
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 1282 **Hearing Date:** April 23, 2024
Author: Smallwood-Cuevas
Version: April 17, 2024
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Crimes: diversion*

HISTORY

Source: Vera Institute

Prior Legislation: SB 492 (Eggman), held in Assem. Approps., 2023
AB 2294 (Jones-Sawyer), Ch. 856, Stats. 2022
AB 200 (Committee on Budget), Ch. 58, Stats. 2022
AB 3234 (Ting), Ch. 334, Stats. 2020
SB 394 (Skinner), Ch. 593, Stats. 2019
SB 215 (Beall), Ch. 1005, Stats. 2017
AB 208 (Eggman), Ch. 778, Stats. 2017
AB 725 (Jackson), Ch. 179, Stats. 2017
AB 1351 (Eggman), vetoed, 2015
SB 1110 (Jackson), Ch. 655, Stats. 2014
AB 2124 (Lowenthal), Ch. 732, Stats. 2014
SB 1227 (Hancock), Ch. 658, Stats. 2013
AB 994 (Lowenthal), vetoed, 2013
AB 358 (Ammiano), vetoed, 2009

Support: A New Way of Life Reentry Project; California Public Defenders Association; Californians for Safety and Justice; Californians United for a Responsible Budget; Ella Baker Center for Human Rights; Essie Justice Group; Friends Committee on Legislation of California; Initiate Justice; Initiate Justice Action; La Defensa; Los Angeles Regional Reentry Partnership; Pacific Juveniles Defender Center; Smart Justice California; Uncommon Law; Young Women’s Freedom Center

Opposition: None known

PURPOSE

The purpose of this bill is to require each county, before January 1, 2026, to create a misdemeanor deferred entry of judgment or diversion program and to expand the court-initiated misdemeanor diversion program to felonies, except those specified.

Existing law authorizes a city or county prosecuting attorney or county probation department to create a diversion or deferred entry of judgment program for persons who commit a theft offense or repeat theft offenses, as specified. (Pen. Code, § 1001.81.)

This bill requires each county, on or before January 1, 2026, to create a diversion or deferred entry of judgment program for a person who commits a theft offense or repeat theft offenses. (Pen. Code, § 1001.81.)

Existing law authorizes both misdemeanors and felonies to be diverted under the mental health diversion program for eligible defendants, except for the following offenses:

- Murder or voluntary manslaughter;
- An offense for which a person, if convicted, would be required to register as a sex offender, except indecent exposure.
- Rape;
- Lewd or lascivious act on a child under 14 years of age;
- Assault with intent to commit rape, sodomy, or oral copulation, in violation of Section 220;
- Commission of rape or sexual penetration in concert with another person;
- Continuous sexual abuse of a child;
- Use or deployment of a weapon of mass destruction. (Pen. Code, §1001.36.)

Existing law authorizes a judge of the superior court in which a misdemeanor case is being prosecuted, at the judge's discretion and over the objection of a prosecuting attorney, offer diversion to a defendant except if the defendant is charged with any of the following offenses:

- Any offense for which the defendant, if convicted, would be required to register as a sex offender;
- Any offense involving domestic violence; or,
- An offense of stalking. (Pen. Code, § 1001.95., subd. (a) & (e).)

Existing law states that a judge may continue a diverted case for a period not to exceed 24 months and order the defendant to comply with terms, conditions, or programs that the judge deems appropriate based on the defendant's situation. (Pen. Code, § 1001.95., subd. (b).)

Existing law states that if the defendant has complied with the imposed terms and conditions, at the end of the period of diversion, the judge shall dismiss the action against the defendant. (Pen. Code, § 1001.95., subd. (c).)

Existing law states that if it appears that the defendant is not complying with the terms and conditions of diversion, after notice to the defendant, the court shall hold a hearing to determine whether the criminal proceedings should be reinstated. If the court finds that the defendant has not complied with the terms and conditions of diversion, the court may end the diversion and order resumption of the criminal proceedings. (Pen. Code, § 1001.95., subd. (d).)

This bill authorizes a judge to offer diversion to persons charged with felonies, over a prosecutor's objection, except if the person is charged with the following offenses:

- Any offense for which a person would be required to register as a sex offender;
- Any offense involving domestic violence;
- An offense of stalking;
- Murder or involuntary manslaughter;
- Use or deployment of a weapon of mass destruction; or,
- Any offense for which diversion is prohibited by an initiative statute.

This bill requires the court, if diversion is offered, to consider a referral to housing services, behavioral health care, substance use disorder treatment, restorative justice, or other treatment, services, or programs that the court deems appropriate.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Diversionsary programs offer life-changing programs like education, counseling, and job training – which are proven to not only lower recidivism rates, but also reduce crime and improve long-term public safety. We cannot incarcerate ourselves out of the systemic issues that drive crime in our communities that lead to poverty, unemployment and homelessness. This bill ensures that, when appropriate, judges can offer diversionsary programs as an alternative to incarceration for individuals facing felony charges. By expanding judicial discretion, we can ensure that individuals who a judge believes is better suited for diversion rather than incarceration has access to the programs they need.

2. Background: Diversion

Diversion is the suspension of criminal proceedings for a prescribed time period with certain conditions. A defendant may not be required to admit guilt as a prerequisite for placement in a pretrial diversion program. If diversion is successfully completed, the criminal charges are dismissed and the defendant may, with certain exceptions, legally answer that he or she has never been arrested or charged for the diverted offense. If diversion is not successfully completed, the criminal proceedings resume, however, a hearing to terminate diversion is required.

Diversion programs may be pre-plea or post-plea. Pre-plea programs allow a defendant to participate in the program without admitting guilt. In post-plea programs, the defendant must first admit guilt before participating in the program. The main difference between the two types of diversion is that in a pre-plea program, if the defendant does not successfully complete the program, criminal proceedings resume and the defendant has the option to plead guilty or pursue a defense against their case. In a post-plea diversion program, if a defendant does not successfully complete the program, the defendant having already plead guilty, would be sentenced.

In recent years, the Legislature has enacted several preplea diversion programs such as military diversion (SB 1227 (Hancock), chapter 658, statutes of 2013), mental health diversion (SB 215 (Beall), chapter 1005, statutes of 2017), diversion for primary caretakers (SB 394 (Skinner), chapter 593, statutes of 2019), and court-initiated misdemeanor diversion (AB 3234 (Ting), chapter 334, statutes of 2020). Drug diversion was enacted as a preplea program and changed to a postplea program in 1997 (SB 1369 (Kopp), chapter 1132, statutes of 1996), then in 2017 changed back to a preplea program (AB 208 (Eggman), chapter 778, statutes of 2017).

Existing law authorizes a city or county prosecuting attorney or county probation department to create a diversion or deferred entry of judgment program for persons who commit a theft offense or repeat theft offenses and specifies that the prosecuting attorney is to determine who to refer to the program and who is appropriate for placement in the program. For purposes of the program, "repeat theft offenses" means being cited or convicted for misdemeanor or felony theft from a store or vehicle two or more times in the previous 12 months and failing to appear in court when cited for these crimes or continuing to engage in these crimes after release or after conviction. (Pen. Code, § 1001.81.)

This bill would require each county to, on or before January 1, 2026, create this type of diversion or deferred entry of judgment program.

3. Court-Initiated Diversion

Existing law authorizes a judge to divert a misdemeanor defendant, over the objection of the prosecution, except in cases of stalking, domestic violence and any offense requiring sex offender registration. The judge has broad authority to order the defendant to comply with terms, conditions, or programs that the judge deems appropriate based on the specific situation, however the case may not be diverted for a period exceeding 24 months. Similar to other existing diversion programs, if a defendant successfully completes diversion, the charges would be dismissed; if not, the judge is to hold a hearing to determine whether the defendant has not complied with the terms and conditions of diversion and whether the criminal proceedings should be reinstated. Unlike some of the other existing pre-plea diversion programs such as mental health diversion or military diversion, court-initiated diversion contains no statutory requirements for the defendant to satisfy in order to be eligible other than the crimes that are specifically excluded.

Whether or not to divert a misdemeanor defendant is in the trial court's discretion. However, judicial discretion is not without limits. "[A]ll exercises of legal discretion must be grounded in reasoned judgment and guided by legal principles and policies appropriate to the particular matter at issue." (*People v. Russel* (1968) 69 Cal.2d 187, 195.) A trial court abuses its discretion when it exceeds the bounds of reason, all of the circumstances before it being considered. (*Id.*, at p. 194.)

This bill would expand the existing court-initiated diversion program to apply to also apply to felony offenses, other than those excluded. Specifically, the excluded crimes would be any crime requiring sex offender registration or any crime involving domestic violence, stalking, murder or voluntary manslaughter, use or deployment of a weapon of mass destruction, or any offense for which diversion is prohibited by an initiative statute. This list of exclusions is similar to those specifically excluded in mental health diversion, although there are a few more exclusions like stalking and offenses involving domestic violence. This bill would also require, if diversion is offered, a court to consider a referral to housing services, behavioral health care, mental health

care, substance use disorder treatment, restorative justice, or other treatment, services, or programs that the court deems appropriate.

According to additional background information provided by the author's office:

A look at 50 years of crime data has found that poverty ultimately drives property crime throughout the nation. Diversion programs, which address the root causes of crime like poverty, are a valuable and often successful tool to make our communities safer. Throughout the nation, diversion programs have been extremely successful when it comes to decreasing crime rates and alleviating the systemic issues individuals face. One study found that fewer than 4 percent of participants in a diversion program were arrested for a new crime within a year, compared to 28 percent of individuals who did not receive diversion. A California Policy Lab study found that San Francisco youth facing serious felony charges, who participated in a diversion program had a 19-percentage-point lower likelihood of a rearrest within six months, a 44 percent reduction relative to the youth who were prosecuted in the traditional juvenile justice system. Another study on San Francisco's felony diversion program found that participating in a diversion program reduced the likelihood of receiving another felony charge and conviction for up to five years after finishing the program.

4. Argument in Support

According to Vera Institute, the sponsor of this bill:

SB 1282 has two important parts. First, it requires counties to offer diversion programs for theft offenses. Currently, counties are not required to provide diversion programs for such offenses, leading to inequitable results: people charged in California have access to diversion based on geography rather than charges, needs, or other relevant factors. Every county should be required to operate at least one diversion program so that communities and law enforcement across the state can all access its range of benefits.

Second, the bill expands judicial discretion to order diversion beyond the limited circumstances eligible under current law. In doing so, California would join states as varied as Colorado, Georgia, and Arizona, which all allow diversion for a wide range of cases, including felonies. Diversion programs for misdemeanors under existing law have allowed California judges to better address the factors that drive people into the criminal legal system in the first place. When someone with felony charges can receive diversion without any safety risk to the community, expanding judges' discretion will give them better options for maintaining community safety.

Research shows diversion programs can reduce recidivism, which keeps us all safer. Diversion focuses on the drivers behind people's conduct, and it provides resources to address their unmet needs. Services such as treatment for substance use and mental health, job training, housing support, or education provide people with the means to thrive so that they are likely to come into contact with the criminal legal system in the future. By doing so, diversion programs are also much more cost-effective than prisons.

Diversion programs also reduce racial disparities in convictions and incarceration. Black and brown Californians remain more likely to be arrested because of over-policing, but if judges choose to extend them, diversion programs allow successful participants to avoid conviction histories. This means avoiding the long-term collateral consequences of incarceration includes difficulties accessing housing, employment, and education—consequences that are shown to increase recidivism.

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