of the California Constitution. Given the care with which the bill has been negotiated, we caution against further changes to the mental health diversion statute proposed by SB 1373.”

- b) According to *County Behavioral Health Directors Association (CBHDA)*, “This bill would narrow eligibility criteria for mental health diversion by providing statutorily undefined criteria for defendants being treated in the community, leading to further undue incarceration of individuals who are better off receiving treatment for their conditions rather than placement in carceral settings.

“For individuals living with serious mental illness (SMI), being inadvertently charged with a crime due to a mental illness can lead to detrimental lasting effects on their livelihoods. California currently allows for pretrial diversion, which is a method of compassionately administering justice for those living with SMI by way of court intervention to identify critical behavioral health treatment prior to completion of prosecution. Not only does this prevent unwarranted incarcerations of those in need of mental health treatment, but it also allows for early identification of potential patients for the state’s behavioral health system.

.....

“County behavioral health professionals are dedicated and have a keen understanding of SMI and serious emotional disturbance (SED) symptomology and treatment modalities to effectively treat defendants and others living with these diagnoses – the policy changes proposed by this bill would limit the numbers of individuals with mental health conditions related to their charges who can be safely treated in community through diversion. CBHDA is concerned that this would lead to greater criminalization of individuals with mental health conditions, which would compromise public safety. For individuals whose charges are related to actions taken while experiencing behavioral health symptoms, diversion has been a proven intervention to ensure that underlying mental health needs are met while allowing the individual charged with an opportunity to enter recovery and truly reenter society, rather than remain incarcerated for long periods without the possibility of rehabilitation.”

9) **Related Legislation:**

- a) AB 46 (Nguyen) would make various changes to mental health diversion program including modifying the public safety consideration in determining suitability of a particular defendant for diversion. AB 46 is pending approval by the Governor.

- b) AB 2275 (Bains) would have made various changes to the mental health diversion program including excluding additional crimes from eligibility. AB 2275 was never heard in this committee.

10) Prior Legislation:

- a) AB 433 (Krell), would have excluded additional crimes from eligibility for mental health diversion including the crimes excluded by this bill. AB 433 failed passage in this committee.
- b) SB 483 (Stern), would add another suitability factor for granting mental health diversion, requiring the court be satisfied that the recommended mental health treatment program is consistent with the purpose of diversion and will meet the defendant's specialized treatment need. SB 483 was held on suspense in Assembly Appropriations Committee.
- c) AB 1412 (Hart), Chapter 687, Statutes of 2023, removed borderline personality disorder as an exclusion for mental health diversion.
- d) AB 1323 (Menjivar), Chapter 646, Statutes of 2024, required a court to determine whether the restoration of the defendant's mental competence is in the interests of justice, and if it finds that it is not in the interests of justice, to hold a hearing to consider granting mental health diversion or other programs to the defendant.
- e) AB 455 (Quirk-Silva), Chapter 236, Statutes of 2023, authorized the prosecution to request an order from the court to prohibit a defendant subject to pretrial diversion from owning or possessing a firearm because they are a danger to themselves or others until they successfully complete diversion or their firearm rights are restored.
- f) SB 1223 (Becker), Chapter 735, Statutes of 2022, added a presumption for purposes of mental health diversion eligibility that the defendant's mental disorder was a significant factor in the commission of the offense which could be overcome by 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.
- g) SB 666 (Stone), of the 2019-2020 Legislative Session, would have added offenses which would preclude an individual from being eligible for mental health diversion. SB 666 was held in the Senate Public Safety Committee.
- h) SB 215 (Beall), Chapter 1005, Statutes of 2018, specified ineligible offenses for mental health diversion and required the court to determine whether restitution is owed to any victim of the diverted offense.
- i) AB 1810 (Committee on Budget), Chapter 34, Statutes of 2018, created mental health diversion in statute and specified that when a defendant is determined to be IST, the court can find that they are an appropriate candidate for mental health diversion.

REGISTERED SUPPORT / OPPOSITION:**Support**

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 (CPOC)
Chino Police Department
City of Chino
City of Exeter
City of McFarland
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 County District Attorney's Office
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Monterey County District Attorney's Office - ODA - Salinas, CA
Murrieta Police Officers' Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers 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; City of
Woodlake Police Department

Oppose

A New Way of Life Re-entry Project
ACLU California Action
All of US or None (HQ)
California Association of Alcohol and Drug Program Executives
California Attorneys for Criminal Justice
California Coalition for Women Prisoners
California Public Defenders Association
Californians for Safety and Justice (CSJ)
Californians United for a Responsible Budget
Coalition for Humane Immigrant Rights (CHIRLA)
County Behavioral Health Directors Association, (CBHDA)
Courage California
Disability Rights California
Drug Policy Alliance
Drug Policy Alliance 1
Ella Baker Center for Human Rights
Fair Chance Project
Felony Murder Elimination Project
Friends Committee on Legislation of California
Initiate Justice
Judge Peter Espinoza
Justice2jobs Coalition
LA Defensa
Legal Services for Prisoners With Children
Local 148 Los Angeles County Public Defender's Union
Los Angeles County Public Defender's Office
Rubicon Programs
San Francisco Public Defender
Sister Warriors Freedom Coalition
Smart Justice California, a Project of Beyond Impact
Vera Institute of Justice
Youth Alliance

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