

AMENDED IN SENATE JULY 10, 2025

AMENDED IN ASSEMBLY MAY 5, 2025

AMENDED IN ASSEMBLY MARCH 10, 2025

CALIFORNIA LEGISLATURE—2025–26 REGULAR SESSION

## ASSEMBLY BILL

**No. 46**

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**Introduced by Assembly Member Nguyen**  
(Principal coauthor: Senator Hurtado)  
**(Coauthors: Assembly Members Krell, Petrie-Norris,**  
**Michelle Rodriguez, and Blanca Rubio)**  
(Coauthor: Senator Ashby)

December 2, 2024

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An act to amend Section 1001.36 of the Penal Code, relating to diversion.

### LEGISLATIVE COUNSEL'S DIGEST

AB 46, as amended, Nguyen. Diversion.

Existing law authorizes a court to grant pretrial diversion to a defendant suffering from a mental disorder, on an accusatory pleading alleging the commission of a misdemeanor or felony offense, in order to allow the defendant to undergo mental health treatment. Existing law provides that a defendant is eligible for diversion if they have been diagnosed with certain mental disorders and the court finds that the mental disorder was a significant factor in the commission of the charged offense, unless there is clear and convincing evidence that the disorder was not a motivating, causal, or contributing factor to the defendant's involvement in the alleged offense. Existing law prohibits defendants charged with specified offenses, including murder, from being placed in this diversion program.

This bill would, if the defendant has been diagnosed with a mental disorder within 5 years ~~prior to~~ of the current offense, as specified, 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~~ a preponderance of evidence that it was not a motivating, causal, or contributing factor to the defendant's involvement in the alleged offense.

Existing law makes a defendant eligible for this diversion program if, among other criteria, the defendant will not pose an unreasonable risk of danger to public safety if treated in the community, as specified.

~~The bill would instead require that the defendant not endanger public safety, as defined, if treated in the community.~~

*The bill would specify that a court retains discretion to deny diversion, even if a defendant is otherwise suitable for diversion, upon a finding that it is more likely than not that the defendant will pose an unreasonable risk to the physical safety of another person. The bill would require the court to state the reasons for denial on the record.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1001.36 of the Penal Code is amended
- 2 to read:
- 3 1001.36. (a) On an accusatory pleading alleging the
- 4 commission of a misdemeanor or felony offense not set forth in
- 5 subdivision (d), the court may, in its discretion, and after
- 6 considering the positions of the defense and prosecution, grant
- 7 pretrial diversion to a defendant pursuant to this section if the
- 8 defendant satisfies the eligibility requirements for pretrial diversion
- 9 set forth in subdivision (b) and the court determines that the
- 10 defendant is suitable for that diversion under the factors set forth
- 11 in subdivision (c). Diversion pursuant to this section is
- 12 discretionary in all cases.
- 13 (b) A defendant is eligible for pretrial diversion pursuant to this
- 14 section if both of the following criteria are met:
- 15 (1) The defendant has been diagnosed with a mental disorder
- 16 as identified in the most recent edition of the Diagnostic and
- 17 Statistical Manual of Mental Disorders, including, but not limited
- 18 to, bipolar disorder, schizophrenia, schizoaffective disorder, or

1 post-traumatic stress disorder, but excluding antisocial personality  
2 disorder and pedophilia. Evidence of the defendant's mental  
3 disorder shall be provided by the defense and shall include a  
4 diagnosis or treatment for a diagnosed mental disorder within the  
5 last five years by a qualified mental health expert. In opining that  
6 a defendant suffers from a qualifying disorder, the qualified mental  
7 health expert may rely on an examination of the defendant, the  
8 defendant's medical records, arrest reports, or any other relevant  
9 evidence.

10 (2) The defendant's mental disorder was a significant factor in  
11 the commission of the charged offense. If the defendant has been  
12 diagnosed with a mental disorder within five years ~~prior to~~ of the  
13 current offense, based on the evidence offered in paragraph (1),  
14 the court shall find that the defendant's mental disorder was a  
15 significant factor in the commission of the offense unless there is  
16 ~~clear and convincing~~ *a preponderance of* evidence that it was not  
17 a motivating factor, causal factor, or contributing factor to the  
18 defendant's involvement in the alleged offense. A court may  
19 consider any relevant and credible evidence, including, but not  
20 limited to, police reports, preliminary hearing transcripts, witness  
21 statements, statements by the defendant's mental health treatment  
22 provider, medical records, records or reports by qualified medical  
23 experts, or evidence that the defendant displayed symptoms  
24 consistent with the relevant mental disorder at or near the time of  
25 the offense.

26 (c) (1) For any defendant who satisfies the eligibility  
27 requirements in subdivision (b), the court shall consider whether  
28 the defendant is suitable for pretrial diversion. A defendant is  
29 suitable for pretrial diversion if all of the following criteria are  
30 met:

31 ~~(1)~~

32 (A) In the opinion of a qualified mental health expert, the  
33 defendant's symptoms of the mental disorder causing, contributing  
34 to, or motivating the criminal behavior would respond to mental  
35 health treatment.

36 ~~(2)~~

37 (B) The defendant consents to diversion and waives the  
38 defendant's right to a speedy trial, or a defendant has been found  
39 to be an appropriate candidate for diversion in lieu of commitment  
40 pursuant to clause (iii) of subparagraph (B) of, or clause (v) of

1 subparagraph (C) of, paragraph (1) of subdivision (a) of Section  
2 1370 or subparagraph (A) of paragraph (1) of subdivision (b) of  
3 Section 1370.01 and, as a result of the defendant's mental  
4 incompetence, cannot consent to diversion or give a knowing and  
5 intelligent waiver of the defendant's right to a speedy trial.

6 ~~(3)~~

7 (C) The defendant agrees to comply with treatment as a  
8 condition of diversion, or the defendant has been found to be an  
9 appropriate candidate for diversion in lieu of commitment for  
10 restoration of competency treatment pursuant to clause (iii) of  
11 subparagraph (B) of, or clause (v) of subparagraph (C) of,  
12 paragraph (1) of subdivision (a) of Section 1370 or subparagraph  
13 (A) of paragraph (1) of subdivision (b) of Section 1370.01 and, as  
14 a result of the defendant's mental incompetence, cannot agree to  
15 comply with treatment.

16 ~~(4)~~

17 ~~(D) The defendant will not endanger public safety if treated in~~  
18 ~~the community. "Endanger public safety" for purposes of this~~  
19 ~~section means that the person's treatment in the community would~~  
20 ~~likely result in physical injury or other serious danger to others.~~  
21 ~~pose an unreasonable risk of danger to public safety, as defined~~  
22 ~~in Section 1170.18, if treated in the community. The court may~~  
23 ~~consider any factors that the court deems appropriate in making~~  
24 ~~this determination, including, but not limited to, the opinions of~~  
25 ~~the district attorney, the defense, or a qualified mental health~~  
26 ~~expert, and may consider the defendant's treatment plan, the~~  
27 ~~defendant's violence and criminal history, and the current charged~~  
28 ~~offense. The court shall consider the victim's rights under~~  
29 ~~subdivision (b) or Section 28 of Article I of the California~~  
30 ~~Constitution.~~

31 *(2) Even if a defendant is otherwise suitable for diversion, a*  
32 *court retains discretion to deny diversion upon a finding that it is*  
33 *more likely than not that the defendant, if treated in the community,*  
34 *will pose an unreasonable risk to the physical safety of another*  
35 *person.*

36 *(3) If the court denies diversion under this section, the court*  
37 *shall orally state the reasons on the record.*

38 (d) A defendant may not be placed into a diversion program,  
39 pursuant to this section, for the following current charged offenses:

40 (1) Murder or voluntary manslaughter.

1 (2) An offense for which a person, if convicted, would be  
2 required to register pursuant to Section 290, except for a violation  
3 of Section 314.

4 (3) Rape.

5 (4) Lewd or lascivious act on a child under 14 years of age.

6 (5) Assault with intent to commit rape, sodomy, or oral  
7 copulation, in violation of Section 220.

8 (6) Commission of rape or sexual penetration in concert with  
9 another person, in violation of Section 264.1.

10 (7) Continuous sexual abuse of a child, in violation of Section  
11 288.5.

12 (8) A violation of subdivision (b) or (c) of Section 11418.

13 (e) At any stage of the proceedings, the court may require the  
14 defendant to make a prima facie showing that the defendant will  
15 meet the minimum requirements of eligibility for diversion and  
16 that the defendant and the offense are suitable for diversion. The  
17 hearing on the prima facie showing shall be informal and may  
18 proceed on offers of proof, reliable hearsay, and argument of  
19 counsel. If a prima facie showing is not made, the court may  
20 summarily deny the request for diversion or grant any other relief  
21 as may be deemed appropriate.

22 (f) As used in this chapter, the following terms have the  
23 following meanings:

24 (1) "Pretrial diversion" means the postponement of prosecution,  
25 either temporarily or permanently, at any point in the judicial  
26 process from the point at which the accused is charged until  
27 adjudication, to allow the defendant to undergo mental health  
28 treatment, subject to all of the following:

29 (A) (i) The court is satisfied that the recommended inpatient  
30 or outpatient program of mental health treatment will meet the  
31 specialized mental health treatment needs of the defendant.

32 (ii) The defendant may be referred to a program of mental health  
33 treatment utilizing existing inpatient or outpatient mental health  
34 resources. Before approving a proposed treatment program, the  
35 court shall consider the request of the defense, the request of the  
36 prosecution, the needs of the defendant, and the interests of the  
37 community. The treatment may be procured using private or public  
38 funds, and a referral may be made to a county mental health  
39 agency, existing collaborative courts, or assisted outpatient  
40 treatment only if that entity has agreed to accept responsibility for

1 the treatment of the defendant, and mental health services are  
2 provided only to the extent that resources are available and the  
3 defendant is eligible for those services.

4 (iii) If the court refers the defendant to a county mental health  
5 agency pursuant to this section and the agency determines that it  
6 is unable to provide services to the defendant, the court shall accept  
7 a written declaration to that effect from the agency in lieu of  
8 requiring live testimony. That declaration shall serve only to  
9 establish that the program is unable to provide services to the  
10 defendant at that time and does not constitute evidence that the  
11 defendant is unqualified or unsuitable for diversion under this  
12 section.

13 (B) The provider of the mental health treatment program in  
14 which the defendant has been placed shall provide regular reports  
15 to the court, the defense, and the prosecutor on the defendant's  
16 progress in treatment.

17 (C) The period during which criminal proceedings against the  
18 defendant may be diverted is limited as follows:

19 (i) If the defendant is charged with a felony, the period shall be  
20 no longer than two years.

21 (ii) If the defendant is charged with a misdemeanor, the period  
22 shall be no longer than one year.

23 (D) Upon request, the court shall conduct a hearing to determine  
24 whether restitution, as defined in subdivision (f) of Section 1202.4,  
25 is owed to any victim as a result of the diverted offense and, if  
26 owed, order its payment during the period of diversion. However,  
27 a defendant's inability to pay restitution due to indigence or mental  
28 disorder shall not be grounds for denial of diversion or a finding  
29 that the defendant has failed to comply with the terms of diversion.

30 (2) "Qualified mental health expert" includes, but is not limited  
31 to, a psychiatrist, psychologist, a person described in Section  
32 5751.2 of the Welfare and Institutions Code, or a person whose  
33 knowledge, skill, experience, training, or education qualifies them  
34 as an expert.

35 (g) If any of the following circumstances exists, the court shall,  
36 after notice to the defendant, defense counsel, and the prosecution,  
37 hold a hearing to determine whether the criminal proceedings  
38 should be reinstated, whether the treatment should be modified,  
39 or whether the defendant should be conserved and referred to the  
40 conservatorship investigator of the county of commitment to initiate

1 conservatorship proceedings for the defendant pursuant to Chapter  
2 3 (commencing with Section 5350) of Part 1 of Division 5 of the  
3 Welfare and Institutions Code:

4 (1) The defendant is charged with an additional misdemeanor  
5 allegedly committed during the pretrial diversion and that reflects  
6 the defendant's propensity for violence.

7 (2) The defendant is charged with an additional felony allegedly  
8 committed during the pretrial diversion.

9 (3) The defendant is engaged in criminal conduct rendering the  
10 defendant unsuitable for diversion.

11 (4) Based on the opinion of a qualified mental health expert  
12 whom the court may deem appropriate, either of the following  
13 circumstances exists:

14 (A) The defendant is performing unsatisfactorily in the assigned  
15 program.

16 (B) The defendant is gravely disabled, as defined in  
17 subparagraph (B) of paragraph (1) of subdivision (h) of Section  
18 5008 of the Welfare and Institutions Code. A defendant shall only  
19 be conserved and referred to the conservatorship investigator  
20 pursuant to this finding.

21 (h) If the defendant has performed satisfactorily in diversion,  
22 at the end of the period of diversion, the court shall dismiss the  
23 defendant's criminal charges that were the subject of the criminal  
24 proceedings at the time of the initial diversion. A court may  
25 conclude that the defendant has performed satisfactorily if the  
26 defendant has substantially complied with the requirements of  
27 diversion, has avoided significant new violations of law unrelated  
28 to the defendant's mental health condition, and has a plan in place  
29 for long-term mental health care. If the court dismisses the charges,  
30 the clerk of the court shall file a record with the Department of  
31 Justice indicating the disposition of the case diverted pursuant to  
32 this section. Upon successful completion of diversion, if the court  
33 dismisses the charges, the arrest upon which the diversion was  
34 based shall be deemed never to have occurred, and the court shall  
35 order access to the record of the arrest restricted in accordance  
36 with Section 1001.9, except as specified in subdivisions (j) and  
37 (k). The defendant who successfully completes diversion may  
38 indicate in response to any question concerning the defendant's  
39 prior criminal record that the defendant was not arrested or diverted  
40 for the offense, except as specified in subdivision (j).

1 (i) A record pertaining to an arrest resulting in successful  
2 completion of diversion, or any record generated as a result of the  
3 defendant's application for or participation in diversion, shall not,  
4 without the defendant's consent, be used in any way that could  
5 result in the denial of any employment, benefit, license, or  
6 certificate.

7 (j) The defendant shall be advised that, regardless of the  
8 defendant's completion of diversion, both of the following apply:

9 (1) The arrest upon which the diversion was based may be  
10 disclosed by the Department of Justice to any peace officer  
11 application request and that, notwithstanding subdivision (i), this  
12 section does not relieve the defendant of the obligation to disclose  
13 the arrest in response to any direct question contained in any  
14 questionnaire or application for a position as a peace officer, as  
15 defined in Section 830.

16 (2) An order to seal records pertaining to an arrest made pursuant  
17 to this section has no effect on a criminal justice agency's ability  
18 to access and use those sealed records and information regarding  
19 sealed arrests, as described in Section 851.92.

20 (k) A finding that the defendant suffers from a mental disorder,  
21 any progress reports concerning the defendant's treatment,  
22 including, but not limited to, any finding that the defendant be  
23 prohibited from owning or controlling a firearm because they are  
24 a danger to themselves or others pursuant to subdivision (m), or  
25 any other records related to a mental disorder that were created as  
26 a result of participation in, or completion of, diversion pursuant  
27 to this section or for use at a hearing on the defendant's eligibility  
28 for diversion under this section may not be used in any other  
29 proceeding without the defendant's consent, unless that information  
30 is relevant evidence that is admissible under the standards described  
31 in paragraph (2) of subdivision (f) of Section 28 of Article I of the  
32 California Constitution. However, when determining whether to  
33 exercise its discretion to grant diversion under this section, a court  
34 may consider previous records of participation in diversion under  
35 this section.

36 (l) The county agency administering the diversion, the  
37 defendant's mental health treatment providers, the public guardian  
38 or conservator, and the court shall, to the extent not prohibited by  
39 federal law, have access to the defendant's medical and  
40 psychological records, including progress reports, during the



1 defendant's time in diversion, as needed, for the purpose of  
2 providing care and treatment and monitoring treatment for  
3 diversion or conservatorship.

4 (m) (1) The prosecution may request an order from the court  
5 that the defendant be prohibited from owning or possessing a  
6 firearm until they successfully complete diversion because they  
7 are a danger to themselves or others pursuant to subdivision (i) of  
8 Section 8103 of the Welfare and Institutions Code.

9 (2) The prosecution shall bear the burden of proving, by clear  
10 and convincing evidence, both of the following are true:

11 (A) The defendant poses a significant danger of causing personal  
12 injury to themselves or another by having in their custody or  
13 control, owning, purchasing, possessing, or receiving a firearm.

14 (B) The prohibition is necessary to prevent personal injury to  
15 the defendant or any other person because less restrictive  
16 alternatives either have been tried and found to be ineffective or  
17 are inadequate or inappropriate for the circumstances of the  
18 defendant.

19 (3) (A) If the court finds that the prosecution has not met that  
20 burden, the court shall not order that the person is prohibited from  
21 having, owning, purchasing, possessing, or receiving a firearm.

22 (B) If the court finds that the prosecution has met the burden,  
23 the court shall order that the person is prohibited, and shall inform  
24 the person that they are prohibited, from owning or controlling a  
25 firearm until they successfully complete diversion because they  
26 are a danger to themselves or others.

27 (4) An order imposed pursuant to this subdivision shall be in  
28 effect until the defendant has successfully completed diversion or  
29 until their firearm rights are restored pursuant to paragraph (4) of  
30 subdivision (g) of Section 8103 of the Welfare and Institutions  
31 Code.