SENATE COMMITTEE ON PUBLIC SAFETY

Senator Jesse Arreguín, Chair
2025 - 2026 Regular

Bill No:	AB 46	**Hearing Date:**	July 8, 2025
Author:	Nguyen		
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Urgency:	No	**Fiscal:**	Yes
Consultant:	CA		

Subject: ***Diversion.***

HISTORY

Source: Sacramento County District Attorney's Office

Prior Legislation: AB 1412 (Hart), Ch. 687, Stats. of 2023
AB 1323 (Menjivar), Ch. 646, Stats. of 2024
SB 1223 (Becker), Ch. 735, Stats. of 2022
SB 666 (Stone), held in Senate Public Safety, 2020
SB 215 (Beall), Ch. 1005, Stats. of 208
AB 1810 (Committee on Budget), Ch. 34, Stats, of 2018

Support: Arcadia Police Officers' Association; Brea Police Association; Burbank Police Officers' Association; California Association of School Police Chiefs; California Coalition of School Safety Professionals; California Narcotic Officers' Association; California Police Chiefs Association; California Reserve Peace Officers Association; California State Sheriffs' Association; Claremont Police Officers Association; Corona Police Officers Association; Culver City Police Officers' Association; Fullerton Police Officers' Association; Los Angeles School Police Management Association; Los Angeles School Police Officers Association; Murrieta Police Officers' Association; Newport Beach Police Association; Palos Verdes Police Officers Association; Placer County Deputy Sheriffs' Association; Pomona Police Officers' Association; Riverside Police Officers Association; Riverside Sheriffs' Association; Sacramento County District Attorney's Office; Sacramento County Sheriff Jim Cooper; San Diego County District Attorney's Office

Opposition: ACLU California Action; California Attorneys for Criminal Justice; California Public Defenders Association; Californians for Safety and Justice; Californians United for a Responsible Budget; Center for Empowering Refugees and Immigrants; Communities United for Restorative Youth Justice; County of Los Angeles Board of Supervisors; Courage California; Drug Policy Alliance; Ella Baker Center for Human Rights; Empowering Women Impacted by Incarceration; Fresno County Public Defender; Friends Committee on Legislation of California; Immigrant Legal Resource Center; Initiate Justice; Initiate Justice Action; Justice2jobs Coalition; LA Defensa; Local 148 LA County Public Defenders Union; Los Angeles County Public Defender's Office; New Light Wellness; San Francisco Public Defender; Silicon Valley De-bug; Smart Justice California; South Bay People Power; Vera Institute of Justice

Assembly Floor Vote: 56 - 7

PURPOSE

The purpose of this bill is to make various changes to the mental health diversion program including raising the public safety standard criteria for finding a particular defendant suitable for diversion.

Existing law states that the purpose of mental health diversion is to promote the following:

- Increased diversion of individuals with mental disorders to mitigate the individuals' entry and reentry into the criminal justice system while protecting public safety;
- Allowing local discretion and flexibility for counties in the development and implementation of diversion for individuals with mental disorders across a continuum of care settings; and,
- Providing diversion that meets the unique mental health treatment and support needs of individuals with mental disorders. (Pen. Code, § 1001.35.)

Existing law allows a court, in its discretion, and after considering the positions of the defense and prosecution, to grant pretrial mental health diversion to a defendant charged with a misdemeanor or a felony if the defendant meets the following eligibility and suitability requirements:

- The defendant suffers from a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder, borderline personality disorder, and pedophilia, and the defense produces evidence of the defendant's mental disorder which must include a diagnosis by a qualified mental health expert within the last five years;
- The defendant's mental disorder was a significant factor in the commission of the charged offense, as provided;
- In the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder motivating the criminal behavior would respond to mental health treatment;
- The defendant consents to diversion and waives their right to a speedy trial, unless a defendant has been found to be an appropriate candidate for diversion in lieu of commitment due to the their mental incompetence and cannot consent to diversion or give a knowing and intelligent waiver of their right to a speedy trial;
- The defendant agrees to comply with treatment as a condition of diversion; and,

- The defendant will not pose an unreasonable risk of danger to public safety – i.e., unreasonable risk of committing a super strike offense[1] – if treated in the community. In making this determination, the court may consider the opinions of the district attorney, the defense, or a qualified mental health expert, and may consider the defendant's treatment plan, violence and criminal history, the current charged offense, and any other factors that the court deems appropriate. (Pen. Code, § 1001.36, subds. (a)-(c).)

This bill restates that diversion is discretionary in all cases.

This bill replaces the criteria that a court must currently consider when determining whether to grant diversion which requires a court to find that the defendant will not pose an unreasonable risk of danger to public safety – i.e., an unreasonable danger of committing a super strike offense – and instead requires that the defendant will not endanger public safety, as defined.

This bill defines "endanger public safety" to mean that the person′s treatment in the community would likely result in physical injury or other serious danger to others.

This bill specifies that the court shall consider the victim′s rights under Marsy′s Law.

Existing law contains a presumption that the defendant's mental disorder was a significant factor in the commission of the offense, which can be rebutted with clear and convincing evidence. (Pen. Code § 1001.36, subd. (b)(2).)

This bill provides that in order for the presumption that the defendant's diagnosed mental disorder was a significant factor in the commission of the offense to apply, the defendant must have been diagnosed with a mental disorder within five years prior to the current offense.

Existing law excludes defendants from mental health diversion eligibility if they are charged with murder, voluntary manslaughter, an offense requiring sex-offender registration (except for indecent exposure), or offenses involving weapons of mass destruction. (Pen. Code, § 1001.36, subd. (d).)

Existing law states that at any stage of the proceedings, the court may require the defendant to make a prima facie showing that the defendant will meet the minimum requirements of eligibility for diversion and that the defendant and the offense are suitable for diversion. (Pen. Code, § 1001.36, subd. (e).)

Existing law provides that the hearing on the prima facie showing shall be informal and may proceed on offers of proof, reliable hearsay, and argument of counsel. If a prima facie showing is not made, the court may summarily deny the request for diversion or grant any other relief as may be deemed appropriate. (Pen. Code, § 1001.36, subd. (e).)

Existing law defines "pretrial diversion" for purposes of mental health diversion as the postponement of prosecution, either temporarily or permanently, at any point in the judicial

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[1]The violent felonies known as "super strikes" include murder, attempted murder, solicitation to commit murder, assault with a machine gun on a police officer, possession of a weapon of mass destruction, and any serious felony punishable by death or life imprisonment. (Pen. Code, §§ 667, subd. (e)(2)(C)(iv) & 1170.18.)

process from the point at which the accused is charged until adjudication, to allow the defendant to undergo mental health treatment, subject to the following conditions:

- The court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant;
- The provider of the mental health treatment program in which the defendant has been placed shall provide regular reports to the court, the defense, and the prosecutor on the defendant's progress in treatment; and,
- A defendant may be diverted no longer than two years if it is a felony, and one year if it is a misdemeanor. (Pen. Code, § 1001.36, subd. (f).)

Existing law states that if any of the following circumstances exists, the court shall, after proper notice, 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:

- The defendant is charged with an additional misdemeanor allegedly committed during the pretrial diversion and that reflects the defendant's propensity for violence;
- The defendant is charged with an additional felony allegedly committed during the pretrial diversion;
- The defendant is engaged in criminal conduct rendering him or her unsuitable for diversion; or,
- A qualified mental health expert opines that:
    - The defendant is performing unsatisfactorily in the assigned program; or
    - The defendant is gravely disabled, as defined. (Pen. Code, § 1001.36, subd. (g).)

Existing law requires the court to dismiss the criminal charges if the defendant has performed satisfactorily in diversion. A court may conclude that the defendant has performed satisfactorily if the defendant has substantially complied with the requirements of diversion, has avoided significant new violations of law unrelated to the defendant's mental health condition, and has a plan in place for long-term mental health care. (Pen. Code, § 1001.36, subd. (h).)

COMMENTS

1. Need for This Bill

According to the author:

> AB 46 is about restoring balance to the court's decision-making process. Judges should have the discretion to decide when mental health diversion is appropriate

in each case, especially in serious cases where public safety is at stake. Right now, the law ties their hands.

In *People v. Whitmill (2022),* the court of Appeal made it clear*:*

"The statute clearly limits the discretion of courts to find in any particular case that mental health diversion creates a public safety risk… Our decision is compelled by the policy decision made by our elected representatives. We are duty-bound to enforce the law as written, whether or not we agree with the public safety risk the law accepts as permissible."

As it stands, even if a judge believes diversion is not appropriate, they may still be forced to grant it. That's not justice. It's not fair to victims, and it's not fair to communities who expect the courts to keep them safe. I support mental health treatment and second chances, but I also believe judges need the ability to look at the facts, consider the seriousness of the case, and make a decision that reflects both accountability and rehabilitation.

AB 46 puts that trust back in the courts. It says we believe in judicial discretion, and it says that when the stakes are this high, we need to make sure judges are equipped to do their job.

Mental Health Diversion

Effective June 27, 2018, the Legislature enacted Penal Code sections 1001.35 and 1001.36, which created a pretrial diversion program for certain defendants with mental health disorders. (Ch. 34, Stats. of 2018.) Pretrial diversion "allows for the suspension of criminal proceedings and potential dismissal of charges upon successful completion of mental health treatment." (*Sarmiento v. Superior Court* (2024) 98 Cal.App.5th 882, 890 (*Sarmiento*).) The statute expressly states the purpose of this legislation was to "[i]ncrease[] diversion of [such] individuals" (Pen. Code, § 1001.35, subd. (a)) based on concerns that "incarceration only serves to aggravate [their] preexisting conditions and does little to deter future lawlessness." (Sen. Com. on Public Safety, Analysis of Sen. Bill No. 215 (2017–2018 Reg. Sess.) as amended Jan. 3, 2018, p. 4.) Certain offenses are ineligible for pretrial diversion, including murder, rape, and registerable sex offenses. (Pen. Code, § 1001.36, subd. (d).)

Under current law, Penal Code section 1001.36, subdivision (b), provides that a defendant is eligible for mental health diversion if both of the following criteria are met:

- The defendant suffers from a qualifying mental disorder, as evidenced by a diagnosis or treatment for a diagnosed mental disorder within the last five years by a qualified mental health expert; and,

- The disorder played a significant role in the commission of the charged offense.

The second prong is presumptively satisfied unless there is clear and convincing evidence that the disorder was "not a motivating factor, causal factor, or contributing factor to the defendant's involvement in the alleged offense." (Pen. Code, § 1001.36, subd. (d).)

Once eligibility is established, a trial court must consider whether the defendant is suitable for pretrial diversion (Pen. Code, § 1001.36, subd. (c)). A defendant is suitable if: (1) in the opinion of a qualified mental health expert, the defendant's mental health disorder would respond to treatment; (2) the defendant consents to diversion and agrees to waive their speedy trial rights; (3) the defendant agrees to comply with treatment requirements; and (4) the defendant will not pose an unreasonable risk of danger to public safety as defined in Penal Code section 1170.18 (i.e., an unreasonable risk of committing certain violent felonies known as super strikes), if treated in the community. (Pen. Code, § 1001.36, subd. (c)(1)–(4).)

The maximum period of diversion is two years if the defendant is charged with a felony, and one year if the defendant is charged with a misdemeanor. If the defendant performs satisfactorily in diversion, the trial court must dismiss the criminal charges that were the subject of the criminal proceedings at the time of the initial diversion. (Pen. Code, § 1001.36, subds. (c)(3), (f)(1)(C).)

The law gives the trial court discretion to grant diversion if the minimum standards are met, and, correspondingly, refuse to grant diversion even though the defendant meets all of the requirements. (https://capcentral.org/wp-content/uploads/2023/12/Judge-Couzens-Mental-Health-Diversion-MAY-2024.pdf at p. 14 [as of May 29, 2024]; see also *Vaughn v. Superior Court* (2024) 105 Cal.App.5th 124, 134.) But this "residual" discretion must be exercised "'consistent with the principles and purpose of the [mental health diversion].'" (*People v. Qualkinbush* (2022) 79 Cal.App.5th 879, 891, quoting *Wade v. Superior Court* (2019) 33 Cal.App.5th 694, 710; see also *Sarmiento, supra*, 98 Cal.App.5th at p. 892.) A court abuses its discretion when it makes an arbitrary or capricious decision by applying the wrong legal standard. (*Vaughn, supra,* 105 Cal.App.5th at p. 135.) For example, in *People v. Whitmill* (2022) 86 Cal.App.5th 1138, 1151, the Court of Appeal reversed the denial of mental health diversion because substantial evidence did not support finding that the defendant posed an unreasonable risk to public safety. The Court of Appeal reasoned it was "unclear" how the trial court determined that the expert opinion did not find a low risk for future dangerousness when the doctor expressly concluded that the appellant fit the mental health eligibility criteria. (*Ibid.*) In *People v. Pacheco* (2022) 75 Cal.App.5th 207, on the other hand, the Court of Appeal held the trial court properly denied mental health diversion to a defendant who started a brush fire. The court concluded the defendant, who suffered from schizophrenia and was addicted to methamphetamine, posed an unreasonable risk of danger to public safety. A clinical psychologist opined that if the defendant returned to using methamphetamine, he would become unstable and psychotic and be likely to reoffend, and the record supported that he would not refrain from using methamphetamine if treated in the community.

This bill restates that the court has discretion to grant or deny diversion in all cases, which is already expressly included in the statute. Because this is already stated in the law, it is unclear what the effect of adding this to the statute will be or if it will cause confusion with the courts.

This bill also states that the defendant must have been diagnosed with a mental disorder within five years *prior* to the offense for the presumption to apply that the mental disorder was a significant factor in the commission of the offense. While a defendant would still be eligible for mental health diversion if diagnosed within five years, the presumption that the mental disorder was a significant factor in commission of the offense would on apply if that diagnosis was in the five years preceding the offense.

Additionally, this bill amends the standard of risk to public safety for purposes of determining a defendant's suitability for diversion. Under existing law, the standard is "unreasonable risk of public safety" which currently requires a showing that there is a likelihood that if the defendant is granted diversion, they will commit one of the enumerated "super strike" violent felonies. This bill instead provides that a defendant could be found unsuitable for diversion if that person's treatment in the community would "endanger public safety" which is defined to mean that the person's treatment in the community would "likely result in physical injury or other serious danger to others." By providing a redefined risk to public safety standard, the bill gives courts more discretion to determine unsuitability of a person who otherwise meets the statutory eligibility requirements.

The bill does not define "other serious danger to others." This same language is used in Penal Code section 1385, subdivision (c)(2), regarding the trial court's exercise of discretion in dismissing sentencing enhancements in furtherance of justice -- "'[e]ndanger public safety'" means there is a likelihood that the dismissal of the enhancement would result in physical injury or other serious danger to others." However, the term "other serious danger to others" is not defined in that statute either. Courts must grapple with this on a case-by-case basis.

Lastly, this bill provides that that the court shall consider the victim's rights under Marsy's Law. Under Marsy's Law, the California Constitution article I, § 28, section (b), victims are provided with enumerated rights, such as the right to be informed of proceedings, the right to restitution, and the right to be heard upon request at proceedings. Since Marsy's Law is enshrined in the California Constitution, courts are already required to consider victim's rights.

2. Competency in Criminal Proceedings and Growing Incompetent to Stand Trial (IST) Population:

The Due Process Clause of the United States Constitution prohibits the criminal prosecution of a defendant who is not mentally competent to stand trial. A defendant is IST if, as a result of a mental health disorder or developmental disability, they cannot understand the nature of the criminal proceedings or assist counsel in their defense in a rational manner. (Pen. Code, § 1367, subd. (a).) The law specifies procedures for inquiring into and determining mental competence, including suspending criminal proceedings. (Pen. Code, § 1368.)

If a felony defendant is found mentally incompetent to stand trial, the court may grant the defendant treatment through mental health diversion if the court finds the defendant is an appropriate candidate and the defendant is found eligible for mental health diversion. (Pen. Code, § 1370, subd. (a)(1)(B)(iii) & (a)(1)(C)). Otherwise, where restoring the defendant to competence is in the interests of justice, the court must order the defendant delivered to the Department of State Hospitals (DSH) or other treatment facility or placed on outpatient status for treatment to regain competency. (Pen. Code, § 1370, subd. (a)(1)(C)(i).)

California, similar to the rest of the nation, has seen a significant increase over the last decade in the number of individuals with serious mental illness who become justice-involved and deemed IST on felony charges. "It is ultimately the state's responsibility to ensure compliance with the law by providing an adequate number of state hospital beds or other authorized placements to safely house and treat those committed under its own statutes. California's appellate courts have repeatedly urged the legislative and executive branches to remedy this long-standing problem." (*In re Lerke* (2024) 107 Cal.App.5th 685, 702, citing

Stiavetti v. Clendenin (2021) 65 Cal.App.5th 691, 737 (*Stiavetti*).)

Due to increasingly long waiting periods to be admitted to the DSH for treatment, in 2015, the American Civil Liberties Union sued DSH. (See *Stiavetti, supra,* 65 Cal.App.5th 691.) In *Stiavetti*, the appellate court held that the long waitlist for competency restoration treatment violates the due process rights of people found to be IST. (*Id*. at p. 737.) The Court ordered that DSH must begin substantive restoration services within 28 days of being placed on the list. **(***Id*. at p. 730.) The court's order is being implemented in phases.

In 2021, the Legislature charged the California Health & Human Services Agency and the DSH to convene an IST Solutions Workgroup to identify actionable solutions that address this increasing population. The IST Workgroup released a report in November 2021 that outlined system improvements and one of the changes discussed was mental health diversion:

> By FY 2017-18, DSH recognized that the demand for IST treatment services was not going to be met by capacity created within the State Hospital system. At this time the department began working to establish treatment pathways in the community with the long-term goal of decreasing demand for State Hospital services by connecting more people with Serious Mental Illness into ongoing community care. The Budget Act of 2018 included funding for two major new programs to help DSH realize this vision.
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> The Budget Act of 2018 allocated $13.1million for DSH to contract with the Los Angeles County Office of Diversion and Reentry (ODR) for the first community-based restoration (CBR) program in the state. In this program, ODR subcontracts for housing and treatment services for IST patients in the community. Most IST patients in this program live in unlocked residential settings with wraparound treatment services provided on site. The original CBR program provided funding for 150 beds; investments in the LA program since 2018 has increased the program size to 515 beds. In addition, DSH has received funding to implement additional CBR programs across the state. The Budget Act of 2021 included ongoing funding to add an additional 252 CBR beds in counties outside of Los Angeles, bringing the total number of funded CBR beds to 767.
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> The Budget Act of 2018 also allocated DSH $100 million (one-time) to establish the DSH Felony Mental Health Diversion (Diversion) pilot program. Of this funding, $99.5 million was earmarked to send directly to counties that chose to contract with DSH to establish a pilot Diversion program (the remaining $500,000 was for program administration and data collection support at DSH). Assembly Bill 1810 (2018) established the legal (Penal Code (PC) 1001.35-1001.36) and programmatic (Welfare & Institutions Code (WIC) 4361) infrastructure to authorize general mental health diversion and the DSH-funded Diversion program. The original Diversion pilot program includes 24 counties who have committed to serving up to 820 individuals over the course of their three-year pilot programs….

(https://www.chhs.ca.gov/wp-content/uploads/2021/12/IST_Solutions_Report_Final_v2.pdf [as of May 29, 2025].) The report noted that IST restoration of competency is not an adequate long-term treatment plan. The Workgroup looked at the three-year post discharge

recidivism rates using the Department of Justice's criminal offender record information data and found that recidivism rates are still high – about 70% rearrest post discharge – which shows that whatever circumstances led to an individual's prior arrest have likely not changed and most IST patients are stuck looping through the criminal justice system and DSH. The solutions identified by the report included expanding community-based treatment and diversion options for felony ISTs that will help end the cycle of criminalization by connecting patients to comprehensive behavioral health treatment.

This bill would give courts broader authority to deny diversion by loosening the public safety standard in existing law. Removing diversion as an option will likely result in more people proceeding with the IST process with the goal of restoration of competency. This will place more burdens on an already overburdened system that are currently under a court order to provide services within a shortened time frame in order to meet constitutional standards that has already been shown to not be a long-term solution for the individual or the community in addressing public safety.

3. Related Legislation

AB 433 (Krell), of the 2025-2026 legislative session, would have excluded additional crimes from eligibility for mental health diversion. AB 433 failed passage in the Assembly Public Safety Committee.

SB 483 (Stern), would add another suitability factor for granting mental health diversion, namely that the defendant agrees the recommended treatment plan will meet their specialized treatment needs. SB 483 also requires the court be satisfied that the recommended mental health treatment is consistent with the underlying purpose of mental health diversion. SB 483 is at the Assembly Desk pending referral.

4. Argument in Support

According to the Sacramento County District Attorney, the sponsor of this bill:

> Courts have repeatedly expressed frustration at their lack of ability to exercise their judicial discretion when determining a defendant's amenability for the diversion program. Furthermore, upon acceptance into the program, defendants are released back into the community with minimal supervision and high likelihood of recidivism. Despite these flaws with the Mental Health Diversion program, the result can still lead to the expungement of their criminal records. The victims receive no protection or assurance they will ever be free from further victimization.
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> AB 46 is a commonsense solution to the negative consequences the Mental Health Diversion statute has created. It gives discretion back to the court to determine an individual defendant's amenability to treatment. It allows prosecutors the ability to object to applicants that pose a risk to public safety and changes the unfair presumption of amenability for every applicant with a mental health diagnosis. Lastly, it adds the extremely violent crime of attempted murder to the list of excludable offenses.

5. Argument in Opposition

According to the California Public Defenders Association:

> AB 46 would effectively eliminate mental health diversion by creating impossible eligibility standards. This misguided approach would force courts to imprison mentally ill Californians instead of providing treatment—despite clear evidence that diversion reduces recidivism by over 30% compared to prison. The bill would increase costs, worsen public safety outcomes, and return California to the failed practice of mass incarceration of the mentally ill while ensuring that noncitizens suffering from mental illness will be torn from their families and deported.
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> **Mental Health Diversion Has Been Wildly Successful, Reducing Recidivism Rates By More Than 30%, and Saving the State and Counties Hundreds of Millions of Dollars**
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> Under current mental health diversion law, a court can only grant diversion if a defendant has been diagnosed with a mental disorder, that mental disorder was a significant factor in the commission of the charged offense, a treatment program is available, and the defendant can be safely treated in the community. Before issuing such an order, courts are required to consider public safety, as well as the opinions of qualified mental health experts, in order to determine if a diversion grant is appropriate. (Pen. Code § 1001.36.)
>
> The law never *requires* courts to grant diversion, it merely gives the court the ability, where appropriate, to use its informed discretion to divert mentally disordered Californians out of the criminal system and into the mental health treatment system.
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> The mental health diversion law has been wildly successful - **recidivism rates for mental health diversion graduates are more than 30% *lower* than for defendants sent to state prison.**
>
> The statute has similarly saved states and counties hundreds of millions of dollars, not only be reducing recidivism rates, but by removing the need for costly trials, lowering incarceration rates, and reducing reliance on State Hospital beds for Incompetent to Stand Trial (IST) defendants.
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> **AB 46 Will Prevent Courts From Ordering Mental Health Diversion, Even When a Mental Health Diversion Order Has the Best Chance of Preventing Recidivism**
> AB 46 would nonetheless remove the ability of judges to order mentally ill Californians into treatment unless the defense can somehow "prove" that the individual will never threaten public safety if treated in the community – a standard so impossible to meet that it will effectively prevent courts from diverting any person ever.

Consider, for example, a typical mental health diversion case: A young person suffering from schizophrenia is charged with punching their parent while off their medication. The parent desperately wants their child to be ordered into treatment through the mental health diversion program. Under AB 46, however, unless the defense can prove that the child isn't "likely" to reoffend if treated in the community, the court is powerless to order them into treatment. Because the defense and court don't have crystal balls and therefore cannot "prove" that a person will never reoffend, that child will end up with a criminal record and no treatment.

The absurdity of this rule is particularly evident when one considers the fact that if a court is barred from using the mental health diversion statute, its only remaining options are probation (where the defendant will *still* be released into the community, but now with the added burden of a criminal record and without dedicated mental health treatment), or prison (where the defendant is warehoused for a few years only to be released back into the community, again with a criminal record and without treatment). In both of these alternative scenarios, outcomes are *worse*, both for the individual and his family, and the safety of the community at large. Additionally, if the child is a noncitizen they could also suffer the cruel consequence of deportation after being convicted of the misdemeanor battery or felony assault against their parent if it were deemed to be a crime of moral turpitude because the parent was injured.

The failure to understand that mental health diversion is the option with the best chances of success for the community and the individual is exactly what is wrong with AB 46. Instead of allowing the court to use its informed judgement to make the best possible decision based on the facts of an individual case, AB 46 tries to simply remove treatment as an option, unless the court can guarantee that treatment will work perfectly, forever. Because no such guarantees are possible in medicine or criminal law, however, and because the other options (probation and prison) generally have worse outcomes, AB 46 is simply horrendous public policy and promises only a return to the mass imprisonment of mentally ill Californians.

AB 46 offers no data in support of this ham-fisted approach, nor can it. To the contrary, the data shows that mental health diversion outcomes are far *better* for public safety than traditional prosecution and imprisonment.

In Los Angeles, for example, the county has invested tens of millions of dollars to create systems of care for those diverted under the mental health diversion statute. The outcomes are outstanding: **A graduate of the mental health diversion program in Los Angeles has a 9% likelihood of reoffending. In contrast, a graduate of State Prison has a 42% chance of reoffending.**

AB 46 Would Also Prevent Individuals From Being Treated Unless They Had Access to a Psychiatrist Before Their Arrest – a Luxury Most Californians Do Not Enjoy

AB 46 would also prevent diversion unless the individual was "diagnosed" with a mental disorder *before* their alleged offense. Such a rule makes little sense, both because it favors the wealthy (who have access to therapists and doctors) over the

poor (who do not), and because it is often a person's first mental health episode that brings them to the attention of law enforcement and the criminal court in the first place.

It makes little sense to forbid treatment to those whose mental health issue isn't identified until after their arrest, because that's the first time they've seen a doctor, AB 46 is again a poorly constructed sledgehammer that fails to understand the reality of medicine, criminal courts, and the scarce availability of mental health care for the average Californian.

AB 46 Will Be Incredibly Costly, Imposing Financial Hardship on Counties, the State Hospital System, Courts, Prosecutors, and Public Defenders

AB 46 will also impose massive costs on California's courts, criminal justice system participants, and the State Hospital system at a time when budget deficits already threaten basic services.

First, AB 46's new impossible-to-meet eligibility requirement would result in Californians being deemed ineligible for treatment and therefore forced to go through long and costly trials via the traditional criminal court pipeline. These trials will require more resources from the courts, prosecutors, and defense counsel – resources that are desperately needed elsewhere. With roughly 200,000 felony cases filed last year, even a 10% increase in the number of trials and prison sentences would cost California hundreds of millions of dollars a year.

Second, absent treatment, more individuals will reoffend, increasing the number of cases and prosecutions that must be handled by courts, prosecutors, and the defense, with the same dire fiscal effect.

Third, because the mental health diversion statute also applies to Incompetent to Stand Trial (IST) defendants, the unavailability of a diversion option will have a horrendous effect on the State Hospital system.

Before the diversion law was passed defendants found IST were required to be treated in the State Hospital and routinely languished for months in county jail before a state hospital bed became available. The diversion statute enabled community-based treatment radically changing that situation. Only recently the Presiding Judge of Sacramento credited the mental health diversion law with allowing Sacramento to end a years-long backlog of cases and IST bed wait-times. Under AB 46, however, because nobody will qualify for diversion, IST defendants will once again be housed in county jail for months at local expense pending the availability of a state hospital bed.

Fourth, California and counties will face yet more lawsuits as a result of inadequate mental health care in prisons and jails if we return to an era of imprisoning the mentally ill instead of treating them. (See, e.g., *Coleman v. Newsom* [decades long class-action lawsuit relating to inadequate mental health care in prisons, **resulting in $162 million in fines against California in the last three years alone**.)

AB 46 Fails to Recognize That Imprisoning Californians Suffering from Mental Illness is Cruel, Ineffective, and Should Always Be the Last Choice

Finally, AB 46 is bad public policy because it fails to recognize that imprisoning and prosecuting mentally ill Californians should always be the *last* choice. Imprisoning a mentally ill person is not only cruel and costly−it is pointless because it does nothing to address the underlying causes of their actions. AB 46 would nonetheless prevent courts from ordering mentally ill Californians into treatment – even when the judge with the most knowledge about the case concludes that diversion is far more likely to protect public safety. (Footnotes omitted.)

– END –