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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Jesse Arreguín, Chair  
2025 - 2026 Regular

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**Author:** Grove  
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**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Mental health diversion*

## HISTORY

**Source:** Author

**Prior Legislation:** SB 483 (Stern), held in Assembly Appropriations, 2025  
AB 433 (Krell), failed passage in Assembly Public Safety, 2025  
SB 1323 (Menjivar), Ch. 646, Stats. of 2024  
AB 1412 (Hart), Ch. 687, Stats. of 2023  
SB 1223 (Becker), Ch. 735, Stats. of 2022  
SB 666 (Stone), failed passage in Senate Public Safety, 2020  
SB 215 (Beall), Ch. 1005, Stats. of 2018  
AB 1810 (Com. on Budget), Ch. 34, Stats. of 2018

**Support:** Association for Los Angeles Deputy Sheriffs; California District Attorneys Association; California Massage Therapy Council; California Police Chiefs Association; California State Sheriffs' Association; Central Valley Justice Coalition' Chief Probation Officers' of California; Chino Police Department; City of McFarland; Community Action Partnership of Kern; County of Tulare; Crime Victims United; emPOWERment Dess Perkins Foundation; Farmersville Police Department; Fresno County District Attorneys Office; Fresno Police and Fire Chaplaincy; Fresno Police Department; Kern Coalition Against Human Trafficking; Kern County Sheriff's Office; Monterey County District Attorney's Office; Peace Officers Research Association of California; Sacramento County Sheriff Jim Cooper; San Diego County District Attorney's Office; San Luis Obispo County District Attorney; The California Baptist Capitol Ministry; The Open Door Network; Tulare County District Attorney's Office; Woodlake Police Department; 1 individual

**Opposition:** ACLU California Action; All of Us or None; California Association of Alcohol and Drug Program Executives; California Public Defenders Association; Californians United for a Responsible Budget; Drug Policy Alliance; Ella Baker Center for Human Rights; Fair Chance Project; Justice2Jobs Coalition; La Defensa; Legal Services for Prisoners With Children; Los Angeles County Public Defender's Office; Los Angeles County Public Defender's Union, Local 148; San Francisco Public Defender; Sister Warriors Freedom Coalition; Smart Justice California; Vera Institute of Justice

## PURPOSE

***The purpose of this bill is to make various changes to the mental health diversion law, including adding to the list of offenses for which a person is excluded from mental health diversion eligibility and adding to the list of factors may take into consideration when determining a defendant's risk to public safety.***

*Existing law*, known as Marsy's Law, enumerates a number of rights to victims of crime, including the right to have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant; to reasonable notice of all public proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings; to restitution; to be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender; and to be informed of their enumerated rights, among others. (Cal. Con., art. I, § 28.)

*Existing law* provides 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 specified eligibility and suitability requirements. (Pen. Code, § 1001.36, subd. (a).)

*Existing law* provides that a defendant is eligible for mental health diversion if both of the following criteria are met:

- 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 and pedophilia. Requires the defense to produce evidence of the defendant's mental disorder which must include a diagnosis or treatment 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. (Pen. Code, § 1001.36, subd. (b).)

*Existing law* requires the court, for any defendant who meet the eligibility criteria, to consider whether the defendant is suitable for mental health diversion. (Pen. Code, § 1001.36, subd. (c).)

*Existing law* provides that a defendant is suitable for mental health diversion if all of the following criteria are met:

- In the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder causing, contributing to, or 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 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; or the defendant has been found to be an appropriate candidate for diversion in lieu of commitment for restoration of competency treatment and, as a result of the defendant's mental incompetence, cannot agree to comply with treatment.
- The defendant will not pose an unreasonable risk of danger to public safety—i.e., unreasonable risk of committing a super strike offense<sup>1</sup>—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, subs. (c)(1)-(4).)

*Existing law* contains a presumption that the defendant's diagnosed mental disorder was a significant factor in the commission of the offense unless there is clear and convincing evidence that it was not a motivating factor, causal factor, or contributing factor to the defendant's involvement in the alleged offense. Authorizes a court to consider any relevant and credible evidence, including, but not limited to, police reports, preliminary hearing transcripts, witness statements, statements by the defendant's mental health treatment provider, medical records, records or reports by qualified medical experts, or evidence that the defendant displayed symptoms consistent with the relevant mental disorder at or near the time of the offense. (Pen. Code § 1001.36, subd. (b)(2).)

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

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<sup>1</sup> 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, and specified sex offenses. (Pen. Code, §§ 667, subd. (e)(2)(C)(iv) & 1170.18, subd. (c).)

*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 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 must 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* requires the court to hold a hearing, after proper notice, to determine whether the criminal proceedings should be reinstated, the treatment should be modified, or the defendant should be conserved, if any of the following circumstances exist:

- 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. Provides that 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).)

*Existing law* provides that upon successful completion of diversion, if the court dismisses the charges, the arrest upon which the diversion was based shall be deemed never to have occurred. Requires the court to order access to the record of the arrest restricted, as specified. Provides that the defendant who successfully completes diversion may indicate in response to any question concerning the defendant’s prior criminal record that the defendant was not arrested or diverted for the offense, except on an application for a position as a peace officer. (Pen. Code, § 1001.36, subds. (h) & (j).)

*Existing law* prohibits a record pertaining to an arrest resulting in successful completion of diversion, or any record generated as a result of the defendant’s application for or participation in diversion, from being used, without the defendant’s consent, in any way that could result in the denial of any employment, benefit, license, or certificate. (Pen. Code, § 1001.36, subd. (i).)

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

*This bill* adds to the list of offenses for which a person is excluded from mental health diversion eligibility. Adds the following offenses:

- Child abuse and endangerment, if charged as a felony.
- Assault of a child under eight years of age resulting in the death of the child.
- Human trafficking.
- Corporal injury that causes great bodily injury.
- Inflicting cruel or inhuman corporal punishment on a child resulting in an injury, if charged as a felony.

*This bill* changes the public safety standard from “the defendant will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community” to “the defendant will not pose a substantial and undue risk of danger to public safety if treated in the community.”

*This bill* adds to the list that the court may consider in making its decision regarding to the public safety risk to include: the defendant’s prior history in a pretrial diversion plan, the degree of danger posed to the community as evidenced by the defendant’s prior violence and criminal history, and the severity of injuries to victims.

*This bill* requires the court to consider the victim’s rights pursuant to subdivision (b) or Section 28 of Article I of the California Constitution.

*This bill* requires the court to conduct an additional hearing if it intends to summarily grant diversion or any other relief.

## COMMENTS

### 1. Need For This Bill

According to the author:

California’s Mental Health Diversion program is being misused as a ‘get-out-of-jail-free’ card by violent criminals. We cannot allow loopholes that let child abusers, attempted murderers, and repeat violent offenders erase their records as if their crime never happened. SB 1373 ensures that those accused of committing the most egregious offenses will not be eligible for diversion. It restores judicial discretion to make evidence-based decisions, and prioritizes public safety and victims’ rights, while allowing legitimate cases to qualify for mental health treatment.

## 2. Mental Health Diversion

In 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. (Com. on Budget, 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” 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, among others. (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. (Pen. Code, § 1001.36, subd. (f).) 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, subd. (h).)

Existing law gives the trial court discretion to grant diversion if the minimum standards are met, and, correspondingly, to refuse to grant diversion even though the defendant meets all of the requirements. (J. Richard Couzens, *Mental Health Diversion Under Penal Code Sections 1001.35 and 1001.36* (May 2024), p. 14 <<https://capcentral.org/wp-content/uploads/2023/12/Judge-Couzens-Mental-Health-Diversion-MAY-2024.pdf>>; 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.

### **3. Competency in Criminal Proceedings and Growing Incompetent to Stand Trial (IST) Population**

The Due Process Clause of the U.S. 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, the defendant 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, 1369.)

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), 1001.36, subd. (c)(2).) 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 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. Courts have repeatedly held:

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 DSH for treatment, the American Civil Liberties Union sued DSH in 2015. (See *Stiavetti, supra*, 65 Cal.App.5th 691.) In *Stiavetti*, the appellate court held that the long waitlist for competency restoration treatment violated the due process rights of people found to be IST. (*Id.* at p. 737.) The Court ordered DSH to 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 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.

The Budget Act of 2018 allocated \$13.1 million 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.

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....

(Incompetent to Stand Trial Solutions Workgroup, *Report of Recommended Solutions* (Nov. 2021), pp.17-18 <[https://www.chhs.ca.gov/wp-content/uploads/2021/12/IST\\_Solutions\\_Report\\_Final\\_v2.pdf](https://www.chhs.ca.gov/wp-content/uploads/2021/12/IST_Solutions_Report_Final_v2.pdf)>.)

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 cycling 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 exclude certain offenders from mental health diversion eligibility. Removing diversion as an option will likely result in more people proceeding with the IST process with the goal of restoration of competency, presenting additional challenges for a system that is under a court order to provide services within a shortened time frame in order to meet constitutional standards.

#### **4. Related Legislation**

On March 17, 2026, the Committee heard and passed AB 46 (Nguyen) which makes several changes to the mental health diversion statute. Among its many provisions, AB 46 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, the defendant will commit one of the enumerated "super strike" violent felonies. AB 46 instead provides that a defendant could be found unsuitable for diversion if that person's treatment in the community would "pose a substantial and undue risk to the physical safety of another person." By providing a redefined risk to public safety standard, AB 46 gives courts more discretion to determine unsuitability of a person who otherwise meets the statutory eligibility requirements.

#### **5. Effect of This Bill**

This bill makes several changes to the mental health diversion statute. First, this bill provides that the defendant must have been diagnosed with a mental disorder within five years prior to the offense for the presumption that the mental disorder was a significant factor in the commission of the offense to apply.

Next, this bill adds to the list of offenses for which a person is excluded from mental health diversion eligibility. Adds the following offenses:

- Child abuse and endangerment, if charged as a felony.
- Assault of a child under eight years of age resulting in the death of the child.
- Human trafficking.
- Corporal injury that causes great bodily injury.
- Inflicting cruel or inhuman corporal punishment on a child resulting in an injury, if charged as a felony.

This bill also changes the public safety standard from "the defendant will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community" to "the defendant will not pose a substantial and undue risk of danger to public safety if treated in the community." This bill adds to the list that the court may consider in making its decision regarding the defendant's public safety risk to include: the defendant's prior history in a pretrial diversion plan, the degree of danger posed to the community as evidenced by the defendant's prior violence and criminal history, and the severity of injuries to victims.

Finally, this bill requires the court to conduct an additional hearing if it intends to summarily grant diversion or any other relief.

Elements of this bill are identical to the language in AB 46. For example, this bill includes the same public safety standard as the one in AB 46. Like AB 46, this bill requires that the defendant must have been diagnosed with a mental disorder within five years prior to the offense for the presumption that the mental disorder was a significant factor in the commission of the offense to apply. Both bills also include a provision that requires the court to consider the victim's rights which is already required under existing law.

Unlike AB 46, this bill adds to the list of offenses for which a person is excluded from mental health diversion eligibility. This bill also adds to the factors that a court may, but is not required to consider, when making the determination regarding the defendant's risk to public safety. One final distinction between the bills is that this bill requires the court to conduct an additional hearing if it intends to summarily grant diversion or any other relief.

## 6. Argument in Support

The California District Attorneys Association write:

Mental health diversion is an important component of California's criminal justice system. When applied appropriately, it promotes treatment, reduces recidivism, and connects individuals to needed services. However, experiences under Penal Code section 1001.36 have revealed structural gaps that have allowed diversion to extend beyond its intended scope, including in cases involving serious violence, repeated felony offenders, and diagnoses that are remote in time or insufficiently connected to the conduct charged.

SB 1373 restores clarity, balance, and public confidence in the diversion framework so that the law may achieve its intended purpose.

*First, the bill requires recent and documented clinical evidence.* By limiting the statutory causation presumption to defendants who have received a diagnosis or treatment within five years of the charged offense, SB 1373 ensures that diversion decisions are grounded in current, credible medical evidence. This change does not prevent defendants with older diagnoses from seeking diversion, but it appropriately removes the automatic presumption in cases where the diagnosis is stale. Courts retain discretion, but the analysis must be evidence-based and contemporaneous.

*Second, the bill strengthens public safety safeguards.* SB 1373 expands the list of offenses that are categorically ineligible for diversion ... These exclusions reflect the gravity of these offenses and the profound harm suffered by victims.

...

*Third, SB 1373 clarifies and strengthens the public safety standard.* ... It further directs courts to consider prior diversion performance, ... criminal history, ... and the severity of injury to victims. These are practical, real-world factors that should inform diversion decisions.

Importantly, SB 1373 does not eliminate diversion. It preserves judicial discretion and maintains access to treatment-based alternatives for defendants whose mental illness is recent, documented, and causally connected to the offense. The bill

simply ensures that diversion remains a targeted intervention, not a default outcome in serious or repeat felony cases.

*Finally, we also recognize and support related efforts to strengthen California's mental health diversion framework.* Assemblymember Nguyen's AB 46 likewise preserves meaningful access to treatment while reinforcing accountability and public safety protections. Rather than conflicting approaches, these legislative measures are complementary efforts designed to improve the clarity, integrity, and consistent application of California's diversion statutes.

SB 1373 represents a thoughtful and necessary recalibration of Penal Code section 1001.36. It reinforces victim protections, promotes evidence-based decision-making, and restores guardrails that ensure diversion operates as intended.

## 7. Argument in Opposition

According to the San Francisco Public Defender:

Diversion is widely recognized as one of the most effective public safety tools available. Research on Los Angeles County's Rapid Diversion Program found that fewer than 10 percent of participants had new charges filed against them for an offense occurring after graduation. By contrast, approximately 39 percent of people released from California state prisons have a new conviction within three years. Diversion participants receive resources like treatment programming, case management, and the opportunity to stay in their communities, leading them to report numerous stabilizing benefits from diversion programming—including employment, housing stability, and stronger relationships with their families.

SB 1373 will make it much harder to access mental health diversion. California already has a strict process for mental health diversion—under current law, courts evaluate whether eligible individuals are suitable candidates for diversion and can be safely treated in the community. In practice, data shows diversion is only granted in fewer than four percent of cases, and mental health diversion is denied more often than it is approved. SB 1373 severely limits access to mental health supports by changing this standard, allowing courts to decline to consider diversion altogether—even for those who qualify and seek it.

...

For people with mental illness, diversion programs provide critical access to proven treatment that improves public safety by addressing the root causes of harmful behavior—something incarceration alone cannot do. By requiring people to complete mental health treatment, diversion programs ensure accountability, reduce future risk, and promote long-term stability. In turn, these community-based programs promote essential goals like public safety, accountability, and justice—while saving taxpayer dollars. SB 1373 runs counter to these goals.