

Date of Hearing: April 8, 2025
Deputy Chief Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Nick Schultz, Chair

AB 1231 (Elhawary) – As Amended March 24, 2025

CORRECTED

As Proposed to be Amended in Committee

SUMMARY: Authorizes a court to grant pretrial diversion for felony offenses, except as specified, for a period of up to 24 months, if the court determines that the defendant is suitable for diversion. Specifically, **this bill**:

- 1) States that a defendant may request diversion at any time prior to the start of a trial and the court may, in its discretion, and after considering the positions of the defense and prosecution, grant pretrial diversion to a defendant if the court determines that the defendant is suitable as provided.
- 2) States that diversion may apply to any felony punishable either as a county-jail eligible felony or as an alternate felony-misdemeanor, except if the felony offense is a “serious” felony or “violent” felony.
- 3) Additionally excludes from diversion eligibility:
 - a) Any offense alleged to have caused great bodily injury or serious bodily injury;
 - b) Any offense alleged to have involved the personal use of a firearm in the commission of an offense, pursuant to Section 12022.5 or Section 12022.53;
 - c) A felony driving under the influence offense;
 - d) Any offense for which a person, if convicted, would be required to register as a sex offender;
 - e) Any offense involving domestic violence;
 - f) A violation of stalking; or,
 - g) Use or deployment of a weapon of mass destruction.
- 4) States that in determining whether to grant diversion, the court shall consult with the prosecutor and the defendant or their counsel and may consider information provided by other entities, including, but not limited to, probation or pretrial services, family or close contacts of the defendant, and service providers.

- 5) States that the court shall consider mitigating factors including the defendant's trauma, victimization, and youth or other mitigating factors listed in Rule of 4.423 of the California Rules of Court.
- 6) Specifies that a history of having survived human trafficking, domestic violence, or sexual assault shall be given great weight as mitigating factors that indicate diversion is appropriate.
- 7) States that a defendant shall submit to the court and serve on the prosecution a proposed diversion plan and shall recommend in that plan either dual agency supervision or single agency supervision, as defined.
- 8) States that the court shall not grant diversion unless it finds that the diversion plan mitigates any unreasonable risk of danger to public safety and finds that the defendant is likely to benefit from the services provided in the diversion plan.
- 9) Authorizes a court to order the defendant to comply with terms, conditions, or programs that the court finds appropriate for the needs of the defendant and based on the recommendations from the defendant, a social worker, a behavioral health worker, or health care professional. The court may also consider the perspective of the prosecutor, pretrial services office, or probation department, or sexual assault counselor or human trafficking caseworker where appropriate, in assessing any recommendation.
- 10) States that the diversion plan ordered by the court shall include any conditions necessary to mitigate an unreasonable risk of danger to public safety.
- 11) Provides that upon a court granting diversion, any bail, bond or undertaking, or deposit in lieu thereof on behalf of the defendant shall be exonerated.
- 12) Defines the following terms:
 - a) "Dual agency supervision" means a court-approved, individually tailored diversion plan administered jointly by the treatment agency and by a county probation department or pretrial services department for a specified period of time. Under dual agency supervision, the treatment agency shall administer the treatment rehabilitation program.
 - b) "Single agency supervision" means a court approved, individually tailored diversion plan administered by a treatment agency, for a specified period of time. The treatment agency may include a government-sponsored or community-based job training services center or reentry service provider.
 - c) "Treatment agency" may include a government or community-based organization, including, but not limited to, a county health department, a county workforce development department, a behavioral health or reentry services provider, or a similar agency or community-based organization partnering with a county department.
- 13) Requires the court to order single agency supervision, unless it finds that single agency diversion is not practical or that dual agency diversion is necessary to mitigate unreasonable risks to public safety.

- 14) Requires the treatment agency to provide progress reports to the court, defense and prosecution under single agency supervision, or to the probation department under dual agency supervision every three months, and requires the probation department to submit copies of the report to the court, defense, and prosecution within 5 judicial days of receipt of the report.
- 15) Specifies that if the treatment agency is a community-based organization, the following shall apply:
 - a) The organization shall adhere to similar transparency, accountability, and outcome measure standards that apply to a government or county department;
 - b) The organization shall not pay wages and benefits to its most highly compensated executive and managerial employees that are significantly higher than the rates that would be paid to public employees performing similar job duties; and,
 - c) The court shall prioritize ordering services by an organization with a record of providing culturally competent and reasonable rehabilitative services.
- 16) Provides that while courts may order the defendant to participate in diversion plan services by government or community-based providers, nothing in this section is intended to reduce employment by government agencies.
- 17) States that a defendant whose charges have been diverted shall be ordered to pay full restitution, however, a defendant's inability to pay restitution due to indigence shall not be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion.
- 18) Authorizes a court to modify a diversion plan if it appears, following a hearing on the matter, that the defendant is not meeting the terms and conditions of the diversion program.
- 19) States that a court may hold a hearing to determine whether criminal proceeding should be reinstated if any of the following circumstances exist:
 - a) The defendant is charged with a misdemeanor allegedly committed while the defendant is receiving pretrial diversion services that reflects the defendant's propensity for violence;
 - b) The defendant is charged with a felony allegedly committed while the defendant is receiving pretrial diversion services; or,
 - c) Any other similar circumstance that causes the court to believe that no additional terms, conditions, or services can mitigate unreasonable risks to public safety.
- 20) Provides that a hearing to reinstitute criminal proceedings shall not proceed until probable cause has been established in *the subsequent felony allegations*.
- 21) Requires the court to dismiss the criminal allegations if at the end of the period of diversion the defendant has complied with the imposed terms and conditions and the arrest upon which the diversion was based shall be deemed to have never occurred.

- 22) Specifies that the provisions of this bill shall be implemented only to the extent that it does not conflict with an initiative statute.

EXISTING LAW:

- 1) Authorizes a city or county prosecuting attorney or county probation department to create a diversion or deferred entry of judgment program for persons who commit a theft offense or repeat theft offenses, as specified. (Pen. Code, § 1001.81.)
- 2) Authorizes both misdemeanors and felonies to be diverted pretrial under the mental health diversion program for eligible defendants, except for the following offenses:
 - a) Murder or voluntary manslaughter;
 - b) An offense for which a person, if convicted, would be required to register as a sex offender, except indecent exposure.
 - c) Rape;
 - d) Lewd or lascivious act on a child under 14 years of age;
 - e) Assault with intent to commit rape, sodomy, or oral copulation, in violation of Section 220;
 - f) Commission of rape or sexual penetration in concert with another person;
 - g) Continuous sexual abuse of a child;
 - h) Use or deployment of a weapon of mass destruction. (Pen. Code, §1001.36.)
- 3) Provides that the period during which criminal proceedings against the defendant may be diverted under mental health diversion is limited to no longer than one year for a misdemeanor and no longer than two years for a felony. (Pen. Code, §1001.36, subd. (f)(1)(C).)
- 4) States that if any of the following circumstances exists, the court shall, after notice to the defendant, defense counsel, and the prosecution, 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 the defendant unsuitable for diversion; or,

- d) Based on the opinion of a qualified mental health expert whom the court may deem appropriate, either of the following circumstances exists:
 - 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).)
- 5) States that if the defendant has performed satisfactorily in mental health diversion, at the end of the period of diversion, the court shall dismiss the defendant's criminal charges that were the subject of the criminal proceedings at the time of the initial diversion. (Pen. Code, §1001.36, subd. (h).)
- 6) Authorizes a judge of the superior court in which a misdemeanor case is being prosecuted, at the judge's discretion and over the objection of a prosecuting attorney, offer diversion to a defendant except if the defendant is charged with any of the following offenses:
 - a) Any offense for which the defendant, if convicted, would be required to register as a sex offender;
 - b) Any offense involving domestic violence; or,
 - c) An offense of stalking. (Pen. Code, § 1001.95., subd. (a) & (e).)
- 7) States that a judge may continue a diverted case for a period not to exceed 24 months and order the defendant to comply with terms, conditions, or programs that the judge deems appropriate based on the defendant's situation. (Pen. Code, § 1001.95., subd. (b).)
- 8) States that if the defendant has complied with the imposed terms and conditions, at the end of the period of diversion, the judge shall dismiss the action against the defendant. (Pen. Code, § 1001.95., subd. (c).)
- 9) States that if it appears that the defendant is not complying with the terms and conditions of diversion, after notice to the defendant, the court shall hold a hearing to determine whether the criminal proceedings should be reinstituted. If the court finds that the defendant has not complied with the terms and conditions of diversion, the court may end the diversion and order resumption of the criminal proceedings. (Pen. Code, § 1001.95., subd. (d).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 1231 would allow judges to grant diversion programs and services, rather than solely rely on traditional punishment. This keeps our communities safe, gets people back into the workforce or connected with behavioral health services as needed, ultimately lowering costs to the state."
- 2) **Background on 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.

Diversion programs may be pre-plea or post-plea (often called deferred entry of judgement). Pre-plea programs allow a defendant to participate in the program without admitting guilt. In post-plea programs, the defendant must first admit guilt before participating in the program. The main difference between the two types of diversion is that in a pre-plea program, if the defendant does not successfully complete the program, criminal proceedings resume and the defendant has the option to plead guilty or pursue a defense against their case. In a post-plea diversion program, if a defendant does not successfully complete the program, the defendant having already plead guilty, would be sentenced.

In recent years, the Legislature has enacted several pre-plea diversion programs such as military diversion (SB 1227 (Hancock), chapter 658, statutes of 2013), mental health diversion (SB 215 (Beall), chapter 1005, statutes of 2017), diversion for primary caretakers (SB 394 (Skinner), chapter 593, statutes of 2019), and court-initiated misdemeanor diversion (AB 3234 (Ting), chapter 334, statutes of 2020). Drug diversion was enacted as a preplea program and changed to a postplea program in 1997 (SB 1369 (Kopp), chapter 1132, statutes of 1996), then in 2017 changed back to a preplea program (AB 208 (Eggman), chapter 778, statutes of 2017).

Existing law authorizes a city or county prosecuting attorney or county probation department, until January 1, 2031, to create a diversion or deferred entry of judgment program for persons who commit a theft offense or repeat theft offenses and specifies that the prosecuting attorney is to determine who to refer to the program and who is appropriate for placement in the program. For purposes, of the program, "repeat theft offenses" means being cited or convicted for misdemeanor or felony theft from a store or vehicle two or more times in the previous 12 months and failing to appear in court when cited for these crimes or continuing to engage in these crimes after release or after conviction. (Pen. Code, § 1001.81.)

- 3) **Misdemeanor Diversion:** As referenced above, existing law authorizes a judge to suspend criminal proceedings and divert a misdemeanor defendant, over the objection of the prosecution, except in cases of stalking, domestic violence and any offense requiring sex offender registration. The judge has broad authority to order the defendant to comply with terms, conditions, or programs that the judge deems appropriate based on the specific situation, however the case may not be diverted for a period exceeding 24 months. Similar to other existing diversion programs, if a defendant successfully completes diversion, the charges would be dismissed; if not, the judge is to hold a hearing to determine whether the defendant has not complied with the terms and conditions of diversion and whether the criminal proceedings should be reinstituted. Unlike some of the other existing pre-plea diversion programs such as mental health diversion or military diversion, court-initiated diversion contains no statutory requirements for the defendant to satisfy in order to be eligible other than the crimes that are specifically excluded.

Whether or not to divert a misdemeanor defendant is in the trial court's discretion. However, judicial discretion is not without limits. "[A]ll exercises of legal discretion must be grounded

in reasoned judgment and guided by legal principles and policies appropriate to the particular matter at issue." (*People v. Russel* (1968) 69 Cal.2d 187, 195.) A trial court abuses its discretion when it exceeds the bounds of reason, all of the circumstances before it being considered. (*Id.*, at p. 194.)

This bill creates a similar diversion program to the misdemeanor court-initiated diversion program but applied to felonies that are either punishable as county-jail eligible felonies or an alternate felony-misdemeanor, also known as "wobblers." Excluded offenses would be any "serious" or "violent" felonies, offenses alleged to have caused great bodily injury or serious bodily injury, offenses where it is alleged defendant personally used a firearm in the commission of a felony, or alleged felony driving under the influence. The bill would also exclude offenses that are excluded in misdemeanor diversion, specifically any crime where a person would be required to register as a sex offender, any domestic violence offense, or any stalking offense. Additionally, the bill would exclude use or deployment of a weapon of mass destruction which is excluded from mental health diversion.

This bill specifies that the criminal proceedings may be continued for a period not to exceed two years which is also the same period of time specified in misdemeanor diversion. Restitution would still be ordered in full, although inability to pay restitution due to indigence shall not be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion.

In determining whether the defendant is suitable for diversion, the court is required to consider specified mitigating circumstances with great weight to be given to a history of having survived human trafficking, domestic violence, or sexual assault that would indicate that diversion would be appropriate.

This bill requires that any diversion plan ordered by the court shall include any conditions necessary to mitigate an unreasonable risk of danger to public safety. The treating agency is required to submit progress reports to the court, prosecution, and defense every three months, or to submit progress reports to the probation department every three months if the defendant is on dual agency supervision and the probation department would send copies of the reports to the courts, defense and prosecution.

This bill provides that if the defendant is not meeting the terms and conditions of the diversion program, the court may modify the diversion to provide for greater supervision. A hearing to reinstitute criminal proceedings may be initiated by the court or the prosecutor, or, in cases of dual agency supervision, the probation department and may proceed only after notice to the defendant. If any of the following circumstances exist, that would be cause to hold a hearing to determine whether to reinstate criminal proceedings: (1) the defendant is charged with a misdemeanor allegedly committed during diversion which reflects the defendant's propensity for violence; (2) the defendant is charged with a felony allegedly committed while the defendant is receiving pretrial diversion services; or, (3) any other similar circumstance that causes the court to believe that no additional terms, conditions, or services can mitigate unreasonable risks to public safety. For a felony charge, this bill would require probable cause to be established prior to conducting a hearing on reinstituting criminal proceedings.

On the other hand, if the defendant successfully complies with the terms and conditions of diversion, at the end of the period of diversion, the court shall dismiss the criminal allegations. Any record of the arrest or charges shall be deemed to have never occurred.

- 4) **Mitigating Factors:** This bill specifies that in determining whether diversion is appropriate, the court shall consider mitigating circumstances, as listed in existing rules of court, and specified circumstances including whether the person has experienced psychological, physical, or childhood trauma, whether the person is a youth or was a youth at the time of the commission of the offense, or the person is or was a victim of intimate partner violence or human trafficking prior to or during the offense. Additionally, the bill states that the court and may consider the defendant's age and health conditions.

The rules of court lists out circumstances of mitigation that apply to either the circumstances of the crime (i.e. defendant's role was minor or committed under coercion or mistake) or characteristics of the defendant (i.e. defendant was under 26 years of age, or had prior victimization that contributed to the offense, or has little to no criminal record.) (Cal. Rules of Court, rule 4.423.)

This bill also specifies that a history of having survived human trafficking, domestic violence, or sexual assault shall be given great weight as mitigating factors that indicate diversion is appropriate.

- 5) **Argument in Support:** According to *Vera Institute of Justice*, the sponsor of this bill, "As a recipient of diversion, I cannot stress enough how life changing this type of relief is for people navigating the justice system. As a youth survivor of sexual assault, and as someone who lacked supportive resources, I developed a substance use disorder as an unhealthy coping mechanism. I soon found myself in jail. However, after speaking with my public defender and the judge overseeing my case, I was able to enroll in diversion instead of solely facing punishment and incarceration as a result of my trauma. I enrolled in an adult school office technology program, which became my foundation for higher education, meaningful employment, and deeper engagement in my community. I went on to attend community college, the University of California, Berkeley, and now advocate for criminal justice reform as a Senior Program Associate at Vera California. Diversion unequivocally saved my life.

"The research also shows that community-based diversion programs have improved public safety for Californians statewide. Participants in California's diversion programs come into contact with the justice system at a significantly lower rate (15.3 percent) compared to similar people leaving state prisons (41.9 percent). Diversion programs that offer targeted, light-touch services such as job training, education, housing, treatment for substance use and mental health, empower people to address their underlying needs, which reduces future contact with the criminal legal system.

"Moreover, evidence shows diversion programs are key to reducing racial disparities in the criminal legal system. To this day, Black and brown Californians are arrested at disproportionately higher rates than white people in nearly all of California's 58 counties. Expanded judicial discretion to grant diversion would likely decrease these racial disparities, helping even more Californians avoid the severe, long-term collateral consequences of incarceration—such as barriers to employment, housing, and education—that increase

recidivism. As a Native and Latina youth, receiving diversion gave me the opportunity to overcome the generational cycle of incarceration and educate myself.

“Diversion programs, which tap into existing community services, are also much more cost-effective than prisons and traditional court processing. This is particularly true in rural areas like the Central Valley, where resources are historically limited, and expanded diversion programming provides crucial opportunities for people to achieve stability, thereby enhancing public safety. My experience demonstrates this potential: having access to local resources and counselors in the Central Valley, who believed in me, enabled me to avoid further incarceration and become the advocate I am today.”

- 6) **Argument in Opposition:** According to *Chief Probation Officers of California*, “Several diversion and DEJ statutes and programs already exist around various offenses or collaborative court models. The Legislature has recognized that certain individuals may benefit from these pathways such as with substance use, mental health, veterans courts while concurrently retaining other judicial pathways for addressing the myriad of felony offenses where diversion or DEJ may not be deemed suitable.

“We are concerned that the expansion of felony diversion, particularly considering the structure of the bill to establish tiers of single and dual agency supervision will create significant confusion, create court inefficiencies, and is not in the best interest of public safety. For example, this would establish processes whereby a treatment agency, which may be an entity with no connection to the court or court orders, could be overseeing the treatment and reporting to the court on someone with a felony offense. Additionally, it would propose to have the defendant develop their own diversion plan and make recommendations for who should supervise them based on the new proposed multi-agency model.

“While we recognize the role that specific collaborative court programs can play in helping people to get connected to services through court ordered treatment and accountability, this bill goes beyond that model to apply diversion to a broad list of felony offenses and creates new procedures that create ambiguity and are not in the best interest of public safety, accountability and rehabilitation.”

7) **Related Legislation:**

- a) AB 46 (Nguyen), would make various changes to the mental health diversion program including making additional exceptions to eligible crimes under the program. AB 46 is pending hearing by this committee.
- b) AB 433 (Krell), would exclude additional crimes from eligibility for mental health diversion. AB 433 is pending hearing by this committee.
- c) SB 483 (Stern), would add another suitability factor for granting mental health diversion, requiring the court be satisfied that the recommended mental health treatment program is consistent with the purpose of diversion and will meet the defendant’s specialized treatment needs. SB 483 is pending hearing by the Senate Committee on Appropriations.

8) **Prior Legislation:**

- a) SB 1282 (Smallwood-Cuevas), of the 2023-2024 Legislative Session, would have authorized felony pretrial diversion, with specified exceptions. SB 1282 failed passage on the Senate Floor.
- b) SB 1025 (Eggman), Chapter 924, Statutes of 2024, expanded military diversion to apply to specified felonies.
- c) SB 1223 (Becker), Chapter 735, Statutes of 2022, made various changes to the mental health diversion program recommended by the Committee on the Revision of the Penal Code including requiring the court, if a defendant has been diagnosed with a mental disorder, to find that the defendant's mental disorder was a significant factor in the commission of a charged offense unless there is clear and convincing evidence that it was not a motivating factor, causal factor, or contributing factor to the alleged offense.
- d) AB 3234 (Ting), Chapter 334, Statutes of 2020, authorized a judge in the superior court in which a misdemeanor is being prosecuted to offer misdemeanor diversion to a defendant over the objection of a prosecuting attorney, except as specified.
- e) SB 394 (Skinner), Chapter 593, Statutes of 2019, authorized the presiding judge of the superior court, in consultation with the presiding juvenile court judge and criminal court judges and together with the prosecuting entity and the public defender, to create a pretrial diversion program for defendants who are primary caregivers of a child under 18 years of age, as specified.
- f) SB 215 (Beall), Chapter 1005, Statutes of 2018, made specified changes to mental health diversion established by AB 1810 of the same year.
- g) AB 1810 (Committee on Budget), Chapter 34, Statutes of 2018, established mental health diversion for defendants with mental disorders through which the court would be authorized to grant pretrial diversion, for a period no longer than 2 years, 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.
- h) AB 208 (Eggman), Chapter 778, Statutes of 2017, make the deferred entry of judgment program for drugs a pretrial diversion program.
- i) AB 725 (Jackson), Chapter 179, Statutes of 2017, authorized driving under the influence offenses to be diverted under the military diversion program.
- j) SB 1227 (Hancock), Chapter 658, Statutes of 2013, established the military diversion program for a defendant who was, or currently is, a member of the United States military and if they may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her military service.

REGISTERED SUPPORT / OPPOSITION:

Support

Drug Policy Alliance (Co-sponsor)
Los Angeles Regional Reentry Partnership (LARRP) (Co-sponsor)
Pico California (Co-sponsor)
SEIU California (Co-sponsor)
Vera Institute of Justice (Co-sponsor)
A New Path
A New Way of Life Re-entry Project
ACLU California Action
Alliance of Californians for Community Empowerment (acce Action)
Asian Americans Advancing Justice Southern California
Back to The Start
Being Alive - Los Angeles
Bend the Arc: Jewish Action, California
Bienestar Human Services
Black Women for Wellness Action Project
Broken No More
Buen Vecino
California Immigrant Policy Center
California Public Defenders Association (CPDA)
California Syringe Exchange Program (CASEP) Coalition
Californians for Safety and Justice (CSJ)
Californians United for A Responsible Budget
Carceral Ecologies
Catalyst California
Coalition for Humane Immigrant Rights (CHIRLA)
Communities United for Restorative Youth Justice (CURYJ)
County of Los Angeles Board of Supervisors
Courage California
Ella Baker Center for Human Rights
Fair Chance Project
Felony Murder Elimination Project
Gente Organizada
Glide
Homies Unidos INC
Indivisible CA Statestrong
Initiate Justice
Initiate Justice Action
Inland Coalition for Immigrant Justice
Justice in Aging
Justice2jobs Coalition
LA Defensa
Laane (los Angeles Alliance for A New Economy)
Larkin Street Youth Services
Law Office of Jac C. Lyons
Legal Services for Prisoners With Children
Local 148 LA County Public Defenders Union
Los Angeles County Public Defender's Office

National Association of Social Workers, California Chapter
New Light Wellness
Norcal Resist
Oasis Legal Services
Public Counsel
Rubicon Programs
San Francisco Aids Foundation
San Francisco Public Defender
Santa Clara County Public Defender's Office
Smart Justice California, a Project of Tides Advocacy
South Bay People Power
Southeast Asia Resource Action Center
Steinberg Institute
Urban Peace Institute
Valor US

Opposition

California Police Chiefs Association
California State Sheriffs' Association
Chief Probation Officers' of California (CPOC)

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