

**Introduced by Senator Stern**

February 19, 2025

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

LEGISLATIVE COUNSEL'S DIGEST

SB 483, as amended, 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 defines "pretrial diversion" as the postponement of prosecution to allow the defendant to undergo mental health treatment, subject to certain requirements, such as the court is satisfied that the recommended program will meet the specialized needs of the defendant, among others.* 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.~~ *defendant agree that the recommended treatment plan will meet their specialized needs and would redefine "pretrial diversion" to require that the court is also satisfied that the recommended program is consistent with the underlying purpose of mental health diversion, as described.*

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).  
12    (b) A defendant is eligible for pretrial diversion pursuant to this  
13    section if both of the following criteria are met:  
14    (1) The defendant has been diagnosed with a mental disorder  
15    as identified in the most recent edition of the Diagnostic and  
16    Statistical Manual of Mental Disorders, including, but not limited  
17    to, bipolar disorder, schizophrenia, schizoaffective disorder, or  
18    post-traumatic stress disorder, but excluding antisocial personality  
19    disorder and pedophilia. Evidence of the defendant's mental  
20    disorder shall be provided by the defense and shall include a  
21    diagnosis or treatment for a diagnosed mental disorder within the  
22    last five years by a qualified mental health expert. In opining that  
23    a defendant suffers from a qualifying disorder, the qualified mental  
24    health expert may rely on an examination of the defendant, the  
25    defendant's medical records, arrest reports, or any other relevant  
26    evidence.  
27    (2) The defendant's mental disorder was a significant factor in  
28    the commission of the charged offense. If the defendant has been  
29    diagnosed with a mental disorder, the court shall find that the  
30    defendant's mental disorder was a significant factor in the  
31    commission of the offense unless there is clear and convincing  
32    evidence that it was not a motivating factor, causal factor, or  
33    contributing factor to the defendant's involvement in the alleged  
34    offense. A court may consider any relevant and credible evidence,  
35    including, but not limited to, police reports, preliminary hearing

1 transcripts, witness statements, statements by the defendant's  
2 mental health treatment provider, medical records, records or  
3 reports by qualified medical experts, or evidence that the defendant  
4 displayed symptoms consistent with the relevant mental disorder  
5 at or near the time of the offense.

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

10 (1) In the opinion of a qualified mental health expert, the  
11 defendant's symptoms of the mental disorder causing, contributing  
12 to, or motivating the criminal behavior would respond to mental  
13 health treatment.

14 (2) The defendant consents to diversion and waives the  
15 defendant's right to a speedy trial, or a defendant has been found  
16 to be an appropriate candidate for diversion in lieu of commitment  
17 pursuant to clause (iii) of subparagraph (B) of, or clause (v) of  
18 subparagraph (C), of, paragraph (1) of subdivision (a) of Section  
19 1370, or subparagraph (A) of paragraph (1) of subdivision (b) of  
20 Section 1370.01 and, as a result of the defendant's mental  
21 incompetence, cannot consent to diversion or give a knowing and  
22 intelligent waiver of the defendant's right to a speedy trial.

23 ~~(3) The court is satisfied that the recommended inpatient or~~  
24 ~~outpatient program of mental health treatment is consistent with~~  
25 ~~the underlying purpose of mental health diversion, as described in~~  
26 ~~Section 1001.35, will meet the specialized mental health treatment~~  
27 ~~needs of the defendant, and the defendant agrees to comply with~~  
28 ~~the recommended treatment program~~ *defendant agrees the*  
29 *recommended treatment plan will meet their specialized needs and*  
30 *agrees to comply with the treatment* as a condition of diversion,  
31 or the defendant has been found to be an appropriate candidate for  
32 diversion in lieu of commitment for restoration of competency  
33 treatment pursuant to clause (iii) of subparagraph (B) of, or clause  
34 (v) of subparagraph (C) of, paragraph (1) of subdivision (a) of  
35 Section 1370 or subparagraph (A) of paragraph (1) of subdivision  
36 (b) of Section 1370.01 and, as a result of the defendant's mental  
37 incompetence, cannot agree to comply with treatment.

38 (4) The defendant will not pose an unreasonable risk of danger  
39 to public safety, as defined in Section 1170.18, if treated in the  
40 community. The court may consider the opinions of the district

1 attorney, the defense, or a qualified mental health expert, and may  
2 consider the defendant's treatment plan, the defendant's violence  
3 and criminal history, the current charged offense, and any other  
4 factors that the court deems appropriate.

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

7 (1) Murder or voluntary manslaughter.

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

11 (3) Rape.

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

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

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

17 (7) Continuous sexual abuse of a child, in violation of Section  
18 288.5.

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

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

29 (f) As used in this chapter, the following terms have the  
30 following meanings:

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

36 (A) (i) The court is satisfied that the recommended inpatient  
37 or outpatient program of mental health treatment will meet the  
38 specialized mental health treatment needs of the ~~defendant.~~  
39 *defendant and is consistent with the underlying purpose of mental*  
40 *health diversion, as described in Section 1001.35.*

1 (ii) The defendant may be referred to a program of mental health  
2 treatment utilizing existing inpatient or outpatient mental health  
3 resources. Before approving a proposed treatment program, the  
4 court shall consider the request of the defense, the request of the  
5 prosecution, the needs of the defendant, and the interests of the  
6 community. The treatment may be procured using private or public  
7 funds, and a referral may be made to a county mental health  
8 agency, existing collaborative courts, or assisted outpatient  
9 treatment only if that entity has agreed to accept responsibility for  
10 the treatment of the defendant, and mental health services are  
11 provided only to the extent that resources are available and the  
12 defendant is eligible for those services.

13 (iii) If the court refers the defendant to a county mental health  
14 agency pursuant to this section and the agency determines that it  
15 is unable to provide services to the defendant, the court shall accept  
16 a written declaration to that effect from the agency in lieu of  
17 requiring live testimony. That declaration shall serve only to  
18 establish that the program is unable to provide services to the  
19 defendant at that time and does not constitute evidence that the  
20 defendant is unqualified or unsuitable for diversion under this  
21 section.

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

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

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

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

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

39 (2) "Qualified mental health expert" includes, but is not limited  
40 to, a psychiatrist, psychologist, a person described in Section

1 5751.2 of the Welfare and Institutions Code, or a person whose  
2 knowledge, skill, experience, training, or education qualifies them  
3 as an expert.

4 (g) If any of the following circumstances exists, the court shall,  
5 after notice to the defendant, defense counsel, and the prosecution,  
6 hold a hearing to determine whether the criminal proceedings  
7 should be reinstated, whether the treatment should be modified,  
8 or whether the defendant should be conserved and referred to the  
9 conservatorship investigator of the county of commitment to initiate  
10 conservatorship proceedings for the defendant pursuant to Chapter  
11 3 (commencing with Section 5350) of Part 1 of Division 5 of the  
12 Welfare and Institutions Code:

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

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

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

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

23 (A) The defendant is performing unsatisfactorily in the assigned  
24 program.

25 (B) The defendant is gravely disabled, as defined in  
26 subparagraph (B) of paragraph (1) of subdivision (h) of Section  
27 5008 of the Welfare and Institutions Code. A defendant shall only  
28 be conserved and referred to the conservatorship investigator  
29 pursuant to this finding.

30 (h) If the defendant has performed satisfactorily in diversion,  
31 at the end of the period of diversion, the court shall dismiss the  
32 defendant's criminal charges that were the subject of the criminal  
33 proceedings at the time of the initial diversion. A court may  
34 conclude that the defendant has performed satisfactorily if the  
35 defendant has substantially complied with the requirements of  
36 diversion, has avoided significant new violations of law unrelated  
37 to the defendant's mental health condition, and has a plan in place  
38 for long-term mental health care. If the court dismisses the charges,  
39 the clerk of the court shall file a record with the Department of  
40 Justice indicating the disposition of the case diverted pursuant to

1 this section. Upon successful completion of diversion, if the court  
2 dismisses the charges, the arrest upon which the diversion was  
3 based shall be deemed never to have occurred, and the court shall  
4 order access to the record of the arrest restricted in accordance  
5 with Section 1001.9, except as specified in subdivisions (j) and  
6 (k). The defendant who successfully completes diversion may  
7 indicate in response to any question concerning the defendant's  
8 prior criminal record that the defendant was not arrested or diverted  
9 for the offense, except as specified in subdivision (j).

10 (i) A record pertaining to an arrest resulting in successful  
11 completion of diversion, or any record generated as a result of the  
12 defendant's application for or participation in diversion, shall not,  
13 without the defendant's consent, be used in any way that could  
14 result in the denial of any employment, benefit, license, or  
15 certificate.

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

18 (1) The arrest upon which the diversion was based may be  
19 disclosed by the Department of Justice to any peace officer  
20 application request and that, notwithstanding subdivision (i), this  
21 section does not relieve the defendant of the obligation to disclose  
22 the arrest in response to any direct question contained in any  
23 questionnaire or application for a position as a peace officer, as  
24 defined in Section 830.

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

29 (k) A finding that the defendant suffers from a mental disorder,  
30 any progress reports concerning the defendant's treatment,  
31 including, but not limited to, any finding that the defendant be  
32 prohibited from owning or controlling a firearm because they are  
33 a danger to themselves or others pursuant to subdivision (m), or  
34 any other records related to a mental disorder that were created as  
35 a result of participation in, or completion of, diversion pursuant  
36 to this section or for use at a hearing on the defendant's eligibility  
37 for diversion under this section may not be used in any other  
38 proceeding without the defendant's consent, unless that information  
39 is relevant evidence that is admissible under the standards described  
40 in paragraph (2) of subdivision (f) of Section 28 of Article I of the

1 California Constitution. However, when determining whether to  
2 exercise its discretion to grant diversion under this section, a court  
3 may consider previous records of participation in diversion under  
4 this section.

5 (l) The county agency administering the diversion, the  
6 defendant's mental health treatment providers, the public guardian  
7 or conservator, and the court shall, to the extent not prohibited by  
8 federal law, have access to the defendant's medical and  
9 psychological records, including progress reports, during the  
10 defendant's time in diversion, as needed, for the purpose of  
11 providing care and treatment and monitoring treatment for  
12 diversion or conservatorship.

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

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

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

23 (B) The prohibition is necessary to prevent personal injury to  
24 the defendant or any other person because less restrictive  
25 alternatives either have been tried and found to be ineffective or  
26 are inadequate or inappropriate for the circumstances of the  
27 defendant.

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

31 (B) If the court finds that the prosecution has met the burden,  
32 the court shall order that the person is prohibited, and shall inform  
33 the person that they are prohibited, from owning or controlling a  
34 firearm until they successfully complete diversion because they  
35 are a danger to themselves or others.

36 (4) An order imposed pursuant to this subdivision shall be in  
37 effect until the defendant has successfully completed diversion or  
38 until their firearm rights are restored pursuant to paragraph (4) of



- 1 subdivision (g) of Section 8103 of the Welfare and Institutions
- 2 Code.

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