
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 58 **Hearing Date:** July 11, 2023
Author: Kalra
Version: June 19, 2023
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Deferred entry of judgment pilot program*

HISTORY

Source: Author

Prior Legislation: AB 1318 (Stone), Ch. 210, Stats. 2021
AB 1390 (Stone), Ch. 129, Stats. 2019
SB 1106 (Hill) Ch. 1007, Stats. 2018
SB 1004 (Hill) Ch. 865, Stats. 2016

Support: California Judges Association; California Public Defenders Association; Chief Probation Officers of California; Santa Clara County Probation Peace Officers' Union AFSCME Local 1587; Santa Clara County Supervisor, District 2; Santa Clara County Supervisor, District 3

Opposition: None known

Assembly Floor Vote: Not relevant

PURPOSE

The purpose of this bill is to extend the operation of the Transition Age Youth Pilot Program in the Counties of Alameda, Butte, Napa, and Santa Clara until January 1, 2026.

Existing law provides that the counties of Alameda, Butte, Napa, Nevada, Santa Clara and Ventura may establish a pilot program to operate a deferred entry of judgment pilot program until January 1, 2024 for certain eligible defendants. (Pen. Code, § 1000.7, subd. (a).)

Existing law provides that a defendant may participate in a deferred entry of judgment pilot program within the county's juvenile hall if that person is charged with committing a felony offense, except as specified, they plead guilty to the charge or charges, and the probation department determines that the person meets all of the following requirements:

- Is 18 years of age or older, but under 21 years of age on the date the offense was committed, or is 21 years of age or older, but under 25 years of age on the date the offense was committed with the approval of the county multidisciplinary team established pursuant to this pilot program;
- Is suitable for the program after evaluation using a risk assessment tool, as specified;

- Shows the ability to benefit from services generally reserved for delinquents, including but not limited to, cognitive behavioral therapy, other mental health services, and age-appropriate educational, vocational, and supervision services, that are currently deployed under the jurisdiction of the juvenile court;
- Meets the rules of the juvenile hall developed in accordance with the applicable regulations;
- Does not have a prior or current conviction for committing certain specified offenses; and,
- Is not required to register as a sex offender, as specified. (Pen. Code, § 1000.7, subd. (b).)

Existing law requires the probation department, in consultation with the superior court, district attorney, and sheriff of the county or the governmental body charged with operating the county jail, to develop an evaluation process using a risk assessment tool to determine eligibility for the program. (Pen. Code, § 1000.7, subd. (c).)

Existing law makes ineligible for the deferred entry of judgment pilot program a defendant who is required to register as a sex offender, as specified, or who has been convicted of one or more of the following offenses:

- A “serious” felony, as that term is defined by law;
- A “violent” felony, as that term is defined by law; or,
- A serious or violent crime as that term is defined pertaining to juveniles. (Pen. Code, § 1000.7, subd. (d).)

Existing law provides that the court must grant deferred entry of judgment if an eligible defendant consents to participate in the program, waives their right to a speedy trial or a speedy preliminary hearing, pleads guilty to the charge or charges, and waives time for the pronouncement of judgment. (Pen. Code, § 1000.7, subd. (e).)

Existing law provides that if the probation department determines that the defendant is not eligible for the deferred entry of judgment pilot program or the defendant does not consent to participate in the program, the proceedings shall continue as in any other case. (Pen. Code, § 1000.7, subd. (f)(1).)

Existing law states that if it appears to the probation department that the defendant is performing unsatisfactorily in the program as a result of the commission of a new crime or the violation of any of the rules of the juvenile hall or that the defendant is not benefiting from the services in the program, the probation department may make a motion for entry of judgment. After notice to the defendant, the court is required to hold a hearing to determine whether judgment should be entered. (Pen. Code, § 1000.7, subd. (f)(2).)

Existing law states that if the court finds that the defendant is performing unsatisfactorily in the program or that the defendant is not benefiting from the services in the program, the court is required to render a finding of guilt to the charge or charges pleaded, enter judgment, and schedule a sentencing hearing, and the probation department, in consultation with the county

sheriff, is required to remove the defendant from the program and return him or her to custody in county jail. The mechanism of when and how the defendant is moved from custody in juvenile hall to custody in a county jail shall be determined by the local multidisciplinary team, as specified. (*Id.*)

Existing law provides that if the defendant has performed satisfactorily during the period in which deferred entry of judgment was granted, at the end of that period, the court is required to dismiss the criminal charge or charges. (Pen. Code, § 1000.7, subd. (f)(3).)

Existing law prohibits a defendant participating in this program from serving longer than one year in juvenile hall. (Pen. Code, § 1000.7, subd. (g).)

Existing law requires the probation department to develop a plan for reentry services, including, but not limited to, housing, employment, and education services, as a component of the program. (Pen. Code, § 1000.7, subd. (h).)

Existing law requires the probation department to submit data relating to the effectiveness of the program to the Division of Recidivism Reduction and Re-Entry, within the Department of Justice, including recidivism rates for program participants as compared to recidivism rates for similar populations in the adult system within the county. (Pen. Code, § 1000.7, subd. (i).)

Existing law prohibits a defendant participating in the program from coming into contact with minors within the juvenile hall for any purpose, including, but not limited to, housing, recreation, or education. (Pen. Code, § 1000.7, subd. (j).)

Existing law provides that prior to establishing a pilot program pursuant to this section, the county is required to apply to the Board of State and Community Corrections (BSCC) for approval of a county institution as a suitable place for confinement for the purpose of the pilot program. The BSCC is required to review and approve or deny the application of the county within 30 days of receiving notice of this proposed use. In its review, the BSCC is required to take into account the available programming, capacity, and safety of the institution as a place for the confinement and rehabilitation of individuals within the jurisdiction of the criminal court, and those within the jurisdiction of the juvenile court. (Pen. Code, § 1000.7, subd. (k).)

Existing law requires the BSCC to review a county's pilot program to ensure compliance with requirements of the federal law, relating to "sight and sound" separation between juveniles and adult inmates. (Pen. Code, § 1000.7, subd. (l).)

Existing law provides that the statutes related to this pilot program apply to a defendant who would otherwise serve time in custody in a county jail. Participation in this pilot program is prohibited as an alternative to a sentence involving community supervision. (Pen. Code, § 1000.7, subd. (m)(1).)

Existing law requires that each county establish a multidisciplinary team that shall meet periodically to review and discuss the implementation, practices, and impact of the program. The team shall include representatives from the following entities:

- The probation department;
- The district attorney's office;

- The public defender’s office;
- The sheriff’s department;
- Courts located in the county;
- The county board of supervisors;
- The county health and human services department; and,
- A youth advocacy group. (Pen. Code, § 1000.7, subd. (m)(2).)

Existing law requires a county that establishes a pilot program pursuant to this section to submit data regarding the pilot program to the BSCC. (Pen. Code, § 1000.7, subd. (n)(1).)

Existing law requires the BSCC to conduct an evaluation of the pilot program’s impact and effectiveness. The evaluation is required to include, but not limited to:

- Evaluating each pilot program’s impact on sentencing and impact on opportunities for community supervision;
- Monitoring the program’s effect on minors in the juvenile facility, if any; and,
- Its effectiveness with respect to program participants, including outcome-related data for program participants compared to young adult offenders sentenced for comparable crimes. (Pen. Code, § 1000.7, subd. (n)(2).)

Existing law requires BSCC’s evaluation of each participating county to be combined into a comprehensive report and submitted to the Assembly and Senate Committees on Public Safety, no later than December 31, 2022. (Pen. Code, § 1000.7, subd. (n)(3).)

This bill extends the operative date of the Transition Age Youth Pilot Program in the authorized counties, except Ventura County, until January 1, 2026 and requires BSCC’s comprehensive report to be submitted no later than December 31, 2024.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Studies have shown that young adults between the ages of 18-25 are still undergoing significant brain development and developing their decision making skills. To that extent, although these individual are legal adults, they could be better serviced by the juvenile justice system where they would receive age appropriate services as opposed to rehabilitation in an adult facility.

AB 58 would extend the sunset date until January 1, 2026, for the Young Adult Deferred Entry Judgement Program that authorizes selected counties to offer age appropriate services for offenders between the ages of 18 and 25. This pilot

program has shown to have a positive impact in young adults as an alternative to adult incarceration. Extending the sunset to continue this program will give transitional age youth an opportunity to receive supportive services geared for them.

2. Transition Age Youth (TAY) Pilot Program

SB 1004 (Hill) Chapter 865, Statutes of 2016, authorized five counties -- Alameda, Butte, Napa, Nevada, and Santa Clara -- to operate a deferred entry of judgement pilot program until January, 1 2020 in which certain young adult offenders would serve their time in juvenile hall instead of jail. The bill recognized that although 18 to 21 year olds are legally adults, “young offenders...are still undergoing significant brain development and...may be better served by the juvenile justice system with corresponding age appropriate intensive services.” (Sen. Com. on Public Safety, Analysis of Sen. Bill No. 1004 (2015-2016 Reg. Sess.) as amended on Mar. 28, 2016.) Subsequently, SB 1106 (Hill), Chapter 1007, Statutes of 2018, extended the sunset date on the pilot program to January 1, 2022 and added the County of Ventura to the list of counties authorized to operate the pilot program, although ultimately Ventura chose not to participate in the pilot program.

Program eligibility was expanded by AB 1390 (Mark Stone), Chapter 129, Statutes of 2019, to include young adults who were between the age of 21 and 24 at the time of their arresting offense. Program participation by an individual in this age group must first be approved locally by the jurisdiction’s multidisciplinary team established for this project. The operation of the pilot program was again extended by AB 1318 (Mark Stone), Chapter 210, Statutes of 2021 to January 1, 2024.

Prior to establishing a pilot program, the county is required to apply to BSCC for approval of a county institution as a suitable place for confinement for the purpose of the pilot program. To be eligible, the defendant must be between the ages of 18 and 21, and must not have a prior or current conviction for a serious, violent, or sex offense. As stated above, individuals between the age of 21 and 24 may participate in the program with approval of the local multidisciplinary team. Participants must consent to participate in the program, be assessed and found suitable for the program, and show the ability to benefit from the services generally provided to juvenile hall youth. The probation department is required to develop a plan for reentry services, including, but not limited to, housing, employment, and education services, as a component of the program. Finally, a person participating in the program cannot serve more than one year in juvenile hall.

The pilot program is a deferred entry of judgment program, meaning that participants have to plead guilty in order to be eligible for the program. If they succeed in the program then the criminal charges are dismissed. If the individual is found to perform unsatisfactorily in the program, the probation department may file a motion of entry of judgement. Once it receives the motion, the court conducts a hearing to establish whether a judgment should be entered. If the court determines that an individual was not benefiting from the services and supports included in the program or is performing unsatisfactorily in the program, the court may render a verdict of guilty to the charge or charges and schedule a sentencing hearing.

This bill extends the operation date of the TAY Pilot Program to January 1, 2026.

3. BSCC: TAY Pilot Program Evaluation Report

Existing law requires participating counties to report data on the pilot program to BSCC which BSCC is required to use to conduct an evaluation of the program's impact and effectiveness. Specifically, the law requires the evaluation to include, but not be limited to, evaluating each pilot program's impact on sentencing and impact on opportunities for community supervision, monitoring the program's effect on minors in the juvenile facility, if any, and its effectiveness with respect to program participants, including outcome-related data for program participants compared to young adult offenders sentenced for comparable crimes.

BSCC contracted with Evident Change to conduct this evaluation which has submitted two reports thus far. The first report focused on impact on juvenile halls since the data needed to make an evaluation on impacts on sentencing and recidivism were not available. (BSCC, *Transition Age Youth Pilot Program Evaluation Report #2* (Dec. 2020) < <https://www.bscc.ca.gov/wp-content/uploads/Transition-Age-Youth-Pilot-Program-Evaluation-Report.pdf> > [as of Jun. 26, 2023].) The first report found that TAY programs had minimal impact on youth in juvenile hall outside of counties having to develop policies and practices to specifically address participants' presence in the juvenile facility and how they would be kept separate from youth:

Providing housing and programming for TAY participants in the juvenile facilities required TAY pilot counties to develop and implement policies and procedures to keep detained juveniles and incarcerated adults apart from each other and to meet federal and state regulations regarding sight and sound separation.⁷ TAY county representatives reported minimal, if any, impacts of the TAY program and participants on the youth in their respective juvenile facilities. This assessment is supported by a low number of sight and sound incident reports—for a total of three reports submitted to the BSCC—all of which were for minor, brief incidents that the BSCC determined did not violate federal regulations.

(*Id.* at pp. iii; 9-13.)

The second report focused on impact on sentencing and recidivism (BSCC, *Transition Age Youth Pilot Program Evaluation Report #2* (Sept. 2021) < https://www.bscc.ca.gov/wp-content/uploads/Transition-Age-Youth-Pilot-Program-Evaluation-Report_Report-2-Final.pdf > [as of Jun. 26, 2023]):

TAY Program's Impact on Sentencing

Differences were statistically significant between the TAY participant group and the "after TAY" group for jail or prison only, jail and probation, diversion/deferral, and acquitted/dismissed. When comparing the participant group to the "before TAY" group, differences in sentence proportions were statistically significant for jail and probation, diversion/deferral, and acquitted/dismissed. Specifically, the participant group experienced a significantly smaller proportion of jail and probation sentences (7.9%) than both the before (72.4%) and after (62.8%) TAY comparison groups. These results indicate that proportional differences between these sentencing options are correlated with the implementation of the TAY pilot program.

(*Id.* at p. 18.) On issues related to net widening, the report stated that the data did not indicate a definitive impact of net widening from the existence of the program, but that “discretion within the counties as described in staff interviews and surveys allowed for enrollment of participants who may not have been arrested for an eligible offense.” (*Id.* at p. 20.) Additionally, in comparing those participants who spent time in juvenile hall versus those who did not, the report found that while there was no statistical significance, “a larger proportion of participants who did not receive the in-custody portion of the program had successful TAY program completions compared with those who spent some time in juvenile hall (e.g., 63.5% of those who experienced an in-custody stay were successful compared with 75.0% of those without a juvenile hall stay).” (*Id.* at pp. 20-21.)

TAY Pilot Program’s Effectiveness in Reducing Recidivism

There were statistically significant differences between groups with new arrests within six months of program exit, accounting for a smaller proportion of outcomes for TAY participants than for the pre-TAY comparison group. For new violations, there were significant differences between TAY participants and the post-TAY comparison group, with TAY participants experiencing 13% fewer violations within six months than the postTAY comparison group. In addition, there were statistically significant differences in violations between the post- and pre-TAY comparison groups, with the post-TAY group experiencing a larger proportion of violations within six months. There were no statistically significant differences between groups for new convictions.

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 [T]he analysis revealed a statistically significant difference between new arrests, new convictions, and new violations for people who were successful in completing TAY programming compared with people who were identified as unsuccessful. Over 60% of those who did not successfully complete the program were rearrested within six months compared with only 9% of those who successfully completed it. In addition, almost 60% of those identified as unsuccessful and almost 3% of successful individuals were convicted within six months

(*Id.* at pp. 12-14.) The report also noted that most TAY staff and stakeholders generally indicated that the TAY program was beneficial to young adults in their community and is worthy of the effort. (*Id.* at p. 21.)

4. Argument in Support

According to California Judges Association:

AB 58 would extend the sunset dates in each of these counties, except Ventura. This bill allows young adults between the ages of 18 – 25, who meet specific criteria, to participate in a deferred entry program with the approval of a multidisciplinary team established by this bill. This allows these young adults with access to age-appropriate services, such as mental health, vocational, educational, and reentry services.

Young adults who complete the program would be eligible to have their charge(s) dropped and have access to housing, employment, and education reentry services

to combat recidivism and ensure they are given the best chance to succeed post-incarceration. Program efficacy will be determined through participating county's data collection submitted to the Division of Recidivism Reduction and Re-Entry within the Department of Justice.

The California Judges Association believes AB 58 is a common-sense bill that improves the lives of these participating young adults in these specified counties. CJA remains committed to preserving access to justice for many Californians and are committed to continuing to work with all stakeholders.

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