

Date of Hearing: July 15, 2025

Deputy Chief Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Nick Schultz, Chair

SB 483 (Stern) – As Amended July 9, 2025

SUMMARY: Makes changes to the mental health diversion law including adding to the suitability requirements that a defendant agrees the recommended treatment plan will meet their specialized needs. **Specifically, this bill:**

- 1) Revises the definition of “pretrial diversion” to require that the court is also satisfied that the recommended program is consistent with the underlying purpose of mental health diversion.
- 2) Clarifies that notwithstanding the specified statutory public safety suitability consideration, the court retains the discretion already provided in the existing mental health diversion law to deny diversion if it concludes that, despite the proposed treatment program and any available terms and conditions of diversion, the defendant poses an unreasonable risk to the physical safety of another.

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. (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;
 - 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) 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).)
- 9) States that if any of the following circumstances exists, 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).)
- 10) 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).)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the author, "Diversion for those struggling with mental illness is a vital part of California's criminal justice system. Those who benefit most from diversion, those who don't have access to care until they interact with the courts, deserve equitable due process and full engagement in their treatment plan. Without providing this plan to them with their full informed consent, we undermine their treatment outcomes and further fail them. That's what this is about—SB 483 will ensure that all courts across California counties present a treatment plan before granting diversion and makes clear that those being diverted from entering the carceral system understand the conditions of diversion before consenting to comply with treatment. This is how we prevent recidivism, restore dignity, and create a safer public."
- 2) **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 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

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].)

³ *Id.* at p. 2.

⁴ *Id.* at p. 1.

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

- 3) **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 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, with include 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

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

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.

finding that the individual would pose an unreasonable risk to public safety if placed in a diversion program.⁸

In addition to the eligibility requirements of the defendant, 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; and, 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 a year on 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).)

The stated purpose of the diversion program is “to promote all of the following: . . . 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.” (Pen. Code, § 1001.35, subd. (b).)

As stated above, existing law requires the court to be satisfied that the recommended inpatient or outpatient program will meet the specialized mental health treatment needs of the defendant. This bill requires the court to be satisfied that the recommended outpatient program or mental health treatment is consistent with the underlying purpose of mental health diversion as described in Penal Code section 1001.35.

This bill adds to the factors that the court must consider when determining the defendant's suitability for mental health diversion. Specifically, this bill requires the defendant to agree that the recommended treatment plan will meet their specialized needs in addition to the requirement under existing law that the defendant agrees to comply with the treatment as a condition of diversion.

- 4) **Court's Discretion:** Existing law states that a court may, *in its discretion*, grant mental health diversion to a defendant pursuant to the procedures laid out in the mental health diversion statute. (Pen. Code, § 1001.36, subd. (a).) Courts have discretion to grant diversion

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 (accessed July 3, 2025).

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.⁴ (See *Qualkinbush, supra*, 79 Cal.App.5th at pp. 889-890.)¹⁰

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.) 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 clarifies that notwithstanding the specified public safety suitability consideration, the court retains the discretion already provided in subdivision (a) of Penal Code section 1001.36 to deny diversion if it concludes that, despite the proposed treatment program and any available terms and conditions of diversion, the defendant poses an unreasonable risk to the physical safety of another.

- 5) **Argument in Support:** According to *California Behavioral Health Association*, "CBHA members see every day how mental health treatment, when appropriately matched and

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

¹⁰ *Id.* at pg. 4.

consistently applied, can stabilize individuals who are cycling through jails and courts not because they are dangerous, but because they are unwell and untreated. SB 483 offers critical clarity: the court must not only ensure that a treatment plan exists, but that it is consistent with the intent of diversion and tailored to meet the individual's actual condition. That clarity will protect the integrity of diversion programs and the safety of our communities.

“SB 483 upholds due process while reinforcing collaboration between mental health professionals and the justice system. It keeps judicial discretion intact, but arms the court with a stronger standard for assessing program suitability.”

6) **Argument in Opposition:** None received.

7) **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 hearing by the Senate Appropriations Committee.
- b) AB 433 (Krell) would have added more crimes to the list of crimes excluded from mental health diversion eligibility. AB 433 failed passage in Assembly Public Safety Committee.

8) **Prior Legislation:**

- a) AB 1412 (Hart), Chapter 687, Statutes of 2023, removed borderline personality disorder as an exclusion for mental health diversion.
- b) 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.
- c) 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.
- d) 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.
- e) 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.

- f) 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.
- g) 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**

Alameda County Families Advocating for the Seriously Mentally Ill
Arcadia Police Officers' Association
Brea Police Association
Burbank Police Officers' Association
California Behavioral Health Association
California District Attorneys Association
California Narcotic Officers' Association
California Peer Watch
California Public Defenders Association
California State Sheriffs' Association
Claremont Police Officers Association
Culver City Police Officers' Association
Family Advocates for Individuals With Serious Mental Illness (FAISMI) of Sacramento
Fullerton Police Officers' Association
Murrieta Police Officers' Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
San Diego County District Attorney's Office
Santa Ana Police Officers Association

Opposition

None Submitted

Analysis Prepared by: Stella Choe / PUB. S. / (916) 319-3744