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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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<b>Bill No:</b>	SB 1025	<b>Hearing Date:</b>	March 12, 2024
<b>Author:</b>	Eggman		
<b>Version:</b>	February 6, 2024		
<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	SC		

**Subject:** *Pretrial diversion for veterans*

### HISTORY

**Source:** California Judges Association

**Prior Legislation:** SB 492 (Eggman), held in Assem. Approps., 2023  
AB 725 (Jackson), Ch. 179, Stats. 2017  
SB 1110 (Jackson), Ch. 655, Stats. 2014  
SB 1227 (Hancock), Ch. 658, Stats. 2013

**Support:** California Public Defenders Association; Ella Baker Center for Human Rights; Initiate Justice

**Opposition:** California District Attorneys Association (oppose unless amended)

### PURPOSE

***The purpose of this bill is to expand eligibility for the Military Diversion Program to felonies, subject to specified exceptions.***

*Existing law* requires establishes a diversion program for defendants charged with a misdemeanor offense who were, or currently are, a member of the United States military. (Pen. Code, § 1001.80.)

*Existing law* states that this program may apply to a defendant who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of their military service. The court may request, using existing resources, an assessment to aid in making this determination. (Pen. Code, § 1001.80, subd. (a)(2).)

*Existing law* states that if the court determines that a defendant charged with an applicable offense is eligible, the court, with the consent of the defendant and a waiver of the defendant's speedy trial right, may place the defendant in a pretrial diversion program. (Pen. Code, § 1001.80, subd. (b).)

*Existing law* defines "pretrial diversion" to mean the procedure of postponing prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication. (Pen. Code, § 1001.80, subd. (k).)

*Existing law* states that if it appears to the court that the defendant is performing unsatisfactorily in the assigned program, or that the defendant is not benefiting from the treatment and services provided under the diversion program, after notice to the defendant, the court shall hold a hearing to determine whether the criminal proceedings should be reinstituted. (Pen. Code, § 1001.80, subd. (c).)

*Existing law* states that if the court finds that the defendant is not performing satisfactorily in the assigned program, or that the defendant is not benefiting from diversion, the court may end the diversion and order resumption of the criminal proceedings. If the defendant has performed satisfactorily during the period of diversion, at the end of the period of diversion, the criminal charges shall be dismissed. (Pen. Code, § 1001.80, subd. (c).)

*Existing law* provides that if a referral is made to the county mental health authority as part of the diversion program, the county shall provide mental health treatment services only to the extent that resources are available for that purpose. If mental health treatment services are ordered by the court, the county mental health agency shall coordinate appropriate referral of the defendant to the county veterans service officer. The county mental health agency is not responsible for providing services outside its traditional scope of services. (Pen. Code, § 1001.80, subd. (d).)

*Existing law* authorizes the court to order the referral of a defendant to a county mental health agency only if that agency has agreed to accept responsibility for all of the following:

- The treatment of the defendant;
- The coordination of appropriate referral to a county veterans service officer; and,
- The filing of progress reports. (Pen. Code, § 1001.80, subd. (d).)

*Existing law* states that the court, in making an order to commit a defendant to an established treatment program, shall give preference to a treatment program that has a history of successfully treating veterans who suffer from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of military service, including, but not limited to, programs operated by the United States Department of Defense or the United States Department of Veterans Affairs. (Pen. Code, § 1001.80, subd. (f).)

*Existing law* provides that the period during which criminal proceedings against the defendant may be diverted shall be no longer than two years. The responsible agency or agencies shall file reports on the defendant's progress in the diversion program with the court and with the prosecutor not less than every six months. (Pen. Code, § 1001.80, subd. (h).)

*Existing law* states that upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The defendant may indicate in response to a question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except in an application for a position as a peace officer. (Pen. Code, § 1001.80, subds. (i) and (j).)

*This bill* would allow felony offenses, except as specified below, to be diverted under the military diversion program:

- Murder or voluntary manslaughter;
- An offense for which a person, if convicted, would be required to register as a sex offender;

- Rape;
- Lewd or lascivious act on a child under 14 years of age;
- Assault with intent to commit rape, sodomy, or oral copulation;
- Commission of rape or sexual penetration in concert with another person;
- Continuous sexual abuse of a child; or,
- Specified violations involving weapons of mass destruction.

## COMMENTS

### 1. Need for This Bill

According to the author of this bill:

More than half of our California justice-involved veterans are tackling homelessness, mental health struggles including PTSD, depression, anxiety and substance abuse disorders after fighting for our country. This bill gives our veterans with felony offenses an opportunity to rehabilitate and be given the proper care and resources that they need in order to reintegrate back into society rather than being sentenced to a crime they committed while dealing with undue pressure of service linked mental health issues. Many courts are already allowing for military veterans who committed felonies the opportunity to enter a diversion program. This bill simply allows for all courts to do so in order to create fairness to all military veterans who need support in California.

### 2. Background: 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. 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.

### 3. Military Diversion Program

SB 1227 (Hancock) Chapter 658, Statutes of 2013 created a pre-plea military diversion program. According to the author of SB 1227:

California has nearly two million military veterans living in the state, more than any other state in the country. Many of these veterans suffer from service related trauma, such as Post Traumatic Stress Disorder, or Traumatic Brain Injury. Unfortunately, some veterans find themselves entangled in the criminal justice system.

Diversion programs and the benefits of these programs are well established in California. These programs reduce recidivism by targeting the underlying source of criminal behavior. Diversion programs also reduce court and incarceration costs, as well as connect participants to services that help them resume positive community participation.

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Existing veterans' courts are post-plea, probationary programs. Veterans are eligible only after they have been found guilty. While these courts have proven effective, they do not afford participating veterans the benefits of pre-plea diversion programs.

(Sen. Com. on Pub. Safety, Analysis of Sen. Bill No. 1227 (2013-2014 Reg. Sess.) as introduced Feb. 20, 2013, pp. 4-5.)

The goal of the diversion program is provide help for veterans who may be suffering as a result of their service. This program allows them to not only get proper services but also allow them to be more easily employed in the future by keeping the crime off their record if they complete their diversion program successfully.

In order to be eligible for military diversion, the defendant must currently be, or was, a member of the United States military and the defendant suffers from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of their military service. The court may request, under existing resources, an assessment to aid in making this determination. (Pen. Code, § 1001.80, subd. (a).) The court and the assigned treatment program may collaborate with the Department of Veterans Affairs and the United States Department of Veterans Affairs to maximize benefits and services provided to a veteran. (Pen. Code, § 1001.80, subd. (g).) The diversion program shall use existing resources available to current or former members of the military to address and treat those suffering from trauma and mental illness. (Pen. Code, § 1001.80, subd. (k).) The diversion program shall be no longer than two years and the responsible agency or agencies shall file reports on the defendant's progress in the program with the court and prosecutor not less than every six months. (Pen. Code, § 1001.80, subd. (h).)

When SB 1227 was first introduced, the diversion program was to apply to misdemeanors and jail-eligible felonies, which are generally non-violent, non-serious, non-sex offender registration felonies. As the bill moved through the Legislature, the bill was amended to only apply to misdemeanors.

This bill would expand the military diversion program to also apply to any offense except: murder or voluntary manslaughter, any offense requiring sex offender registration except indecent exposure, rape and other specified sex offenses, or the use of a weapon of mass

destruction. This exclusion list conforms with the current list of offense exclusions for the mental health diversion program. (Pen. Code, § 1001.36, subd. (d).)

#### **4. Argument in Support**

According to Initiate Justice:

Current law (SB 1227) allows for military veterans who have committed a misdemeanor to enter a military diversion program as an alternate to sentencing. While felonies are not included as part of the diversion program, some diversion programs do allow it on a case by case basis, which creates a lack of consistency in our diversion court programs. Veterans then have to be moved into a different diversion program to get them the care they need. However, they have to sacrifice the veteran-centered services found in the military diversion program to avoid jail time and permanent records.

The San Francisco Veterans Justice Court who allows for military veterans with felony offenses to participate in its military diversion program states that over 85% of their veteran participants have successfully rehabilitated and reintegrated back into society.

This bill would add felony offenses, as specified, to the pretrial diversion program for a defendant who was, or currently is, a member of the Armed Forces of the United States. This bill gives our veterans with felony offenses an opportunity to rehabilitate and be given the proper care and resources that they need in order to reintegrate back into society rather than being sentenced to a crime they committed while dealing with undue pressure of service linked mental health issues.

#### **5. Argument in Opposition**

California District Attorneys Association (CDA) writes:

This bill would allow pretrial diversion access for all California veterans or active-duty service members charged with nearly any felony offense. CDA recommends amending the measure to allow diversion for only enumerated felonies, such as grand theft, as military diversion requires a lower threshold to access than other types of diversion.

As written, to qualify for military diversion, aside from status as a veteran or active-duty service member, the defendant “may be suffering” from an injury, like mental health problems, as a result of their military service. (Pen. Code, § 1001.80, subd. (a)(2).) Courts “may request” an assessment to determine whether this requirement applies to the defendant. (Pen. Code, § 1001.80, subd. (a)(2).) If the court determines that the defendant meets the qualifications, the defendant may be placed in diversion.

But this standard is more permissive than the existing standards for a comparable diversion program, like mental health diversion. There, to be eligible for diversion, the defendant must have been diagnosed with a mental disorder (Pen.

Code, § 1001.36, subd. (b)(1)) and that the mental disorder “was a significant factor in the commission of the charged offense.” (Pen. Code, § 1001.36, subd. (b)(2).) Mental health diversion is eligible for all felony offenses, except as for identified offenses. (Pen. Code, § 1001.36, subd. (d).) SB 1025, as introduced, mirrors this same language, and excludes the same felony offenses.

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