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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair  
2021 - 2022 Regular

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**Bill No:** AB 282                      **Hearing Date:** July 13, 2021  
**Author:** Lackey  
**Version:** April 8, 2021  
**Urgency:** No                              **Fiscal:** No  
**Consultant:** SC

**Subject:** *Misdemeanor diversion*

## HISTORY

**Source:** Crime Victims United

**Prior Legislation:** AB 3234 (Ting), Ch. 334, Stats. 2020  
SB 725 (Jackson), Ch. 179, Stats. 2017  
SB 1227 (Hancock), Ch. 658, Stats. 2014

**Support:** Auto Club of Southern California (AAA); California Association of Drinking Driver Treatment Programs; California District Attorneys Association; California State Sheriffs' Association; Mothers Against Drunk Driving; Peace Officers Research Association of California (PORAC); San Diego District Attorney's Office

**Opposition:** American Civil Liberties Union California Action; California Attorneys for Criminal Justice; California DUI Lawyers Association; California Public Defenders Association (oppose unless amended); Drug Policy Alliance; Immigrant Legal Resource Center; San Francisco Public Defender; 2 private individuals

**Assembly Floor Vote:** 64 - 9

## PURPOSE

*The purpose of this bill is to exclude driving under the influence and other offenses relating to reckless operation of a vehicle from court-initiated misdemeanor diversion.*

*Existing law* states that pretrial diversion refers to the procedure of postponing prosecution of an offense filed as a misdemeanor either temporarily or permanently at any point in the judicial process from the point at which the accused is charged until adjudication. (Pen. Code, § 1001.1.)

*Existing law* authorizes a superior court judge to offer pretrial diversion to a person charged with a misdemeanor, over the objection of a prosecuting attorney (court-initiated misdemeanor diversion), except that a defendant may not be offered diversion for any of the following currently charged offenses:

- Any offense for which a person would be required to register as a sex offender;

- A domestic violence or domestic battery offense; and,
- Stalking. (Pen. Code, § 1001.95, subds. (a) & (e).)

*Existing law* provides 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 specific situation. (Pen. Code, § 1001.95, subd. (b).)

*Existing law* states that if the defendant has complied with the imposed terms and conditions, at the end of the diversion period, the judge shall dismiss the action against the defendant. (Pen. Code, § 1001.95, subd. (c).)

*Existing law* requires the court to provide the defendant notice and hold a hearing to determine whether criminal proceedings should be reinstated if it appears to the court that the defendant is not complying with the terms and conditions of diversion. 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).)

*Existing law* provides that in order for a defendant who is diverted pursuant to this provision to have their action dismissed:

- The defendant must complete all conditions ordered by the court;
- Make full restitution, however, a defendant's inability to pay restitution due to indigence cannot be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion; and,
- Comply with any court-ordered protective order, stay-away order, or order prohibiting firearm possession. (Pen. Code, § 1001.96.)

*Existing law* states that upon successful completion of the court-ordered terms, conditions, or programs of diversion, the arrest upon which diversion was imposed shall be deemed to never have occurred. The defendant may indicate in response to any question concerning their prior criminal record that they were not arrested. (Pen. Code, § 1001.97, subd. (a).)

*Existing law* prohibits, without the defendant's consent, using a record pertaining to an arrest resulting in successful completion of diversion in any way that could result in the denial of any employment, benefit, license, or certificate. (Pen. Code, § 1001.97, subd. (a).)

*Existing law* requires that the defendant be advised that, regardless of their successful completion of diversion, the arrest on which the diversion was based may be disclosed by the Department of Justice in response to a peace officer application request and that, notwithstanding the foregoing provisions, the defendant is not relieved of the obligation to disclose the arrest in response to a direct question contained in a questionnaire or application for a position as a peace officer, as defined. (Pen. Code, § 1001.97, subd. (b).)

*Existing law* authorizes the prosecution to approve a pretrial diversion program for misdemeanor offenses. (Pen. Code, §§ 1001.2, subd. (b) & 1001.50, subd. (b).)

*Existing law* provides that to be eligible for a prosecution-approved misdemeanor diversion program, all of the following must apply to the defendant:

- The defendant has not ever had probation or parole revoked without thereafter being completed;
- The defendant has not participated in a diversion program within the previous five years; and,
- The defendant has never been convicted of a felony, and has not been convicted of a misdemeanor within the previous five years. (Pen. Code, § 1001.51, subd. (a).)

*Existing law* specifies that a prosecution-approved misdemeanor diversion program does not apply to DUI offenses. (Pen. Code, § 1001.51, subd. (b).)

*Existing law* excludes defendants from a prosecution-approved misdemeanor diversion program where the accusatory pleading charges the commission of a misdemeanor:

- Which requires incarceration upon conviction;
- Which requires sex offender registration upon conviction;
- Which the magistrate determined should be prosecuted as a misdemeanor, as specified;
- Which involves the use of force or violence against a person, unless the charge is a simple assault or battery;
- For which the granting of probation is prohibited; or,
- Which is a driving offense punishable as a misdemeanor, as specified. (Pen. Code, § 1001.51, subd. (c).)

*Existing law* specifies that when a person is charged with a DUI offense, the court shall not suspend or dismiss the criminal proceedings because the defendant participates in education, training, or treatment programs. (Veh. Code, § 23640.)

*Existing law* authorizes pretrial diversion for members of the military and veterans charged with a misdemeanor and who are suffering from service-related trauma or substance abuse, as specified. (Pen. Code, § 1001.80 et seq.)

*Existing law* specifies that a person charged with a DUI offense may be placed in military diversion. However, this section does not limit the authority of the Department of Motor Vehicles to take administrative action concerning the driving privileges of the person. (Pen. Code, § 1001.80, subd. (1).)

*Existing law* states that it is unlawful for a person who is under the influence of any alcoholic beverage or under the influence of any drugs to drive a vehicle. (Veh. Code, § 23152.)

*Existing law* punishes a first DUI conviction as a misdemeanor, punishable by imprisonment in the county jail for not less than 96 hours, at least 48 hours of which shall be continuous, nor

more than six months, and by a fine of not less than \$390, nor more than \$1,000. The person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles (DMV) for a period of six months and the privilege shall not be reinstated until the person gives proof of financial responsibility and gives proof satisfactory to DMV of successful completion of a DUI program. (Veh. Code, §§ 23536 and 13352, subd. (a)(1).)

*Existing law* provides the following enhanced penalties for repeat DUI offenders:

- On a second DUI conviction within 10 years of a prior conviction, the person shall be punished by imprisonment in the county jail for not less than 90 days nor more than one year and by a fine of not less than \$390 nor more than \$1,000. The person's privilege to operate a motor vehicle shall be suspended by DMV for two years and shall not be reinstated until the person gives proof of financial responsibility and gives proof satisfactory to the department of successful completion of a DUI program. (Veh. Code, §§ 23540 and 13352, subd. (a)(3).)
- On a third DUI conviction within 10 years of two separate prior convictions, the person shall be punished by imprisonment in the county jail for not less than 120 days nor more than one year and by a fine of not less than \$390 nor more than \$1,000. The person's privilege to operate a motor vehicle shall be revoked by DMV for a period of three years and shall not be reinstated until the person files proof of financial responsibility and gives proof satisfactory to the DMV of successful completion of an 18-month DUI program. (Veh. Code, §§ 23546 and 13352, subd. (a)(5).)

*Existing law* states that it is unlawful for a person, while under the influence of any alcoholic beverage to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver. (Veh. Code, § 23153.)

*Existing law* punishes DUI with injury offenses as follows:

- A first offense is punishable as an alternate felony-misdemeanor by imprisonment in the state prison, or in a county jail for not less than 90 days nor more than one year, and by a fine of not less than \$390 nor more than \$1,000. The person's privilege to operate a motor vehicle shall be suspended by DMV for a period of one year and may only be reinstated if person gives proof of financial responsibility and gives proof satisfactory to the department of successful completion of a DUI program (Veh. Code, §§ 23554 and 13352, subd. (a)(2).)
- A second offense within 10 years of a separate prior offense is punishable as an alternate felony-misdemeanor by imprisonment in state prison, or in a county jail for not less than 120 days nor more than one year, and by a fine of not less than \$390 nor more than \$5,000. The person's privilege to operate a motor vehicle shall be revoked by DMV for a period of three years and shall not be reinstated until the person gives proof of financial responsibility, and the person gives proof satisfactory to DMV of successful completion of DUI program. (Veh. Code, §§ 23560 and 13353, subd. (a)(4).)
- A third offense within 10 years of two separate prior offenses is punishable felony in state prison for 2, 3 or 4 years and a fine of not less than \$1,015 nor more than \$5,000. The person's privilege to operate a motor vehicle shall be revoked by DMV for a period

of five years and shall not be reinstated until the person gives proof of financial responsibility and gives proof satisfactory to DMV of successful completion of a DUI program. (Veh. Code, §§ 23566 and 13352, subd. (a)(6).)

*Existing law* states that a person who drives a vehicle upon a highway in willful or wanton disregard for the safety of persons or property is guilty of reckless driving. (Veh. Code, § 23103.)

*Existing law* specifies that if the prosecution agrees to a guilty plea to a violation of reckless driving as a substitute for the original charge of a DUI, the prosecution shall state for the record that the offense involved consumption of alcohol or drugs. A plea to this violation may be used as a prior conviction for purposes of enhanced penalties for a second or subsequent DUI within a ten years of a prior DUI offense. This reduced charge is commonly referred to as a wet reckless. (Veh. Code, § 23103.5.)

*Existing law* prohibits the operation of any vessel, water skis, aquaplane, or similar device while under the influence of an alcoholic beverage, any drug, or the combined influence of these substances. (Harb. & Nav. Code, § 655.)

*This bill* prohibits DUI offenses, reckless driving, wet reckless, and boating under the influence from being diverted under court-initiated misdemeanor diversion.

## COMMENTS

### 1. Need for This Bill

According to the author of this bill:

Diversion eligibility was created for minor offenses but has since been expanded to offenses that are more serious. In addition, Governor Newsom highlighted in his signing message of AB 3234 (Ting, 2020) that he wants the Legislature to exclude DUIs from misdemeanor diversion eligibility. This bill honors the Governor's request and prohibits misdemeanor DUIs from diversion.

### 2. Diversion Programs Generally

Existing law permits pretrial diversion programs. (Penal Code, § 1001 et seq.) Pre-trial diversion suspends the criminal proceedings without requiring the defendant to enter a plea. The defendant must successfully complete a program or other conditions imposed by the court. If a defendant does not successfully complete the diversion program, criminal proceedings resume but the defendant, having not entered a plea, may still proceed to trial or enter a plea. If diversion is successfully completed, the criminal charges are dismissed and the defendant may, with certain exceptions, legally answer that they have never been arrested or charged for the diverted offense

Diversion programs were originally only established in local counties upon the prosecution's approval. (Pen. Code, § 1001 et seq.) Pursuant to those provisions, no program can continue without the approval of the prosecution and no person can be diverted under a diversion program unless it has been approved by the prosecution. (Pen. Code, §§ 1001.2, subdivision (b), 1001.50, subdivision (b); *People v. Marroquin* (2017) 15 Cal.App.5th Supplement 1, 37.) However, the

prosecution is not authorized to determine whether a particular defendant shall be diverted. That determination still rests within the court's discretion. (Pen. Code, § 1001.2.)

In recent years, the Legislature has enacted pretrial diversion programs that a court may offer to a defendant, without the prosecution's approval. (See Pen. Code, § 1001.36 which authorizes mental health diversion; Pen. Code, § 1001.80 which authorizes military diversion; and Pen. Code, § 1001.95 which authorizes court-initiated misdemeanor diversion.)

### 3. Military Diversion's Applicability to DUIs and Equal Protection Considerations

When the Military Diversion Program was first enacted in 2014, the statute was silent on whether the law would apply to DUI offenses. (SB 1227 (Hancock) Chapter 658, Stats. 2013.) A person who is currently in the military or who is a veteran who suffered sexual trauma, a traumatic brain injury or post-traumatic stress, substance abuse or mental health problems as a result of his or her military service may be granted pretrial diversion under the program. If the defendant participates in the program then they are diverted to an appropriate treatment program and upon successful completion the arrest shall be deemed to have never occurred.

Because the statute establishing the Military Diversion Program did not explicitly address its applicability to DUI offenses and other statutes exist that prohibit diverting DUI offenses (see Pen. Code, §§ 1001.2 and 1001.51; Veh. Code, § 23640), when challenged in the courts there was a split of authority on whether the Legislature intended for the general prohibition against diverting DUI offenses to apply to persons in the Military Diversion program. In *People v. VanVleck* (2016) 2 Cal.App.5th 355, the Fourth District Court of Appeal held that persons charged with driving under the influence offenses cannot obtain diversion under Penal Code §1001.80. The *VanVleck* court applied the rule that a specific statute controls over a general statute and found that since the Military Diversion program applies to all misdemeanors while Vehicle Code section 23640 applies only to DUIs, the Vehicle Code section is the specific statute and controls. (*Id.* at 365.) The court stated that if the Legislature wanted to specifically include DUIs, it could have done so, but because it did not the general prohibition bars diversion of DUIs. (*Id.* at 367.)

Conversely, in *Hopkins v. Superior Court* (2016) 2 Cal. App. 5th 1275, review granted November 16, 2016, S237734, the Second District Court of Appeal held that the Military Diversion program functions as an implied repeal of the prohibition in Vehicle Code section 23640 against pretrial diversion for defendants charged with DUIs, thus a person who otherwise qualifies for the program could receive pretrial diversion for a DUI. The *Hopkins* court decided that the general versus specific statute rule of statutory construction was not helpful to its analysis because either statute could be determined to be the specific depending on what is focused upon. Since, according to the court, it would be an arbitrary choice on which focus to use, the court decided that it would rely on the rule that a later enacted statute supersedes an earlier one. (*Id.* at 1283-1284). The court urged the Legislature to amend the statutes authorizing the Military Diversion program to express its intent with regard to military diversion in DUI cases. (*Id.* at 1278.)

The California Supreme Court granted review of the conflicting cases, however, in the meantime the Legislature passed SB 725 (Jackson), Ch. 179, Stats. 2017, specifically making DUI offenses eligible for the Military Diversion Program, thus making review of the issue moot. The relevant subdivision now reads, "Notwithstanding any other law, including Section 23640 of the Vehicle Code, a misdemeanor offense for which a defendant may be placed in a pretrial diversion

program in accordance with this section includes a misdemeanor violation of Section 23152 or 23153 of the Vehicle Code. However, this section does not limit the authority of the Department of Motor Vehicles to take administrative action concerning the driving privileges of the person.” (Pen. Code, § 1001.80, subd. (l).)

If this bill were to be enacted into law making DUI and other related offenses ineligible for court-initiated diversion, the law could be challenged on equal protection grounds. “An equal protection challenge may be made to a law when persons similarly situated with respect to a legitimate purpose of the law do not receive like treatment. If the persons similarly situated constitute a ‘suspect classification,’ the higher ‘strict scrutiny’ standard of review will be employed, in which the statute will be upheld only if it is necessary to further a compelling state interest. Alternatively, if a fundamental liberty interest is at issue, the compelling state interest test also will be employed. If neither a ‘suspect class’ nor a fundamental liberty interest is involved, the lesser ‘rational relationship’ test will apply, under which the statute will be upheld if it bears a rational relationship to a legitimate state purpose.” (California Criminal Defense Practice, § 140.20[6].)

California courts have reviewed equal protection challenges based upon statutory ineligibility for diversion under the rational basis standard – i.e., whether the classification is rationally related to the purposes of the statute. (See *People v. Edwards* (1991) 235 Cal.App.3d 1700, 1706.) “The inquiry under the rational basis test requires the court to conduct a serious and genuine judicial inquiry into the correspondence between the classification and the legislative goals.” (*Ibid.*)

An equal protection challenge would turn on whether a court concludes that persons suffering service-related trauma are similarly situated with other persons who may be diverted under court-initiated diversion and whether there is a rational basis to limit misdemeanor DUI diversion only to military diversion.

#### 4. DUI Statistics

According to the most recent report by DMV, DUI arrests have decreased steadily from 2015 through 2017. Of DUI arrestees, persons identified as Hispanic were the largest racial/ethnic group represented at 49% of all DUI arrests. This has been the case for each year for over a decade and is substantially higher than their estimated percentage of California’s adult population, which was 36.5% in 2017.

As for convictions, 73.6% of 2016 DUI arrests resulted in convictions for DUI offenses. Among the DUI convictions for 2016, 73% were first offenders and 27% were repeat offenders, meaning they had one or more prior DUI convictions within the previous 10 years. As noted in the report, the proportion of repeat offenders has decreased considerably since 1989, when it stood at 37%, even though prior DUI convictions are currently retained on record and thus counted longer than in the past (10 years compared to 7 years in 1989).

DUI offenders were sentenced to jail in 73.6% of the cases. 65.6% of first time offenders were sentenced to jail, compared to 95.2% of repeat offenders. Of the DUI offenders arrested in 2016 who were required to enroll in a DUI program, 86.9% of first offenders and 43% of second offenders completed the program.

One-year post-conviction reoffense rates for first time DUI offenders arrested in 2016 was 3.8% compared to 7.6% in 1990. The one-year postconviction reoffense rate for second DUI offenders was 4.4% compared to 9.7% in 1990. Long-term reoffense rates, those occurring over years following an initial DUI conviction, are higher among those with more DUI priors (within 10 years), among males, and among younger-aged drivers.

As for DUI-related fatalities, the report found that while the number of alcohol-involved fatalities declined by about 4% over the past 22 years, the number of drug-involved fatalities increased by about 212% over the same time period. The report notes however, that some of the increase in the number of fatalities reported as drug-involved over this time period may be, in part, associated with an increase in training and ability of California law enforcement to detect and report drug involvement in fatal crashes in recent years. (DMV, 2019 *Annual Report of the California DUI Management Information System: Annual report to the Legislature of the State of California* (June 2020) <https://www.dmv.ca.gov/portal/uploads/2020/06/S5-260-1.pdf> [as of July 6, 2021].)

## 5. Misdemeanors: Immigration Consequences

Having a misdemeanor conviction on one's criminal record has collateral consequences such as creating barriers in employment, housing and student loans, in addition to the punishment for the crime itself which could include time in jail and hefty fines. For non-citizens, the consequences of a misdemeanor conviction can be a damaging factor in discretionary decisions, including whether the person will be released from immigration detention on bond, or found to be of good moral character.

Generally, a DUI conviction does not constitute a per se ground of removability because it is not an aggravated felony, a crime involving moral turpitude, or other inadmissible or deportable conviction. However, a DUI conviction is a disqualifying factor under the Deferred Actions for Childhood Arrivals (DACA) program.

The DACA program was initiated on June 15, 2012 for "certain people who came to the United States as children and meet several guidelines may request consideration of deferred action for a period of two years, subject to renewal. They are also eligible for work authorization. Deferred action is a use of prosecutorial discretion to defer removal action against an individual for a certain period of time. Deferred action does not provide lawful status." (See U.S. Citizenship and Immigration Services website < <https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca> > [as of July 5, 2021].) In order to be eligible to request DACA, a person must meet the following requirements:

- 1) Was under the age of 31 as of June 15, 2012;
- 2) Arrived in the United States before reaching their 16<sup>th</sup> birthday;
- 3) Has continuously resided in the United States since June 15, 2007, up to the present time;
- 4) Was physically present in the United States on June 15, 2012, and at the time of making their request for DACA consideration;
- 5) Had no lawful status on June 15, 2012, as specified;
- 6) Is currently in school, has graduated or obtained a certificate of completion from high school, has obtained a general education development certificate, or is an honorably discharged veteran; and,



- 7) Has not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and does not otherwise pose a threat to national security or public safety. (*Id.*)

A “significant misdemeanor” for purposes of DACA consideration means includes, “[r]egardless of the sentence imposed . . . an offense of domestic violence; sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or, driving under the influence.” (See [https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions#criminal\\_convictions](https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions#criminal_convictions) [as of July 5, 2021].)

As raised by some of the opponents to the bill, DACA recipients who are convicted of a first time DUI are uniquely vulnerable and face disproportionate consequences. Specifically, because DUIs are considered a significant misdemeanor, they will be barred from the DACA program meaning they will lose their employment authorization and legal status in the country even after completing their sentence and any court ordered conditions such as paying fines, restitution, and completing a DUI program.

According to the Congressional Research Service, one in four DACA recipients live in California. As of December 31, 2020, California was the home to 181,660 DACA recipients. (*Deferred Action for Childhood Arrivals (DACA): By the Numbers*, Congressional Research Service (April 14, 2021) <https://fas.org/sgp/crs/homesecc/R46764.pdf> [as of July 5, 2021].)

## 6. AB 3234 (Ting): Governor’s Signing Message

AB 3234 (Ting), Chapter 3234, Statutes of 2020, created a court initiated misdemeanor diversion program. When the Governor signed the bill into law, he included the following in his signing message: “However, I am concerned that the crime of driving under the influence was not excluded from the misdemeanor diversion program. I will seek to expeditiously remedy this issue with the Legislature in the next Legislative session.” (See <https://www.gov.ca.gov/wp-content/uploads/2020/09/AB-3234.pdf> [as of July 2, 2021].)

While this bill is not sponsored by the Administration, the author has stated that it is in response to the concern raised in the Governor’s signing message.

## 7. Argument in Support

According to the San Diego District Attorney’s Office:

Existing law permits alternatives to a criminal conviction for offenders charged with crimes in certain circumstances. One alternative is diversion, which does not require a guilty plea and does not constitute a conviction. Diversion programs are primarily reserved for minor offenses. They are also permitted for certain special populations, such as the recently enacted military diversion and for offenders who are primary caregivers of children. Existing law only excludes the following misdemeanors from eligibility for diversion: crimes that would require a person to register as a sex offender, domestic violence, and stalking.

[D]iversion was created for minor offenses but has since been expanded to more serious offenses. In 2020, Governor Newsom signed a bill that permits a judge to

offer diversion for *any* misdemeanor crime, with few limitations as to seriousness, and without limits on prior convictions or prior diversions. This allows a person to escape conviction, avoid jail time, and have their arrest records related to the crime erased. . . .

AB 282 would prohibit a judge from offering diversion under these provisions for the charged offenses relating to reckless operation of a vehicle and driving under the influence.

## 8. Argument in Opposition

According to the California Public Defenders Association:

Current law permits a court to divert some misdemeanor cases, subject to enumerated exceptions. (Pen. Code § 1001.95.) Thus, when the judge who is handling a misdemeanor case determines that it is in the interests of the public to offer the defendant an opportunity to earn the dismissal of the case, the court may order the defendant to comply with a series of diversion conditions, monitor the defendant's progress and behavior and then, if the defendant remains in compliance throughout the diversion period, dismiss the case.

According to the Traffic Resource Center for Judges, at least 8 states, including Florida, Georgia, Indiana, Kansas, Louisiana, Oregon, Pennsylvania, and Texas, offer pre-trial diversions statewide or in specific counties. (Pre-trial Diversion Programs for DUI's, Issue Brief 2 (February 2015) the Traffic Resource Center for Judges, National Center for State Courts.)

Diversion is demonstrably more effective at reducing recidivism rates and protecting public safety than the prior "one size fits all" method of forcing poor, often mentally ill Californians to shoulder the burden of a criminal conviction, placing them on summary probation, and hoping for the best. Defendants whose cases are diverted and monitored by the court are far less likely to reoffend, and far more likely to find employment in the future than those who are simply convicted. Because diversion statutes allow courts to make individualized determinations about each case and are more likely to prevent crime than traditional prosecution models, it is simply not in the public's interest to prevent their use.

Regrettably, AB 282 proposes to flatly prevent judges from diverting misdemeanor cases based on the charge, rather than on an individualized consideration of the circumstances of the case, the interests of the public, and the likelihood that simply convicting the defendant will increase the chances that they reoffend. In short, AB 282 ignores the available evidence regarding the efficacy of diversion in favor of a return to an ineffective and broken system.

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