
Introduced by Senator Stern

February 19, 2025

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

LEGISLATIVE COUNSEL'S DIGEST

SB 483, as introduced, Stern. Mental health diversion.

Existing law authorizes the court to grant pretrial diversion to a defendant diagnosed with a mental disorder if the defendant satisfies certain eligibility requirements and if the court determines that the defendant is suitable for diversion. Existing law provides that a defendant is suitable for pretrial diversion if certain criteria are met, including, that the defendant agrees to comply with the treatment as a condition of diversion, among others.

This bill would additionally require that the court be satisfied that the recommended mental health treatment program is consistent with the underlying purpose of mental health diversion and will meet the specialized mental health treatment needs of the defendant.

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

1 pretrial diversion to a defendant pursuant to this section if the
2 defendant satisfies the eligibility requirements for pretrial diversion
3 set forth in subdivision (b) and the court determines that the
4 defendant is suitable for that diversion under the factors set forth
5 in subdivision (c).

6 (b) A defendant is eligible for pretrial diversion pursuant to this
7 section if both of the following criteria are met:

8 (1) The defendant has been diagnosed with a mental disorder
9 as identified in the most recent edition of the Diagnostic and
10 Statistical Manual of Mental Disorders, including, but not limited
11 to, bipolar disorder, schizophrenia, schizoaffective disorder, or
12 post-traumatic stress disorder, but excluding antisocial personality
13 disorder and pedophilia. Evidence of the defendant's mental
14 disorder shall be provided by the defense and shall include a
15 diagnosis or treatment for a diagnosed mental disorder within the
16 last five years by a qualified mental health expert. In opining that
17 a defendant suffers from a qualifying disorder, the qualified mental
18 health expert may rely on an examination of the defendant, the
19 defendant's medical records, arrest reports, or any other relevant
20 evidence.

21 (2) The defendant's mental disorder was a significant factor in
22 the commission of the charged offense. If the defendant has been
23 diagnosed with a mental disorder, the court shall find that the
24 defendant's mental disorder was a significant factor in the
25 commission of the offense unless there is clear and convincing
26 evidence that it was not a motivating factor, causal factor, or
27 contributing factor to the defendant's involvement in the alleged
28 offense. A court may consider any relevant and credible evidence,
29 including, but not limited to, police reports, preliminary hearing
30 transcripts, witness statements, statements by the defendant's
31 mental health treatment provider, medical records, records or
32 reports by qualified medical experts, or evidence that the defendant
33 displayed symptoms consistent with the relevant mental disorder
34 at or near the time of the offense.

35 (c) For any defendant who satisfies the eligibility requirements
36 in subdivision (b), the court must consider whether the defendant
37 is suitable for pretrial diversion. A defendant is suitable for pretrial
38 diversion if all of the following criteria are met:

39 (1) In the opinion of a qualified mental health expert, the
40 defendant's symptoms of the mental disorder causing, contributing

1 to, or motivating the criminal behavior would respond to mental
2 health treatment.

3 (2) The defendant consents to diversion and waives the
4 defendant's right to a speedy trial, or a defendant has been found
5 to be an appropriate candidate for diversion in lieu of commitment
6 pursuant to clause (iii) of subparagraph (B) of, or clause (v) of
7 subparagraph (C), of, paragraph (1) of subdivision (a) of Section
8 1370, or subparagraph (A) of paragraph (1) of subdivision (b) of
9 Section 1370.01 and, as a result of the defendant's mental
10 incompetence, cannot consent to diversion or give a knowing and
11 intelligent waiver of the defendant's right to a speedy trial.

12 ~~(3) The defendant agrees to comply with treatment—~~ *court is*
13 *satisfied that the recommended inpatient or outpatient program*
14 *of mental health treatment is consistent with the underlying purpose*
15 *of mental health diversion, as described in Section 1001.35, will*
16 *meet the specialized mental health treatment needs of the*
17 *defendant, and the defendant agrees to comply with the*
18 *recommended treatment program* as a condition of diversion, or
19 the defendant has been found to be an appropriate candidate for
20 diversion in lieu of commitment for restoration of competency
21 treatment pursuant to clause (iii) of subparagraph (B) of, or clause
22 (v) of subparagraph (C) of, paragraph (1) of subdivision (a) of
23 Section 1370 or subparagraph (A) of paragraph (1) of subdivision
24 (b) of Section 1370.01 and, as a result of the defendant's mental
25 incompetence, cannot agree to comply with treatment.

26 (4) The defendant will not pose an unreasonable risk of danger
27 to public safety, as defined in Section 1170.18, if treated in the
28 community. The court may consider the opinions of the district
29 attorney, the defense, or a qualified mental health expert, and may
30 consider the defendant's treatment plan, the defendant's violence
31 and criminal history, the current charged offense, and any other
32 factors that the court deems appropriate.

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

35 (1) Murder or voluntary manslaughter.

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

39 (3) Rape.

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

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

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

5 (7) Continuous sexual abuse of a child, in violation of Section
6 288.5.

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

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

17 (f) As used in this chapter, the following terms have the
18 following meanings:

19 (1) “Pretrial diversion” means the postponement of prosecution,
20 either temporarily or permanently, at any point in the judicial
21 process from the point at which the accused is charged until
22 adjudication, to allow the defendant to undergo mental health
23 treatment, subject to all of the following:

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

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

39 (iii) If the court refers the defendant to a county mental health
40 agency pursuant to this section and the agency determines that it

1 is unable to provide services to the defendant, the court shall accept
2 a written declaration to that effect from the agency in lieu of
3 requiring live testimony. That declaration shall serve only to
4 establish that the program is unable to provide services to the
5 defendant at that time and does not constitute evidence that the
6 defendant is unqualified or unsuitable for diversion under this
7 section.

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

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

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

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

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

25 (2) "Qualified mental health expert" includes, but is not limited
26 to, a psychiatrist, psychologist, a person described in Section
27 5751.2 of the Welfare and Institutions Code, or a person whose
28 knowledge, skill, experience, training, or education qualifies them
29 as an expert.

30 (g) If any of the following circumstances exists, the court shall,
31 after notice to the defendant, defense counsel, and the prosecution,
32 hold a hearing to determine whether the criminal proceedings
33 should be reinstated, whether the treatment should be modified,
34 or whether the defendant should be conserved and referred to the
35 conservatorship investigator of the county of commitment to initiate
36 conservatorship proceedings for the defendant pursuant to Chapter
37 3 (commencing with Section 5350) of Part 1 of Division 5 of the
38 Welfare and Institutions Code:

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

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

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

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

11 (A) The defendant is performing unsatisfactorily in the assigned
12 program.

13 (B) The defendant is gravely disabled, as defined in
14 subparagraph (B) of paragraph (1) of subdivision (h) of Section
15 5008 of the Welfare and Institutions Code. A defendant shall only
16 be conserved and referred to the conservatorship investigator
17 pursuant to this finding.

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

38 (i) A record pertaining to an arrest resulting in successful
39 completion of diversion, or any record generated as a result of the
40 defendant's application for or participation in diversion, shall not,

1 without the defendant's consent, be used in any way that could
2 result in the denial of any employment, benefit, license, or
3 certificate.

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

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

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

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

33 (l) The county agency administering the diversion, the
34 defendant's mental health treatment providers, the public guardian
35 or conservator, and the court shall, to the extent not prohibited by
36 federal law, have access to the defendant's medical and
37 psychological records, including progress reports, during the
38 defendant's time in diversion, as needed, for the purpose of
39 providing care and treatment and monitoring treatment for
40 diversion or conservatorship.

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

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

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

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

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

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

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