
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 2215 **Hearing Date:** May 28, 2024
Author: Bryan
Version: February 7, 2024
Urgency: No **Fiscal:** No
Consultant: SC

Subject: *Criminal procedure: arrests*

HISTORY

Source: Californians for Safety and Justice

Prior Legislation: SB 238 (Hertzberg), Chapter 566, Statutes of 2017
SB 843 (Committee on Budget), Chapter 33, Statutes of 2016

Support: ACLU California Action; California Faculty Association; California Immigrant Policy Center; California Public Defenders Association; Californians United for A Responsible Budget; Communities United for Restorative Youth Justice (CURYJ); Ella Baker Center for Human Rights; Friends Committee on Legislation of California; Initiate Justice; Lawyers' Committee for Civil Rights of The San Francisco Bay Area; Legal Services for Prisoner With Children; Peace Officers Research Association of California (PORAC); Prosecutors Alliance of California; Rubicon Programs; San Francisco Public Defender; Smart Justice California; Steinberg Institute; The Transformative In-prison Workgroup; UnCommon Law; Vera Institute of Justice; Young Women's Freedom Center

Opposition: Los Angeles County Professional Peace Officers Association; Riverside County Sheriff's Office

Assembly Floor Vote: 72 - 0

PURPOSE

The purpose of this bill is to authorize an arresting officer to release an arrested person from custody without bringing the person before a magistrate if the person is delivered or referred to a public health or social service organization that provides services such as housing, medical care, treatment for alcohol or substance use disorders, psychological counseling, or employment training and education, and no further proceedings are desirable.

Existing law provides that an arrest is taking a person into custody in a case and manner authorized by law, and authorizes peace officers and private persons to make arrests. (Pen. Code, § 834.)

Existing law authorizes a peace officer to arrest a person without a warrant in the following circumstances:

- The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence;
- The person arrested has committed a felony, although not in the officer's presence; or,
- The office has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed. (Pen. Code, § 836.)

Existing law requires, when an arrest is made without a warrant by a peace officer or private person, the person arrested be taken, without unnecessary delay, before the nearest or most accessible magistrate in the county in which the offense is triable, unless the person is otherwise released. (Pen. Code, § 849, subd. (a).)

Existing law requires a complaint stating the charge against the arrested person to be laid before the magistrate. (Pen. Code, § 849, subd. (a).)

Existing law authorizes a peace officer to release from custody, instead of taking the person before a magistrate, a person arrested without a warrant in the following circumstances:

- The officer is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested;
- The person arrested was arrested for intoxication only, and no further proceedings are desirable;
- The person was arrested only for being under the influence of a controlled substance or drug and the person is delivered to a facility or hospital for treatment and no further proceedings are desirable;
- The person was arrested for driving under the influence of alcohol or drugs and the person is delivered to a hospital for medical treatment that prohibits immediate delivery before a magistrate; or,
- The person was arrested and subsequently delivered to a hospital or other urgent care facility, including, but not limited to, a facility for the treatment of co-occurring substance use disorders, for mental health evaluation and treatment, and no further proceedings are desirable. (Pen. Code, § 849, subd. (b)(1)-(5).)

Existing law requires the record of arrest of a person released, as specified, to include a record of release, and that the arrest shall not be deemed an arrest, but a detention only. (Pen. Code, § 849, subd. (c).)

Existing law establishes the Law Enforcement Assisted Diversion (LEAD) pilot program. (Pen. Code, § 1001.85, et seq.)

Existing law provides that the purpose of the LEAD program is to improve public safety and reduce recidivism by increasing the availability and use of social service resources while reducing costs to law enforcement agencies and courts stemming from repeated incarceration. (Pen. Code, § 1001.85, subd. (a).)

Existing law requires LEAD pilot programs to be consistent with the following principles, implemented to address and reflect the priorities of the community in which the program exists:

- Providing intensive case management services and an individually tailored intervention plan that acts as a blueprint for assisting LEAD participants;
- Prioritizing temporary and permanent housing that includes individualized supportive services, without preconditions of drug or alcohol treatment or abstinence from drugs or alcohol;
- Employing human and social service resources in coordination with law enforcement in a manner that improves individual outcomes and community safety, and promotes community wellness; and,
- Participation in LEAD services shall be voluntary throughout the duration of the program and shall not require abstinence from drug or alcohol use as a condition of continued participation. (Pen Code, § 1001.85, subd. (b).)

This bill authorizes a peace officer to release a person arrested without a warrant from custody, instead of taking the person before a magistrate, by delivering or referring that person to a public health or social service organization that provides services including, but not limited to, housing, medical care, treatment for alcohol or substance use disorders, psychological counseling, or employment training and education, and if no further proceedings are desired.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Assembly Bill 2215 will amend the Penal Code to explicitly authorize law enforcement to connect individuals they encounter directly to supportive services and treatment if they believe that doing so would be in the best interest of public and community safety. By adding clear and concise language to the penal code, AB 2215 allows law enforcement to exercise all of the tools available to them and codifies their discretionary authority.

2. Committee on the Revision of the Penal Code's Recommendation

On January 1, 2020, the Committee on the Revision of the Penal Code ("Committee") was established within the Law Review Commission to study the Penal Code and recommend statutory reforms. (SB 94, Ch. 25, Stats. 2019; Gov. Code, § 8280.) The Committee's objectives are as follows:

- 1) Simplify and rationalize the substance of criminal law;
- 2) Simplify and rationalize criminal procedures;
- 3) Establish alternatives to incarceration that will aid in the rehabilitation of offenders; and,

4) Improve the system of parole and probation.

(Gov. Code, § 8290.5, subd. (a).) In making recommendations to achieve these objectives, the Committee may recommend adjustments to the length of sentence terms. (Gov. Code, § 8290.5, subd. (b).) The Committee is required to prepare an annual report that describes its work in the prior calendar year and its expected work for the subsequent calendar year. (Gov. Code, § 8293, subd. (b).)

After holding meetings over the course of a year and hearing testimony from more than 40 witnesses, extensive public comment, thorough staff research, and deliberations of Committee members over the course of 4 public meetings, the Committee released its fourth annual report December 2023 describing its work and resulting 10 recommendations. (See http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2023.pdf [as of May 21, 2024].)

One of the Committee's recommendations, citing the success of the LEAD Pilot Program at reducing recidivism rates for those who received supportive services under the program, is to support Law Enforcement Assisted Diversion (LEAD) in two ways. First, by re-establishing the lapsed pilot program with expanded eligibility for offenses. Second, to make permanent changes to the Penal Code to encourage police officers in jurisdictions without LEAD programs to release people arrested for low-level offenses to community-based supportive services instead of jail and referral to prosecution:

The original LEAD pilot was targeted at low-level offenses, particularly those related to drugs and prostitution, and the only felony eligible for LEAD was subsistence drug sales. Other low-level felonies such as burglary and theft were not eligible, nor were many common misdemeanors like theft and trespassing. Erica Shehane, Los Angeles County Office of Diversion and Reentry Director for LEAD, told the Committee that any new LEAD pilot program should expand the list of eligible crimes and give counties the flexibility to decide to make additional offenses LEAD-eligible.

In addition to expanding eligible offenses in the pilot program, the Penal Code should encourage law enforcement agencies that do not have official LEAD programs to develop similar pre-booking diversion practices. There is no law that prevents counties that did not receive pilot funding from implementing LEAD or similar programs and some counties have done so.

Additionally, current law, Penal Code section 849, allows officers to release an arrested person without further proceedings in some circumstances, including when a person is under the influence of drugs and delivered to a hospital for treatment. But this law does not authorize release to LEAD or similar programs. As explained to the Committee by Los Angeles Sheriff's Department Captain Geoffrey Deedrick, a Penal Code provision specifically authorizing officers to use pre-booking diversion (through LEAD or other similar programs) would empower more officers to use their discretion to divert appropriate cases.

Expanding Penal Code section 849 to allow police officers to refer someone to community-based supportive service programs like addiction or mental health counseling rather than taking them to jail would achieve this goal.

(*Id.* at p. 15.)

This bill would enact the second half of the recommendation.

3. LEAD Pilot Program

In 2016, California established the LEAD Pilot Program through a public safety budget trailer bill which allotted \$15 million in funding over 2.5 years. (SB 843 (Committee on Budget), Chapter 33, Statutes of 2016.) The stated goals of the program were “to improve public safety and reduce recidivism by increasing the availability and use of social service resources while reducing costs to law enforcement agencies and courts stemming from repeated incarceration.” (Pen. Code, § 1001.85, subd. (a).) The program was aimed serving persons who are involved in drug offenses and sex work by diverting those arrested for these low-level offenses to social service providers in lieu of prosecution. Los Angeles County and the City and County of San Francisco received grants under the program, most of which was for housing, case management, and other health services for LEAD participants.

The Board of State and Community Corrections, the entity that administered the grant program, contracted with researchers at the California State University Long Beach to evaluate the pilot program in the two pilot sites. The report found that the pilot programs proved successful in reducing future arrests of people who received LEAD intervention compared to similar people who were arrested and brought to jail:

At the 12-month follow-up period, LEAD clients had significantly lower rates of misdemeanor and felony arrests, and felony cases. Notably, the significant increase in citations for LEAD clients seen at the 6-month follow-up was not present after a year in the program. These positive findings are likely due to the harm-reduction nature of LEAD. LEAD participants’ case managers also coordinated with San Francisco public defenders to assist with active cases as to not compromise LEAD intervention plans (Collins et al. 2019). The lower recidivism for LEAD clients translate into a one-year criminal justice system utilization cost savings of \$3691 over system-as-usual comparison individuals. However, due to data availability, these costs do not include jail or probation costs, so the criminal justice savings are likely underestimations. In addition, other system cost savings were not included in this analysis (medical and mental health system, in particular).

(Malm, Law Enforcement Assisted Diversion (LEAD) External Evaluation, Report to the Legislature, CSU Long Beach (Jan 1. 2020) pp. 120-121 [CSULB-LEAD-REPORT-TO-LEGISLATURE-1-15-2020.pdf \(ca.gov\)](#) [as of May 21, 2024].)

Similar to the LEAD program, this bill would give law enforcement officers to use their discretion to divert cases during the pre-booking stage to connect someone to community-based supportive service programs such as addiction or mental health counseling rather than taking them to jail.

4. Argument in Support

According to Californians for Safety and Justice, the sponsor of this bill:

In 2016, California established the LEAD Pilot Program, which allotted \$15 million in funding over 2.5 years. San Francisco and Los Angeles received funding, most of which was for housing, case management, and other health services for LEAD participants. In each county, the pilots proved successful in reducing future arrests of people who received LEAD intervention compared to similar people who were arrested and brought to jail.

While long term funding may have stalled LEAD programs in some areas, it has not slowed down jurisdictions like Los Angeles County and the City of Long Beach, who have expanded their programs to serve more people. California's Committee on the Revision of the Penal Code highlighted the lower recidivism for LEAD clients in their annual 2023 report.

Many states including Colorado, Maryland, New Mexico, and Washington have established state-funded LEAD programs. Other states, including New Jersey, have secured private funding to establish LEAD programs. In Chicago, a program like LEAD allows police officers to connect people arrested for drug possession directly with a substance use counselor. Researchers from the University of Chicago Crime Lab found that over 79% of people who are diverted go on to start treatment, and that nearly half of those who start treatment remain engaged 60 days after with increasingly positive outcomes.

Current law is silent on the use of pre-booking diversion by law enforcement, and jurisdictions that have a thriving LEAD program have asked for explicit legislative language codifying the authority their officers are already wielding. AB 2215 will add clear language to the penal code empowering law enforcement with additional pre-booking diversion tools that codify their discretionary authority to connect people to supportive services in the interest of community safety.

5. Argument in Opposition

According to the Los Angeles County Professional Peace Officers Association:

Releasing individuals without proper judicial oversight could pose risks to public safety. Without proper assessment of the individual's potential threat to society, there's a possibility that releasing them directly to a health or social service organization could put the community at risk.

While providing access to health and social services is important, it should not come at the expense of proper legal proceedings. Bringing individuals before a magistrate ensures that they can access rehabilitation programs within the framework of the legal system, potentially leading to more effective outcomes in addressing underlying issues such as substance abuse or mental health disorders.