

AMENDED IN ASSEMBLY JULY 9, 2025

AMENDED IN SENATE MAY 23, 2025

SENATE BILL

No. 483

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 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~~, *including* that the defendant agrees to comply with the treatment as a condition of ~~diversion, among others. diversion~~ *and they will not pose an unreasonable risk of danger to public safety, among others. Existing law defines “unreasonable risk of danger to public safety” as an unreasonable risk that the defendant will commit a new violent felony, as specified.*

This bill would additionally require that the 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. *The bill would state that, notwithstanding the court's determination whether a defendant may pose an unreasonable risk that the defendant will commit a new violent felony, the court retains discretion to deny pretrial diversion if it concludes that the defendant poses an unreasonable risk to the physical safety of another.*

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

1 defendant's mental disorder was a significant factor in the
2 commission of the offense unless there is clear and convincing
3 evidence that it was not a motivating factor, causal factor, or
4 contributing factor to the defendant's involvement in the alleged
5 offense. A court may consider any relevant and credible evidence,
6 including, but not limited to, police reports, preliminary hearing
7 transcripts, witness statements, statements by the defendant's
8 mental health treatment provider, medical records, records or
9 reports by qualified medical experts, or evidence that the defendant
10 displayed symptoms consistent with the relevant mental disorder
11 at or near the time of the offense.

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

16 (1) In the opinion of a qualified mental health expert, the
17 defendant's symptoms of the mental disorder causing, contributing
18 to, or motivating the criminal behavior would respond to mental
19 health treatment.

20 (2) The defendant consents to diversion and waives the
21 defendant's right to a speedy trial, or a defendant has been found
22 to be an appropriate candidate for diversion in lieu of commitment
23 pursuant to clause (iii) of subparagraph (B) of, or clause (v) of
24 subparagraph (C), of, paragraph (1) of subdivision (a) of Section
25 1370, or subparagraph (A) of paragraph (1) of subdivision (b) of
26 Section 1370.01 and, as a result of the defendant's mental
27 incompetence, cannot consent to diversion or give a knowing and
28 intelligent waiver of the defendant's right to a speedy trial.

29 (3) The defendant agrees the recommended treatment plan will
30 meet their specialized needs and agrees to comply with the
31 treatment as a condition of diversion, or the defendant has been
32 found to be an appropriate candidate for diversion in lieu of
33 commitment for restoration of competency treatment pursuant to
34 clause (iii) of subparagraph (B) of, or clause (v) of subparagraph
35 (C) of, paragraph (1) of subdivision (a) of Section 1370 or
36 subparagraph (A) of paragraph (1) of subdivision (b) of Section
37 1370.01 and, as a result of the defendant's mental incompetence,
38 cannot agree to comply with treatment.

39 (4) (A) The defendant will not pose an unreasonable risk of
40 danger to public safety, as defined in Section 1170.18, if treated

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

6 *(B) Notwithstanding subparagraph (A), the court retains the*
7 *discretion pursuant to subdivision (a) to deny pretrial diversion*
8 *if it concludes that, despite the proposed treatment program and*
9 *any available terms and conditions of diversion, the defendant*
10 *poses an unreasonable risk to the physical safety of another.*

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

13 (1) Murder or voluntary manslaughter.

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

17 (3) Rape.

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

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

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

23 (7) Continuous sexual abuse of a child, in violation of Section
24 288.5.

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

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

35 (f) As used in this chapter, the following terms have the
36 following meanings:

37 (1) "Pretrial diversion" means the postponement of prosecution,
38 either temporarily or permanently, at any point in the judicial
39 process from the point at which the accused is charged until

1 adjudication, to allow the defendant to undergo mental health
2 treatment, subject to all of the following:

3 (A) (i) The court is satisfied that the recommended inpatient
4 or outpatient program of mental health treatment will meet the
5 specialized mental health treatment needs of the defendant and is
6 consistent with the underlying purpose of mental health diversion,
7 as described in Section 1001.35.

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

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

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

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

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

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

39 (D) Upon request, the court shall conduct a hearing to determine
40 whether restitution, as defined in subdivision (f) of Section 1202.4,

1 is owed to any victim as a result of the diverted offense and, if
2 owed, order its payment during the period of diversion. However,
3 a defendant's inability to pay restitution due to indigence or mental
4 disorder shall not be grounds for denial of diversion or a finding
5 that the defendant has failed to comply with the terms of diversion.

6 (2) "Qualified mental health expert" includes, but is not limited
7 to, a psychiatrist, psychologist, a person described in Section
8 5751.2 of the Welfare and Institutions Code, or a person whose
9 knowledge, skill, experience, training, or education qualifies them
10 as an expert.

11 (g) If any of the following circumstances exists, the court shall,
12 after notice to the defendant, defense counsel, and the prosecution,
13 hold a hearing to determine whether the criminal proceedings
14 should be reinstated, whether the treatment should be modified,
15 or whether the defendant should be conserved and referred to the
16 conservatorship investigator of the county of commitment to initiate
17 conservatorship proceedings for the defendant pursuant to Chapter
18 3 (commencing with Section 5350) of Part 1 of Division 5 of the
19 Welfare and Institutions Code:

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

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

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

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

30 (A) The defendant is performing unsatisfactorily in the assigned
31 program.

32 (B) The defendant is gravely disabled, as defined in
33 subparagraph (B) of paragraph (1) of subdivision (h) of Section
34 5008 of the Welfare and Institutions Code. A defendant shall only
35 be conserved and referred to the conservatorship investigator
36 pursuant to this finding.

37 (h) If the defendant has performed satisfactorily in diversion,
38 at the end of the period of diversion, the court shall dismiss the
39 defendant's criminal charges that were the subject of the criminal
40 proceedings at the time of the initial diversion. A court may

1 conclude that the defendant has performed satisfactorily if the
2 defendant has substantially complied with the requirements of
3 diversion, has avoided significant new violations of law unrelated
4 to the defendant's mental health condition, and has a plan in place
5 for long-term mental health care. If the court dismisses the charges,
6 the clerk of the court shall file a record with the Department of
7 Justice indicating the disposition of the case diverted pursuant to
8 this section. Upon successful completion of diversion, if the court
9 dismisses the charges, the arrest upon which the diversion was
10 based shall be deemed never to have occurred, and the court shall
11 order access to the record of the arrest restricted in accordance
12 with Section 1001.9, except as specified in subdivisions (j) and
13 (k). The defendant who successfully completes diversion may
14 indicate in response to any question concerning the defendant's
15 prior criminal record that the defendant was not arrested or diverted
16 for the offense, except as specified in subdivision (j).

17 (i) A record pertaining to an arrest resulting in successful
18 completion of diversion, or any record generated as a result of the
19 defendant's application for or participation in diversion, shall not,
20 without the defendant's consent, be used in any way that could
21 result in the denial of any employment, benefit, license, or
22 certificate.

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

25 (1) The arrest upon which the diversion was based may be
26 disclosed by the Department of Justice to any peace officer
27 application request and that, notwithstanding subdivision (i), this
28 section does not relieve the defendant of the obligation to disclose
29 the arrest in response to any direct question contained in any
30 questionnaire or application for a position as a peace officer, as
31 defined in Section 830.

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

36 (k) A finding that the defendant suffers from a mental disorder,
37 any progress reports concerning the defendant's treatment,
38 including, but not limited to, any finding that the defendant be
39 prohibited from owning or controlling a firearm because they are
40 a danger to themselves or others pursuant to subdivision (m), or

1 any other records related to a mental disorder that were created as
2 a result of participation in, or completion of, diversion pursuant
3 to this section or for use at a hearing on the defendant's eligibility
4 for diversion under this section may not be used in any other
5 proceeding without the defendant's consent, unless that information
6 is relevant evidence that is admissible under the standards described
7 in paragraph (2) of subdivision (f) of Section 28 of Article I of the
8 California Constitution. However, when determining whether to
9 exercise its discretion to grant diversion under this section, a court
10 may consider previous records of participation in diversion under
11 this section.

12 (l) The county agency administering the diversion, the
13 defendant's mental health treatment providers, the public guardian
14 or conservator, and the court shall, to the extent not prohibited by
15 federal law, have access to the defendant's medical and
16 psychological records, including progress reports, during the
17 defendant's time in diversion, as needed, for the purpose of
18 providing care and treatment and monitoring treatment for
19 diversion or conservatorship.

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

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

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

30 (B) The prohibition is necessary to prevent personal injury to
31 the defendant or any other person because less restrictive
32 alternatives either have been tried and found to be ineffective or
33 are inadequate or inappropriate for the circumstances of the
34 defendant.

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

38 (B) If the court finds that the prosecution has met the burden,
39 the court shall order that the person is prohibited, and shall inform
40 the person that they are prohibited, from owning or controlling a

1 firearm until they successfully complete diversion because they
2 are a danger to themselves or others.

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

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