

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

The People of the State of California,)	No. S268925
Plaintiff and Respondent,)	
v.)	Ct. App. 4/2
)	No. E073204
Cory Juan Braden, Jr.,)	
Defendant and Appellant.)	Sup. Ct. No.
_____)	FVI18001116

On review from the
California Court of Appeal,
Fourth Appellate District, Division Two
and the
Superior Court of California for the
County of San Bernardino
Honorable John M. Tomberlin, Judge

**APPELLANT’S REQUEST FOR JUDICIAL NOTICE;
PROPOSED ORDER**

CINDY BRINES
State Bar No. 169125
P.O. Box 2712
San Pedro, California 90731
Telephone: (818) 298-0017
cindybrines@sbcglobal.net
Attorney for Appellant
Appointed by the
Supreme Court of California

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Pursuant to Evidence Code sections 452, subdivision (c), and 459, and California Rules of Court, rule 8.252, appellant Cory Juan Braden, Jr. respectfully requests the Court take judicial notice of the following attached legislative history documents:

- A. Assembly Committee on Public Safety, Analysis of Senate Bill 215, as amended January 25, 2018;
- B. Senate Committee on Public Safety, Analysis of Senate Bill 215, version January 3, 2018;
- C. Senate Rules Committee, Office of Senate Floor Analyses, Unfinished Business, Analysis of Senate Bill 215, as amended August 23, 2018, prepared August 28, 2018;
- D. Senate Rules Committee, Office of Senate Floor Analyses, Third Reading, Analysis of Senate Bill 215, as amended January 25, 2018, prepared January 29, 2018;
- E. Senate Third Reading, Analysis of Senate Bill 215, as amended August 6, 2018;
- F. Senate Third Reading, Analysis of Senate Bill 215, as amended August 23, 2018.

No previous request for judicial notice was made in the trial court as to these documents. However, the Court of Appeal relied on the legislative history to make its finding. A true and correct

copy of the documents are hereby attached as identified above. This motion is being filed in conjunction with the filing of Appellant's Opening Brief on the Merits, and is based on this notice.

Evidence Code section 459, subdivision (a), provides that the Court "may take judicial notice of any matter specified in [Evidence Code section] 452." Evidence Code section 452, subdivision (c), permits judicial notice of "[o]fficial acts of the legislative, executive, and judicial departments . . . of any state of the United States." When appropriate, courts take judicial notice of legislative committee analyses and reports. (See, e.g., *People v. Snyder* (2000) 22 Cal.4th 304, 309 [judicial notice of senate analysis]; *People v. Ledesma* (1997) 16 Cal.4th 90, 98 [judicial notice of assembly bill analysis]; *People v. Eubanks* (1997) 14 Ca.4th 580, 591, fn. 3 [judicial notice of committee reports].) Attachments A, B, C, D, E and F fit these categories, and review of these documents are necessary for full assessment of the issue on appeal.

This case involves the statutory construction of Penal Code¹ section 1001.36. The attached six items are a relevant part of the legislative history behind the recent addition of section 1001.36. Appellant's Opening Brief on the Merits argues that diversion can be granted until sentence is imposed. Appellant's argument is based on the express language, codified policy purposes and the legislative history.

All six documents demonstrate the reasons that motivated the Legislature to enact the pretrial diversion program in section 1001.36. Specifically, the attached six documents demonstrate that the addition of the mental health diversion program was

¹ All further statutory references are to the Penal Code, unless otherwise specified.

motivated to prevent defendants with mental illness from being incarcerated by giving trial courts the ability to grant or deny diversion prior to imposition of sentence. In support of that argument, appellant needs to cite to attachments A through F. (See Cal. Rules of Court, rule 8.252(a)(2)(A).)

Here, the Court of Appeal acknowledged that the language of the statute could be ambiguous, however, found that there was nothing in the language or legislative history to indicate the Legislature sought to apply section 1001.36 in any manner other than pretrial. This was error. Accordingly, it is appropriate to consider extrinsic sources, such as the above listed materials.

CONCLUSION

For the reasons stated above, appellant respectfully requests that the Court take judicial notice of the six legislative-history documents submitted as Attachments A through F.

DATED: October 26, 2021

Respectfully submitted,

/s/ Cindy Brines

CINDY BRINES

Attorney for Appellant

Cory Juan Braden, Jr.

[PROPOSED]
ORDER GRANTING MOTION FOR JUDICIAL NOTICE

Good cause appearing, it is hereby ordered that Appellant's Motion for Judicial Notice is GRANTED. This Court hereby takes notice of Assembly Committee on Public Safety, Analysis of Senate Bill 215, as amended January 25, 2018 (Attachment A); Senate Committee on Public Safety, Analysis of Senate Bill 215, version January 3, 2018 (Attachment B); Senate Rules Committee, Office of Senate Floor Analyses, Unfinished Business, Analysis of Senate Bill 215, as amended August 23, 2018, prepared August 28, 2018 (Attachment C); Senate Rules Committee, Office of Senate Floor Analyses, Third Reading, Analysis of Senate Bill 215, as amended January 25, 2018, prepared January 29, 2018 (Attachment D); Senate Third Reading, Analysis of Senate Bill 215, as amended August 6, 2018 (Attachment E); Senate Third Reading, Analysis of Senate Bill 215, as amended August 23, 2018 (Attachment F).

Dated: _____
_____ Chief Justice

ATTACHMENT A

Assembly Committee on Public Safety
Analysis of Senate Bill 215
as amended January 25, 2018

pages 1 through 10
(complete)

Date of Hearing: June 12, 2018
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SB 215 (Beall) – As Amended January 25, 2018
As Proposed to be Amended in Committee

CORRECTED

SUMMARY: Authorizes a court to postpone prosecution of a misdemeanor or a felony punishable in a county jail, and place the defendant in a pretrial diversion program if the court is satisfied the defendant suffers from a mental disorder, that the defendant's mental disorder played a significant role in the commission of the charged offense, and that the defendant would benefit from mental health treatment. Requires consent of the prosecutor to place defendant in pretrial diversion when the defendant is charged with specified offenses. Specifically, **this bill:**

- 1) Allows a court to grant pretrial diversion to a defendant on a misdemeanor offense or felony offense punishable in a county jail (realignment), if the defendant meets the following criteria:
 - a) The court is satisfied that 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, or post-traumatic stress disorder. Evidence of the defendant's mental disorder shall be provided by the defense and may take the form of an opinion by a licensed psychiatrist or psychologist, records of prior psychiatric hospitalizations, evidence that the defendant receives federal Supplemental Security Income benefits, or any other reliable evidence; and
 - b) The court is satisfied that the defendant's mental disorder played a significant role in the commission of the charged offense. A court may conclude that a defendant's mental disorder played a significant role in the commission of the charged offense if, after reviewing 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, or records by qualified medical experts, the court concludes that the defendant's mental disorder substantially contributed to the defendant's involvement in the commission of the offense;
 - c) The court is satisfied that the defendant would benefit from mental health treatment; and
 - d) The defendant consents to diversion and waives his or her right to a speedy trial.
- 2) Requires the consent of the prosecutor in order for the court to grant diversion pursuant to this bill when the defendant is charged with the following offenses:
 - a) Any felony, with the exception of specified crimes against property, specified crimes involving malicious mischief, specified drug offenses, or car theft, including a conspiracy

- to commit these offenses or acting as an accessory to their commission;
- b) Any offense involving the unlawful use or unlawful possession of a firearm;
 - c) A violation of manslaughter or vehicular manslaughter;
 - d) An offense for which a person, if convicted, would be required to register pursuant as a sex offender, except for indecent exposure;
 - e) A violation of child or elder abuse, domestic violence, stalking, or animal abuse;
 - f) An offense resulting in damages of more than \$5,000; or,
 - g) An offense that occurs within 10 years of three separate referrals to diversion pursuant to this section.
- 3) States that if the provisions of this bill related to the consent of the prosecutor are invalidated for any reason, the offenses listed above shall not be eligible for diversion pursuant to this section.
 - 4) States that a violation for driving under the influence (DUI) is not eligible for diversion pursuant to the provisions of this bill.
 - 5) Defines “pretrial diversion,” for purposes of this bill 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.”
 - 6) Requires the defense to arrange, to the satisfaction of the court, for a program of mental health treatment utilizing existing inpatient or outpatient mental health resources, as specified.
 - 7) Specifies that before approving a proposed treatment program, the court shall consider the requests of the defense, the requests of the prosecution, and the needs of the diveree and the community.
 - 8) Requires that reports be provided to the court, the defense, and the prosecutor by the diveree’s mental health provider on the diveree’s progress in treatment not less than every month if the offense is a felony, and every three months if the offense is a misdemeanor. A court shall consider setting more frequent progress report dates upon request of the prosecution or the defense, or upon the recommendation of the diveree’s mental health treatment provider.
 - 9) States that if it appears to the court that the diveree is performing unsatisfactorily in the assigned program, or that the diveree is not benefiting from the treatment and services provided pursuant to the diversion program, the court shall, after notice to the diveree, defense counsel, and the prosecution, hold a hearing to determine whether the criminal proceedings should be reinstated or whether the treatment program should be modified.

- 10) Specifies that that the diversion shall be no longer than two years.
- 11) States that upon request, the court shall conduct a hearing to determine whether restitution is owed to any victim as a result of the diverted offense and, if owed, order its payment during the period of diversion. However, a defendant's inability to pay restitution due to indigence or mental disorder shall not be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion.
- 12) Provides that if the person has performed satisfactorily during the period of diversion, at the end of the period of diversion, the criminal charges shall be dismissed.
- 13) States that upon dismissal of the charges, a record shall be filed with the Department of Justice indicating the disposition of the case diverted pursuant to this section.
- 14) Provides that upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed never to have occurred.
- 15) States that the divertee who successfully completes the diversion program may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as specified.
- 16) States that regardless of his or her successful completion of diversion, the arrest upon which the diversion was based may be disclosed by the Department of Justice in response to any peace officer application request.
- 17) Specifies that this bill does not relieve the divertee who successfully completes diversion pursuant to this bill of his or her obligation to disclose the arrest in a response to any direct question contained in any questionnaire or application for a position as a peace officer.
- 18) States that a finding that the defendant suffers from a mental disorder, any progress reports concerning the defendant's treatment, or any other records related to a mental disorder that were created as a result of diversion pursuant to this section may not be used in any other proceeding without the defendant's consent.

EXISTING LAW:

- 1) Provides for pretrial diversion of a misdemeanor offense when the defendant was or is currently a member of the military who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her military service. (Pen. Code, § 1001.80.)
- 2) States that pretrial diversion refers to the procedure of postponing prosecution of an offense filed as a misdemeanor either temporarily or permanently at any point in the judicial process from the point at which the accused is charged until adjudication. (Pen. Code, § 1001.1.)
- 3) Provides for diversion of misdemeanors when the defendant is a person with cognitive disabilities. (Pen. Code, § 1001.20 et seq.)

- 4) Provides for diversion of bad check cases. (Pen. Code, § 1001.60 et seq.)
- 5) Establishes the Law Enforcement Assisted Diversion program for offenses related to controlled substances, alcohol and prostitution. (Pen. Code, § 1001.85 et seq.)
- 6) Authorizes a trial court to "defer entry of judgment" (DEJ) for eligible drug offenders, provided the offender pleads guilty and completes an approved drug program, as specified. (Pen. Code, § 1000.)
- 7) Provides upon successful completion of a DEJ program, the arrest upon which the judgment was deferred shall be deemed to have never occurred. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted DEJ for the offense, except as specified. (Pen. Code, § 1000.4, subd. (a).)
- 8) Authorizes a "preguilty plea" diversion for eligible drug offenders in counties where the court, the prosecutor and the public defender agree to use such a process. (Pen. Code, § 1000.5.)
- 9) Authorizes the District Attorney to approve pretrial diversion programs within the county of their jurisdiction, for misdemeanors that do not include DUIs. (Pen. Code, § 1001.2.)
- 10) Specifies that pretrial diversion refers to the procedure of postponing prosecution of an offense filed as a misdemeanor either temporarily or permanently at any point in the judicial process from the point at which the accused is charged until adjudication. (Pen. Code, § 1001.1.)
- 11) Provides that a divertee is entitled to a hearing, as set forth by law, before his or her pretrial diversion can be terminated for cause. (Pen. Code, § 1001.4.)
- 12) States that if the divertee has performed satisfactorily during the period of pretrial diversion, the criminal charges shall be dismissed at the end of the period of diversion. (Pen. Code, § 1001.7.)
- 13) Specifies that upon successful completion of a pretrial diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The divertee may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as specified. (Pen. Code, § 1001.9, subd. (a).)
- 14) States that a record pertaining to an arrest resulting in successful completion of a pretrial diversion program shall not, without the divertee's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate. (Pen. Code, § 1001.9, subd. (a).)
- 15) Requires non-violent drug possession offenders and parolees to receive drug treatment instead of incarceration. (Pen. Code, §§ 1210.1 and 3063.1.)
- 16) Specifies that when a person is charged with driving under the influence of alcohol or drugs, the court shall not suspend or dismiss the criminal proceedings because the defendant

participates in education, training, or treatment programs. (Veh. Code, § 23640.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Roughly a third of inmates in California's jails suffer from serious mental illness. At least one study has concluded that California's jail system has become de facto the largest mental health service provider in the United States, despite being ill-equipped to do so. In the last decade alone, lawsuits resulting from jail overcrowding and inmate death or injuries relating to inadequate mental health care or mistreatment of the mentally ill have cost California hundreds of millions of dollars.

"One reason for the constant jailing of mentally ill Californians is that under current law, trial courts have little ability to rehabilitate mentally ill Californians charged with even minor criminal offenses, without first convicting them of the underlying offense, thereby damaging their prospects for future employment and housing. For example, even where a defendant's offense is clearly a product of mental illness, a court cannot order mental health treatment, relevant counselling, or adherence to a medication regime unless the person suffering from mental illness is first convicted, and then placed on probation or sent to jail at county expense." The proposed bill would grant trial courts the discretion to offer diversion to defendants who suffer from mental illness when charged with low level offenses, after a showing that mental illness played a significant role in the commission of the underlying offense, that the defendant would benefit from mental health treatment AND that there is an available treatment program or programs available for the defendant.

"In essence, if appropriate, a court may (but is not required to) impose the same rehabilitative probationary conditions on a defendant it would have imposed had the defendant been convicted (including that the defendant comply with a mental health treatment plan, obey all laws and make restitution to any victims), with the added incentive that successful completion of diversion would result in dismissal of the criminal case, without the permanent detriment of a criminal record.

"Because such diversionary sentences take advantage of existing community resources for the mentally ill, research suggests that such sentences will save counties money in the short-term on reduced trial and incarceration costs, and in the long-term based on reduced recidivism rates.

"Importantly, a court will not be authorized to grant diversion where no treatment program for the defendant exists. Thus, because the diversionary sentence authorized under this bill relies entirely on pre-existing and available space in community based mental health treatment programs, counties will not be required to create or pay for new treatment facilities or programs."

- 2) **Prevalence of Mentally Ill Offenders in Jails:** A 2009 study based on inmate interviews conducted in Maryland and New York jails found that, within the month previous to the survey, 16.7% of the inmates (14.5% of males and 31% of females) had symptoms of a serious mental illness (schizophrenia, schizoaffective disorder, bipolar disorder, major depression or brief psychotic disorder). However, 31% of the inmates who were asked to

participate in the study refused, a subset that almost certainly included many individuals with paranoid schizophrenia. The interviews were conducted between 2002 and 2006. Given the continued growth of mental illness in the criminal justice system since that time and the high rate of refusers in the survey, it is reasonable to estimate that approximately 20% of jail inmates today have a serious mental illness. (Serious Mental Illness Prevalence in Jails and Prison, Treatment Advocacy Center, September 2016.)

According to the Los Angeles Sheriff's Department (LASD), the overall jail population decreased in 2015, while the mentally ill population was on the rise. Between 2009 and 2016, LASD reports seeing a 60% increase in its mentally ill population. In early September 2016, a quarter of L.A. County's inmates received some form of mental health treatment. Because many of the mentally ill inmates need to be housed alone, it creates a bed shortage in the general population. (<http://www.cnn.com/2016/09/22/us/lisa-ling-this-is-life-la-county-jail-by-the-numbers/index.html>)

Housing mentally ill inmates in a custodial setting creates other difficulties, in addition to bed shortages. Jails are often not set up to provide effective mental health treatment and are not the best treatment option for the inmate. Mentally ill inmates are expensive to house. Mentally ill inmates cost more than other prisoners for a variety of reasons, including increased staffing needs. For example, in Broward County, Florida in 2007, it cost \$80 a day to house a regular inmate but \$130 a day for an inmate with mental illness. (Serious Mental Illness Prevalence in Jails and Prison, Treatment Advocacy Center, September 2016.)

- 3) **Recommendations from Judicial Council Related to Diversion for Mentally Ill Defendants:** The Judicial Council convened a task force to examine the issues related to mentally ill defendants within the court system. The task force published their final report in December of 2015. The report recommended the development of diversion programs for mentally ill defendants. The report stated that resources must be dedicated to identify individuals with mental illness who are involved or who are likely to become involved with the criminal justice system. The report went on to say that interventions and diversion possibilities must be developed and utilized at the earliest possible opportunity. (*Mental Health Issues Implementation Task Force: Final Report*, Judicial Council, December 2015, P. 5.)
- 4) **Pretrial Diversion and Deferred Entry of Judgment:** Existing law provides avenues for diversion on misdemeanor charges through the court system. The statutory framework allows for diversion by means of deferred entry of judgment or pretrial diversion.

In deferred entry of judgment, a defendant determined by the prosecutor to be eligible for deferred entry of judgment must plead guilty to the underlying drug possession charge. The court then defers entry of judgment and places the defendant in a rehabilitation and education program. If he or she successfully completes the program, the guilty plea is withdrawn and the arrest is deemed to have not occurred. If the defendant fails in the program, the court imposes judgment and sentences the defendant.

In pretrial diversion, the criminal charges against an eligible defendant are set aside and the defendant is placed in a rehabilitation and education program treatment. If the defendants successfully complete the program, the arrest is dismissed and deemed to not have occurred. If the defendant fails in the program, criminal charges are reinstated. Existing law provides

that counties can set up a misdemeanor pretrial diversion program if the District Attorney, Courts and the Public Defender agree.

This bill would give the courts the authority to grant pretrial diversion to defendant charged with misdemeanors or felonies that are punishable in county jail under Realignment, if the defendant has a mental illness, the mental illness played a significant role in the commission of the offense, and the defendant would benefit from mental health treatment. DUI offenses are excluded from diversion under the provisions of this bill. Certain offenses that would otherwise qualify for diversion because they are misdemeanors or realigned felonies require the consent of the prosecutor in order for the defendant to be eligible for diversion. This bill requires that reports be provided to the court, the defense, and the prosecutor by the diverttee's mental health provider on the diverttee's progress in treatment not less than every month if the offense is a felony, and every three months if the offense is a misdemeanor. A defendant may not be diverted for a period of time longer than two years. If a defendant successfully completes the diversion program then the criminal charges are dismissed. If the defendant is not performing satisfactorily in the diversion program, the court must hold a hearing to determine whether criminal proceedings should be reinstated.

Under the provisions of this bill, it is permissive for a judge to grant diversion when the conditions set forth in this bill exist. The permissive nature of this bill would provide judges the discretion to admit or deny a defendant with specified mental health issues to the diversion program. If a judge feels that a defendant's participation in a diversion program is not appropriate from the standpoint of public safety, or any other reason, the judge can prohibit the defendant from participating in diversion, and the prosecution would continue in the normal fashion. A judge would maintain discretion to fashion appropriate conditions for participation in, and successful completion of, diversion. Courts would have the discretion to tailor the conditions of the diversion to meet the needs of the individual defendant and the community based on the circumstances of each case.

- 5) **Requirement of District Attorney Approval for Diversion on Certain Charges and Separation of Powers Doctrine:** This bill would require district attorney's to consent to a defendant's participation in diversion if the defendant is charged with certain enumerated offenses that would otherwise be eligible for diversion under the provisions of this bill. California courts have reviewed district attorney participation and decision making in other statutory diversion programs. The statutory drug abuse diversion program was enacted by the Legislature in 1972. (See §§ 1000-1000.4.) Under that statutory scheme, when a defendant was charged with one of six specified drug offenses, the district attorney reviewed the defendant's file to determine whether he met certain minimum standards of eligibility for diversion established by the Legislature. If the defendant met the minimum criteria, the case was referred to the probation department for an investigation and report, and then the trial court, after a hearing on the matter, determined whether diversion was appropriate in the particular case. Even if the court found diversion appropriate, however, the statute gave the district attorney the power to veto the ultimate diversion decision.

In *People v. Superior Court (On Tai Ho)* (1974), 11 Cal.3d 58, the defendant challenged the district attorney's role in the last stage of the diversion process, where the district attorney was given the power to disapprove a trial court's decision, after a hearing, to grant diversion. The court found that the statute violated the principle of separation of powers because it gave the prosecution a veto at the judicial stage of a criminal proceeding, when the case was

already before the court for disposition.

The courts have reiterated that holding in subsequent cases. “. . . when a district attorney is given a role during the ‘judicial phase’ of a criminal proceeding, such role will violate the separation-of-powers doctrine if it accords the district attorney broad, discretionary decisionmaking authority to countermand a judicial determination, . . .” *Davis v. Municipal Court*, 46 Cal. 3d 64, 84-85.

It is possible that a court could find that the provisions of this bill infringe on the separation of powers doctrine by requiring district attorney approval for mental health diversion when the defendant is facing certain charges that are otherwise statutorily eligible for diversion under the provisions of this bill. This bill contains a language which provides a contingency should the courts make such a finding. This bill states that if the provisions of this bill related to the consent of the prosecutor are invalidated for any reason, the offenses listed above shall not be eligible for diversion pursuant to this section.

- 6) **Argument in Support:** According to the *Disability Rights California*, “SB 215 is an important step toward recognizing that the population of inmates suffering from a mental disorder is growing and provides opportunities for the courts and communities to begin providing effective alternatives for treatment other than the woefully non-therapeutic environment in jails. The Committee staff noted earlier this year in the analysis of SB 8 (Beall) that the growth of persons with mental disabilities is occurring in both the state prison system and county jails.

“Additionally, people with mental illness are more likely to become involved with the criminal justice system and are more likely to be the victims of crime. Once incarcerated, people with mental illness tend to stay in detention longer. In Los Angeles County, for example, prisoners with mental illness were found to spend 2-3 times longer in jail than similarly situated prisoners without mental illness. Discrimination against people with mental illness is ‘baked in’ to state and local policies and practices, resulting in disproportionately high incarceration rates.

“Another significant contributor to the excessive lengths of incarceration for prisoners with mental illness is that, without appropriate treatment and other supports, many find it difficult to understand and follow rules resulting in loss of good time credits, additional criminal charges, and extensions of their term. Their placement in jail sets them up to fail.

“There is an urgent need for specific and targeted efforts to reduce the rates of incarceration of people with mental illness, and to facilitate successful diversion and reentry. The current situation is dire. Jails are not therapeutic environments. They are not designed to be mental health treatment centers. Prisoners with mental illness are significantly more likely than those without mental illness to be abused. They are more likely to commit suicide, the leading cause of death in jails. Further, it costs significantly more to incarcerate prisoners with mental illness than prisoners without this condition.

“The over-incarceration of people with mental illness is directly at odds with California’s stated commitment to providing treatment in the least restrictive manner appropriate, with respect for the right to ‘dignity, privacy, and humane care.’

“SB 215 provides a tool for trial courts to use in appropriate cases when diversion is the best option and treatment resources are available. It is crafted in a manner to ensure that treatment resources will be available and the best interests of the community are considered. Further, the bill recognizes that a crucial part of a successful treatment system is one that diverts individuals who can safely and effectively be treated and supervised outside of jail and prison settings. The diversion of criminal defendants with mental illness can improve both mental health and criminal justice outcomes.”

7) Related Legislation:

- a) AB 870 (Levine), would require a court to recommend that a defendant sentenced to state prison receive a mental health evaluation, if the court makes specified findings concerning the defendant's mental health status. AB 870 is on the Senate inactive file.
- b) SB 142 (Beall), would establish the State Community Mental Health Performance Incentives Fund, which would provide monetary incentives for counties to avoid sending mentally ill offenders to prison. SB 142 is awaiting hearing in the Assembly Public Safety Committee.

8) Prior Legislation:

- a) SB 8 (Beall), of the 2017-2018 Legislative Session, would have authorized a court to place a defendant in a pretrial diversion program if the court is satisfied the defendant suffers from a mental disorder, that the defendant's mental disorder played a significant role in the commission of the charged offense, and that the defendant would benefit from mental health treatment. SB 8 was held in the Assembly Appropriations Committee.
- b) AB 154 (Levine), would require a court, upon the conviction of a defendant resulting in a state prison sentence, to recommend that the defendant participate in a counseling or education program having a mental health component while imprisoned if the court makes specified findings. AB 154 was vetoed by the Governor.
- c) SB 1054 (Steinberg), Chapter 436, Statutes of 2014, clarifies that mental health grants be divided equally between adult and juvenile mentally ill offender crime reduction grants and streamline the grant process.
- d) SB 1227 (Hancock), Chapter 658, Statutes of 2013, created a diversion program for veterans who commit misdemeanors or county jail-eligible felonies and who are suffering from service-related trauma or substance abuse.
- e) SB 1323 (Cedillo), of the 2005-2006 Legislative Session, would have appropriated \$350,000 from the General Fund to the department for allocation, over five years, to the County of Los Angeles, at the consent of the county, for the purpose of funding one position to work, in conjunction with the Los Angeles County Superior Court, on a five-year Prototype Court Pilot Program for nonviolent felony offenders in the state who have been identified as having both serious mental health and substance abuse problems. SB 1323 was held in the Senate Appropriations Committee.

- f) SB 643 (Ortiz), of the 2001-2002 Legislative Session, would have enacted the Mental Health Enhancement and Crime Prevention Act of 2001, which would require the board to reimburse counties meeting specified requirements for the excess cost of providing more effective psychotropic medications to inmates in county correctional facilities during their incarceration and after release. SB 643 was held in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County Board of Supervisors
American Civil Liberties Union of California
Anti-Recidivism Coalition
California Attorneys for Criminal Justice
California Council of Community Behavioral Health Agencies
California Public Defenders Association
California Psychiatric Association
Californians for Safety and Justice
County Behavioral Health Directors Association of California
Disability Rights California
Drug Policy Alliance
Los Angeles Regional Reentry Partnership
Mental Health America of California
Mental Health Services Oversight & Accountability Commission
National Association of Social Workers, California Chapter
National Union of Healthcare Workers
Western Regional Advocacy Project

1 private individual

Opposition

None

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

ATTACHMENT B

Senate Committee on Public Safety
Analysis of Senate Bill 215 version
January 3, 2018

pages 1 through 8
(complete)

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2017 - 2018 Regular

Bill No: SB 215 **Hearing Date:** January 9, 2018
Author: Beall
Version: January 3, 2018
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Diversion: Mental Disorders*

HISTORY

Source: California Public Defenders Association

Prior Legislation: SB 8 (Beall), 2017, held on Suspense File in Assembly Appropriations
SB 725 (Jackson), Chapter 179, Statutes of 2017
SB 1227 (Hancock), Chapter 658, Statutes of 2013

Support: American Civil Liberties Union of California; California Attorneys for Criminal Justice; California Council of Community Behavioral Health Agencies; California Psychiatric Association; Californians for Safety and Justice; Disability Rights California; Drug Policy Alliance; Friends Committee on Legislation of California; Mental Health America of California; National Association of Social Workers, California Chapter; Western Regional Advocacy Project

Opposition: None known

PURPOSE

The purpose of this bill is to create a pretrial diversion program for defendants who commit a misdemeanor or jail-eligible felony who suffer from a mental disorder if the mental disorder played a significant role in the commission of the charged offense.

Existing law states that pretrial diversion refers to the procedure of postponing prosecution of an offense filed as a misdemeanor either temporarily or permanently at any point in the judicial process from the point at which the accused is charged until adjudication. (Pen. Code, § 1001.1.)

Existing law provides for diversion of misdemeanors when the defendant is a person with cognitive disabilities. (Pen. Code, § 1001.20 et seq.)

Existing law provides for diversion of non-driving under the influence (DUI) misdemeanor offenses. (Pen. Code, § 1001 et seq., Pen. Code, § 1001.50 et seq.)

Existing law provides for diversion of bad check cases. (Pen. Code, § 1001.60 et seq.)

Existing law establishes the Law Enforcement Assisted Diversion program for offenses related to controlled substances, alcohol and prostitution. (Pen. Code, § 1001.85 et seq.)

Existing law provides pretrial diversion for veterans who commit misdemeanors who are suffering from service-related trauma or substance abuse, as specified. (Pen. Code, § 1001.80 et seq.)

This bill authorizes the court, notwithstanding any other law and except as specified, in any case charging a misdemeanor offense or felony offense punishable in county jail, after considering the positions of the defense and prosecution, to grant pretrial diversion to a defendant who meets all of the specified requirements.

This bill provides that diversion is not available without the consent of the prosecution for the following offenses:

- Any felony, with the exception of specified property and drug offenses;
- Any offense involving the unlawful use or unlawful possession of a firearm;
- Manslaughter or vehicular manslaughter;
- An offense for which a person, if convicted, would be required to register as a sex offender, except for indecent exposure;
- Driving under the influence (DUI) offenses, as specified;
- A violent felony as defined in subdivision (c) of Penal Code section 667.5;
- Child endangerment, corporal injury on a spouse or cohabitant, elder abuse, animal cruelty, and stalking;
- An offense resulting in damages of more than \$5,000;
- An offense that occurs within 10 years of three separate referrals to diversion under the provisions of this bill. A grant of diversion on multiple charges filed under the same case number, or stemming from the same incident, shall constitute a single referral to diversion.

This bill states that it is the intent of the Legislature that the consent of the prosecution be required prior to a court granting diversion for the specified offenses listed above. If the provisions in this bill requiring the consent of the prosecutor are invalidated for any reason, the offenses listed above shall not be eligible for diversion.

This bill provides that pretrial diversion may be granted if all of the following criteria are met:

- The court is satisfied that the defendant suffers from a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders. Evidence of the defendant's mental disorder shall be provided by the defense and shall include a diagnosis by a qualified expert. In opining that a defendant suffers from a qualifying disorder, the expert may rely on an examination of the defendant, medical records, evidence that the defendant receives federal supplemental security income benefits, arrest records, or any other reliable evidence.

- The court is satisfied that the defendant's mental disorder played a significant role in the commission of the charge offense.
- The court is satisfied that the defendant would benefit from mental health treatment.
- The defendant consents to diversion and waives his or her right to a speedy trial.

This bill defines "pretrial diversion" to mean "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:

- The defense shall arrange, to the satisfaction of the court, for a program of mental health treatment utilizing existing inpatient or outpatient mental health resources. Before approving a proposed treatment program, the court shall consider the requests of the defense and prosecution, the needs of the divertee and the community.
- The treatment may be procured using private or public funds, and a referral may be made to a county mental health agency, existing collaborative courts, or assisted outpatient treatment only if that agency has agreed to accept responsibility for the treatment of the defendant, and mental health services are provided only to the extent that resources are available and the defendant is eligible for those services.
- Reports shall be provided to the court, the defense, and the prosecutor by the divertee's mental health provider on the divertee's progress in treatment not less than every month if the offense is a felony, and every three months if the offense is a misdemeanor. A court shall consider setting more frequent progress report dates upon request of the prosecution or defense, or upon the recommendation of the divertee's mental health treatment provider.
- If it appears to the court that the divertee is performing unsatisfactorily in the assigned program, or that the divertee is not benefiting from the treatment and services provided pursuant to the diversion program, the court shall, after notice to the divertee, the defense counsel and prosecution, hold a hearing to determine whether the criminal proceedings should be reinstated or whether the treatment program should be modified.
- The period during which criminal proceedings against the defendant may be diverted shall be no longer than two years.
- If it would be required as a condition of probation for the diverted offense, a grant of diversion shall include a requirement that the divertee install an ignition interlock device, as specified.
- Upon request, the court shall conduct a hearing to determine whether restitution is owed to any victim as a result of the diverted offense and, if owed, order its payment. However, a defendant's inability to pay restitution due to indigence or mental disorder shall not be grounds for denial of diversion or a finding that the defendant failed to comply with the terms of diversion.

This bill states that if the divertee has performed satisfactorily during the period of diversion, at the end of the period of diversion, the criminal charges shall be dismissed.

This bill states that a court may conclude that a divertee has performed satisfactorily if, in the court's judgement, the divertee:

- Has substantially complied with the requirements of the treatment program;
- 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.

This bill provides that upon dismissal of the charges, a record shall be filed with the Department of Justice indicating the disposition of the case diverted. Upon successful completion of the diversion program, the arrest upon which the diversion was based shall be deemed never to have occurred, and the court shall order access to the records of arrest restricted, except as specified. The divertee who successfully completes the diversion program may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as required for a peace officer application request. The divertee shall be advised of the requirements to disclose the arrest when applying for a position as a peace officer.

This bill states that any finding that the defendant suffers from a mental disorder, any progress reports concerning the defendant's treatment, or any other records created as a result of diversion or for use at a hearing on the defendant's eligibility for diversion may not be used in any other proceeding without the defendant's consent. However, when determining whether to exercise its discretion to grant diversion under the provisions of this bill, a court may consider previous records of arrest for which the defendant was granted diversion under the provisions of this bill.

This bill states the following Legislative findings and declarations:

- Despite never being designed for the treatment or housing of those with mental health needs, jails have become de facto mental health facilities in many communities across the country;
- Untreated mental health conditions frequently result in chronic homelessness and an inability to find stable employment or housing, increasing the likelihood that those suffering from mental illness come into contact with law enforcement;
- For many people suffering from mental disorders, incarceration only serves to aggravate preexisting conditions and does little to deter future lawlessness;
- For people who commit offenses as a direct consequence of a mental disorder, diversion into treatment is often not only more cost effective, but also more likely to protect public safety by reducing the likelihood that a person suffering from a mental health disorder reoffends in the future; and,
- Courts, as one of the first points of contact between the mentally ill and the state, can serve as a useful function in identifying defendants with mental disorders and connecting them to existing services, thereby reducing recidivism.

COMMENTS

1. Need for This Bill

According to the author:

Roughly a third of inmates in California's jails suffer from serious mental illness. At least one study has concluded that California's jail system has become de facto the largest mental health service provider in the United States, despite being ill-equipped to do so. In the last decade alone, lawsuits resulting from jail overcrowding and inmate death or injuries relating to inadequate mental health care or mistreatment of the mentally ill have cost California hundreds of millions of dollars. (Footnotes omitted.)

One reason for the constant jailing of mentally ill Californians is that under current law, trial courts have little ability to rehabilitate mentally ill Californians charged with even minor criminal offenses, without first convicting them of the underlying offense, thereby damaging their prospects for future employment and housing. For example, even where a defendant's offense is clearly a product of mental illness, a court cannot order mental health treatment, relevant counselling, or adherence to a medication regime unless the person suffering from mental illness is first convicted, and then placed on probation or sent to jail at county expense.

....

The proposed bill would grant trial courts the discretion to offer diversion to defendants who suffer from mental illness when charged with low level offenses, after a showing that mental illness played a significant role in the commission of the underlying offense, that the defendant would benefit from mental health treatment AND that there is an available treatment program or programs available for the defendant.

In essence, if appropriate, a court may (but is not required to) impose the same rehabilitative probationary conditions on a defendant it would have imposed had the defendant been convicted (including that the defendant comply with a mental health treatment plan, obey all laws and make restitution to any victims), with the added incentive that successful completion of diversion would result in dismissal of the criminal case, without the permanent detriment of a criminal record.

Because such diversionary sentences take advantage of existing community resources for the mentally ill, research suggests that such sentences will save counties money in the short-term on reduced trial and incarceration costs, and in the long-term based on reduced recidivism rates. (<http://www.courtinnovation.org/sites/default/files/EffectivenessMentalHealthCourt.pdf> [participation in mental health treatment through a court authorized diversion plan reduced recidivism rates].)

Importantly, a court will not be authorized to grant diversion where no treatment program for the defendant exists. Thus, because the diversionary sentence authorized under this bill relies entirely on pre-existing and available space in community based mental health treatment programs, counties will not be required to create or pay for new treatment facilities or programs.

2. Diversion of Defendants with Mental Disorders

Diversion is the suspension of criminal proceedings for a prescribed period of time 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.

This bill creates a diversion program for defendants whose mental disorder played a significant role in the commission of the charged offense. The eligible offenses are misdemeanors and jail-eligible felonies. When considering diversion for a jail-eligible felony, other than specified property and drug offenses, the court may only divert the defendant with the prosecutor's consent. These offenses, as specified by a list in the bill, include DUIs, manslaughter and vehicular manslaughter, firearms-related offenses, child endangerment, corporal injury on a spouse or cohabitant, elder abuse, animal cruelty, and stalking. Additionally, the bill specifies that any offense resulting in damages of more than \$5,000 requires the prosecutor's consent as well as any grant of diversion for an offense that occurs within 10 years of three separate referrals to diversion.

The list that requires prosecutorial consent also includes any violent felony as defined in subdivision (c) of Penal Code section 667.5. Violent felonies are not jail-eligible felonies. Including these offenses listed in Penal Code section 667.5, subdivision (c) in the list that requires the prosecutor's consent for certain offenses to be diverted conflicts with the overall restriction that the diversion created by this bill is only for misdemeanors and jail-eligible felonies.

In determining eligibility, the court must be satisfied that the defendant suffers from a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders. Evidence of the defendant's mental disorder shall be provided by the defense and shall include a diagnosis by a qualified expert. In opining that a defendant suffers from a qualifying disorder, the expert may rely on an examination of the defendant, medical records, evidence that the defendant receives federal supplemental security income benefits, arrest records, or any other reliable evidence.

The court must also find that the defendant's mental disorder played a significant role in the commission of the charged offense and that the defendant would benefit from mental health treatment. The defendant must also consent to diversion and waive his or her right to a speedy trial. The defense is responsible for arranging for a program of mental health treatment using

existing inpatient or outpatient mental health resources and the agency must agree to accept responsibility for the treatment of the defendant. Before approving a proposed treatment program, the court shall consider the requests of the defense and prosecution, the needs of the divertee and the community.

The defense is also responsible for providing progress reports to the court not less than every month if the offense is a felony, and every three months if the offense is a misdemeanor. A defendant may not be diverted for a period of time longer than two years under this program.

If a defendant successfully completes the diversion program then the arrest will be deemed never to have occurred and he or she can say she was never arrested or diverted, unless he or she is applying to be a peace officer. If it appears that the defendant is not performing satisfactorily in the diversion program, the court must hold a hearing to determine whether criminal proceedings should be reinstated or whether the treatment program should be modified in some way.

The goal of the diversion program created by this bill is to address the population of jail inmates who suffer from a mental disorder whose incarceration often leads to worsening of their condition and in some cases suicide. This bill authorizes the court to order treatment early in the process rather than waiting for the disposition of the case where the defendant may be facing the possibility of prolonged incarceration or re-arrest upon release. Because diversion does not result in a conviction, once a defendant completes diversion he or she would not be foreclosed from housing and employment opportunities.

3. Population of Inmates Suffering from a Mental Disorder is Growing

According to several reports, the population of inmates in county jails and in state prisons has increased over the years. A Los Angeles Times article from June 2016 reported that “the number of mentally ill inmates has grown in both county jails and state prisons, although overall inmate populations have shrunk. In L.A. County jails, the average population of mentally ill inmates in 2013 was 3,081. As of mid-May it was 4,139, a 34% increase.

“In the state prison system, the mentally ill inmate population was 32,525 in April 2013, making up 24.5% of the overall population. As of February [2016], according to a recently released monitoring report, the overall population had fallen by 5,230 while the mental health population had grown by 4,275, and made up 29% of the total population.” (Sewell, *Mentally ill inmates are swamping the state's prisons and jails. Here's one man's story* (June 19, 2016) Los Angeles Times see full article at < <http://www.latimes.com/local/california/la-me-mentally-ill-inmate-snap-story.html> > [as of Dec. 18, 2017].)

4. Author's Amendments

The author plans to amend this bill to exclude driving under the influence offenses from the diversion authorized under the bill. This amendment will be adopted prior to the bill's next committee hearing.

5. Arguments in Support

According to *Disability Rights California*:

There is an urgent need for specific and targeted efforts to reduce the rates of incarceration of people with mental illness, and to facilitate successful diversion and reentry. The current situation is dire. Jails are not therapeutic environments. They are not designed to be mental health treatment centers. Prisoners with mental illness are significantly more likely than those without mental illness to be abused. Further, it costs significantly more to incarcerate prisoners with mental illness than prisoners without this condition.

....

SB 215 provides a tool for trial courts to use in appropriate cases when diversion is the best option and treatment resources are available. It is crafted in a manner to ensure that treatment resource will be available and the best interests of the community are considered. Further, the bill recognizes that a crucial part of successful treatment is one that diverts individuals who can safely and effectively be treated and supervised outside of jail and prison settings. The diversion of criminal defendants with mental illness can improve both mental health and criminal justice outcomes.

-- END --

ATTACHMENT C

Senate Rules Committee
Office of Senate Floor Analyses
Unfinished Business
Analysis of Senate Bill 215
as amended August 23, 2018,
prepared August 28, 2018

pages 1 through 4
(complete)

UNFINISHED BUSINESS

Bill No: SB 215
Author: Beall (D), et al.
Amended: 8/23/18
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 7-0, 1/9/18
AYES: Skinner, Anderson, Bradford, Jackson, Mitchell, Stone, Wiener

SENATE APPROPRIATIONS COMMITTEE: 7-0, 1/18/18
AYES: Lara, Bates, Beall, Bradford, Hill, Nielsen, Wiener

SENATE FLOOR: 38-0, 1/30/18
AYES: Allen, Anderson, Atkins, Bates, Beall, Berryhill, Bradford, Cannella, De León, Dodd, Gaines, Galgiani, Glazer, Hernandez, Hertzberg, Hill, Hueso, Jackson, Lara, Leyva, McGuire, Mitchell, Monning, Moorlach, Morrell, Newman, Nguyen, Nielsen, Pan, Portantino, Roth, Skinner, Stern, Stone, Vidak, Wieckowski, Wiener, Wilk
NO VOTE RECORDED: Fuller, Mendoza

ASSEMBLY FLOOR: 79-0, 8/28/18 - See last page for vote

SUBJECT: Diversion: mental disorders

SOURCE: Author

DIGEST: This bill amends Governor Brown's 2018 pre-trial diversion program in three ways: (1) it eliminates certain offenses from consideration from diversion, including murder, manslaughter, rape, and other sex offenses; (2) it requires courts, upon request, to conduct a hearing to determine whether restitution is owed to any victim as a result of the diverted offense; and (3) it authorizes a court to request a prima facie hearing where a defendant must show they are potentially eligible for diversion.

Assembly Amendments narrow the bill to deal with clean-up issues after AB 1810 (Assembly Budget Committee, Chapter 34, Statutes of 2018) was signed.

ANALYSIS: Existing law allows trial courts to divert mentally ill defendants into pre-existing treatment programs, where the proposed program is consistent with the needs of the defendant and the safety of the community. (Penal Code §§ 1001.35 et seq)

This bill amends the pretrial diversion program created by AB 1810 (Assembly Budget Committee, Chapter 34, Statutes of 2018). Specifically, this bill:

- 1) Eliminates certain offenses from consideration from diversion, including murder, manslaughter, rape and other sex offenses.
- 2) Requires the courts, upon request, to conduct a hearing to determine whether restitution is owed to any victim as a result of the diverted offense.
- 3) Authorizes a court to request a prima facie hearing where a defendant must show they are potentially eligible for diversion.

Comments

According to the author:

One reason for the constant jailing of mentally ill Californians is that before June 2018, trial courts had no ability to rehabilitate mentally ill Californians charged with even minor criminal offenses, without first convicting them, thereby damaging their prospects for future employment and housing. For example, even where an offense is clearly a product of mental illness, a court could not, prior to AB 1810, order mental health treatment, relevant counselling, or adherence to a medication regime unless the person was first convicted, and then placed on probation or sent to jail at county expense.

By reserving court-ordered services for the mentally ill until after a conviction, the prior system led to higher recidivism rates for mentally ill Californians, who were not only left untreated, but with the additional burden of a criminal record. This approach was unfair, impractical and costly. For example, while community based treatment for a mentally ill defendant costs roughly \$20,000 per year (and greatly reduces recidivism), jailing that same defendant (with a greater risk of recidivism) costs the community more than \$75,000 a year.

The predictable results of California's reliance on this outdated method are higher costs for taxpayers, who are forced to pay for the continuous warehousing of the mentally ill, when early, court-assisted interventions are far

more likely to lead to longer, cheaper, more stable solutions for the community, and for the person suffering from mental illness.

AB 1810 allowed, but does not require trial courts to divert mentally ill defendants into pre-existing treatment programs, where the proposed treatment program is consistent with the needs of the defendant and the safety of the community. By granting courts the ability to divert those suffering from mental illness into treatment at an early stage in the proceedings, AB 1810 seeks to reduce recidivism rates for mentally ill defendants, and to avoid unnecessary and unproductive costs of trial and incarceration.

Since the enactment of AB 1810, some commenters have articulated a concern that a court could theoretically divert a mentally ill defendant charged with rape and murder under AB 1810. Others have asked for clarification on whether victim restitution should be part of any grant of diversion under this section. This bill seeks to address those concerns.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Assembly Appropriations Committee, negligible fiscal impact.

SUPPORT: (Verified 8/24/18)

Anti-Recidivism Coalition
Disability Rights California
Friends Committee on Legislation
National Association of Social Workers, California Chapter

OPPOSITION: (Verified 8/24/18)

None received

ASSEMBLY FLOOR: 79-0, 8/28/18

AYES: Acosta, Aguiar-Curry, Travis Allen, Arambula, Baker, Berman, Bigelow, Bloom, Bonta, Brough, Burke, Caballero, Calderon, Carrillo, Cervantes, Chau, Chávez, Chen, Chiu, Choi, Chu, Cooley, Cooper, Cunningham, Dahle, Daly, Eggman, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez Fletcher, Gray, Grayson, Harper, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager-Dove, Kiley, Lackey, Levine, Limón, Low, Maienschein, Mathis, Mayes, Medina, Melendez, Mullin, Muratsuchi, Nazarian, Obernolte, O'Donnell, Patterson, Quirk, Quirk-Silva,

Reyes, Rivas, Rodriguez, Rubio, Salas, Santiago, Steinorth, Mark Stone,
Thurmond, Ting, Voepel, Waldron, Weber, Wood, Rendon
NO VOTE RECORDED: McCarty

Prepared by: Mary Kennedy / PUB. S. /
8/28/18 21:28:01

**** **END** ****

ATTACHMENT D

Senate Rules Committee
Office of Senate Floor Analyses
Third Reading
Analysis of Senate Bill 215
as amended January 25, 2018,
prepared January 29, 2018

pages 1 through 7
(complete)

THIRD READING

Bill No: SB 215
Author: Beall (D), et al.
Amended: 1/25/18
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 7-0, 1/9/18
AYES: Skinner, Anderson, Bradford, Jackson, Mitchell, Stone, Wiener

SENATE APPROPRIATIONS COMMITTEE: 7-0, 1/18/18
AYES: Lara, Bates, Beall, Bradford, Hill, Nielsen, Wiener

SUBJECT: Diversion: mental disorders

SOURCE: California Public Defenders Association

DIGEST: This bill creates a pretrial diversion program for defendants who commit a misdemeanor or jail-eligible felony who suffer from a mental disorder if the mental disorder played a significant role in the commission of the charged offense.

Senate Floor Amendments of 1/25/18 clarify the list of offenses that requires the prosecutor's consent for a grant of diversion.

ANALYSIS:

Existing law:

- 1) States that pretrial diversion refers to the procedure of postponing prosecution of an offense filed as a misdemeanor either temporarily or permanently at any point in the judicial process from the point at which the accused is charged until adjudication. (Pen. Code § 1001.1.)
- 2) Provides for diversion of misdemeanors when the defendant is a person with cognitive disabilities. (Pen. Code § 1001.20 et seq.)

- 3) Provides for diversion of non-driving under the influence (DUI) misdemeanor offenses. (Pen. Code § 1001 et seq., Pen. Code § 1001.50 et seq.)
- 4) Provides for diversion of bad check cases. (Pen. Code § 1001.60 et seq.)
- 5) Establishes the Law Enforcement Assisted Diversion program for offenses related to controlled substances, alcohol and prostitution. (Pen. Code § 1001.85 et seq.)
- 6) Provides pretrial diversion for veterans who commit misdemeanors who are suffering from service-related trauma or substance abuse, as specified. (Pen. Code § 1001.80 et seq.)

This bill:

- 1) Authorizes the court, notwithstanding any other law and except as specified, in any case charging a misdemeanor offense or felony offense punishable in county jail, after considering the positions of the defense and prosecution, to grant pretrial diversion to a defendant who meets all of the specified requirements.
- 2) Provides that diversion is not available without the consent of the prosecution for the following offenses:
 - a) Any felony, with the exception of specified property and drug offenses;
 - b) Any offense involving the unlawful use or unlawful possession of a firearm;
 - c) Manslaughter or vehicular manslaughter;
 - d) An offense for which a person, if convicted, would be required to register as a sex offender, except for indecent exposure;
 - e) Child endangerment, corporal injury on a spouse or cohabitant, elder abuse, animal cruelty, and stalking;
 - f) An offense resulting in damages of more than \$5,000; and,
 - g) An offense that occurs within 10 years of three separate referrals to diversion under the provisions of this bill. A grant of diversion on multiple charges filed under the same case number, or stemming from the same incident, shall constitute a single referral to diversion.

- 3) States that specified driving under the influence offenses are ineligible for diversion.
- 4) States that it is the intent of the Legislature that the consent of the prosecution be required prior to a court granting diversion for the specified offenses listed above. If the provisions in this bill requiring the consent of the prosecutor are invalidated for any reason, the offenses listed above shall not be eligible for diversion.
- 5) Provides that pretrial diversion may be granted if all of the following criteria are met:
 - a) The court is satisfied that the defendant suffers from a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders. Evidence of the defendant's mental disorder shall be provided by the defense and shall include a diagnosis by a qualified expert. In opining that a defendant suffers from a qualifying disorder, the expert may rely on an examination of the defendant, medical records, evidence that the defendant receives federal supplemental security income benefits, arrest records, or any other reliable evidence;
 - b) The court is satisfied that the defendant's mental disorder played a significant role in the commission of the charge offense;
 - c) The court is satisfied that the defendant would benefit from mental health treatment; and,
 - d) The defendant consents to diversion and waives his or her right to a speedy trial.
- 6) Defines "pretrial diversion" to mean 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:
 - a) The defense shall arrange, to the satisfaction of the court, for a program of mental health treatment utilizing existing inpatient or outpatient mental health resources. Before approving a proposed treatment program, the court shall consider the requests of the defense and prosecution, the needs of the divertee and the community;

- b) The treatment may be procured using private or public funds, and a referral may be made to a county mental health agency, existing collaborative courts, or assisted outpatient treatment only if that agency has agreed to accept responsibility for the treatment of the defendant, and mental health services are provided only to the extent that resources are available and the defendant is eligible for those services;
 - c) Reports shall be provided to the court, the defense, and the prosecutor by the diverttee's mental health provider on the diverttee's progress in treatment not less than every month if the offense is a felony, and every three months if the offense is a misdemeanor. A court shall consider setting more frequent progress report dates upon request of the prosecution or defense, or upon the recommendation of the diverttee's mental health treatment provider;
 - d) If it appears to the court that the diverttee is performing unsatisfactorily in the assigned program, or that the diverttee is not benefiting from the treatment and services provided pursuant to the diversion program, the court shall, after notice to the diverttee, the defense counsel and prosecution, hold a hearing to determine whether the criminal proceedings should be reinstated or whether the treatment program should be modified;
 - e) The period during which criminal proceedings against the defendant may be diverted shall be no longer than two years; and,
 - f) Upon request, the court shall conduct a hearing to determine whether restitution is owed to any victim as a result of the diverted offense and, if owed, order its payment. However, a defendant's inability to pay restitution due to indigence or mental disorder shall not be grounds for denial of diversion or a finding that the defendant failed to comply with the terms of diversion.
- 7) States that if the diverttee has performed satisfactorily during the period of diversion, at the end of the period of diversion, the criminal charges shall be dismissed.
- 8) States that a court may conclude that a diverttee has performed satisfactorily if, in the court's judgment, the diverttee:
- a) Has substantially complied with the requirements of the treatment program;
 - b) Has avoided significant new violations of law unrelated to the defendant's mental health condition; and,

- c) Has a plan in place for long-term mental health care.
- 9) Provides that upon dismissal of the charges, a record shall be filed with the Department of Justice indicating the disposition of the case diverted. Upon successful completion of the diversion program, the arrest upon which the diversion was based shall be deemed never to have occurred, and the court shall order access to the records of arrest restricted, except as specified. The divertee who successfully completes the diversion program may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as required for a peace officer application request. The divertee shall be advised of the requirements to disclose the arrest when applying for a position as a peace officer.
 - 10) States that any finding that the defendant suffers from a mental disorder, any progress reports concerning the defendant's treatment, or any other records created as a result of diversion or for use at a hearing on the defendant's eligibility for diversion may not be used in any other proceeding without the defendant's consent. However, when determining whether to exercise its discretion to grant diversion under the provisions of this bill, a court may consider previous records of arrest for which the defendant was granted diversion under the provisions of this bill.
 - 11) States the following legislative findings and declarations:
 - a) Despite never being designed for the treatment or housing of those with mental health needs, jails have become de facto mental health facilities in many communities across the country;
 - b) Untreated mental health conditions frequently result in chronic homelessness and an inability to find stable employment or housing, increasing the likelihood that those suffering from mental illness come into contact with law enforcement;
 - c) For many people suffering from mental disorders, incarceration only serves to aggravate preexisting conditions and does little to deter future lawlessness;
 - d) For people who commit offenses as a direct consequence of a mental disorder, diversion into treatment is often not only more cost effective, but also more likely to protect public safety by reducing the likelihood that a person suffering from a mental health disorder reoffends in the future; and,

- e) Courts, as one of the first points of contact between the mentally ill and the state, can serve as a useful function in identifying defendants with mental disorders and connecting them to existing services, thereby reducing recidivism.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- Court: Ongoing, unknown court costs likely over \$50,000 annually (General Fund) to the extent the court uses this pretrial diversion option. Workload increases include conducting assessments to determine defendant eligibility, assessing appropriate program placements, holding periodic hearings, reviewing progress reports, and collaborating with various agencies.
- Local: Unknown, ongoing potentially-reimbursable costs (local funds, General Fund) to county district attorney's and public defender's offices to review progress reports and attend progress hearings at least every month or every three months depending on the diverted charge. There would be additional, but unknown, local costs (local funds, General Fund) for publicly-funded defense counsel to arrange for a mental health treatment program to the court's satisfaction and to present evidence of a mental disorder. These costs could be offset by savings achieved through reduced workload in not preparing for and litigating cases to trial.

Additionally, there could be potentially-significant county mental health services costs (local funds), but these likely would not be reimbursable, as placements with county mental health agencies are authorized only if the agencies accept responsibility for the treatment of the defendants.

- Savings: Potentially-significant future cost savings to the criminal justice system, to state and local agencies, in averted court proceedings and reduced local incarceration, supervision, and prosecution costs to the extent participation in diversion programs is successful.

SUPPORT: (Verified 1/18/18)

California Public Defenders Association (source)
 American Civil Liberties Union of California
 California Attorneys for Criminal Justice
 California Behavioral Health Directors Association
 California Council of Community Behavioral Health Agencies

California Psychiatric Association
Californians for Safety and Justice
Disability Rights California
Drug Policy Alliance
Friends Committee on Legislation of California
Mental Health America of California
National Association of Social Workers – California Chapter
National Union of Healthcare Workers
Western Regional Advocacy Project

OPPOSITION: (Verified 1/18/18)

None received

ARGUMENTS IN SUPPORT: According to Disability Rights California, “There is an urgent need for specific and targeted efforts to reduce the rates of incarceration of people with mental illness, and to facilitate successful diversion and reentry. The current situation is dire. Jails are not therapeutic environments. They are not designed to be mental health treatment centers. Prisoners with mental illness are significantly more likely than those without mental illness to be abused. Further, it costs significantly more to incarcerate prisoners with mental illness than prisoners without this condition.

....

“SB 215 provides a tool for trial courts to use in appropriate cases when diversion is the best option and treatment resources are available. It is crafted in a manner to ensure that treatment resource will be available and the best interests of the community are considered. Further, the bill recognizes that a crucial part of successful treatment is one that diverts individuals who can safely and effectively be treated and supervised outside of jail and prison settings. The diversion of criminal defendants with mental illness can improve both mental health and criminal justice outcomes.”

Prepared by: Stella Choe / PUB. S. /
1/29/18 17:28:34

**** END ****

ATTACHMENT E

Senate Third Reading
Analysis of Senate Bill 215
as amended August 6, 2018

pages 1 through 3
(complete)

SENATE THIRD READING
SB 215 (Beall)
As Amended August 6, 2018
Majority vote

SENATE VOTE: 38-0

Committee	Votes	Ayes	Noes
Public Safety	6-0	Jones-Sawyer, Lackey, Carrillo, McCarty, Kiley, Weber	
Appropriations	17-0	Gonzalez Fletcher, Bigelow, Bloom, Bonta, Brough, Calderon, Carrillo, Chau, Eggman, Fong, Friedman, Gallagher, Eduardo Garcia, Nazarian, Obernolte, Quirk, Reyes	

SUMMARY: Amends AB 1810 (Committee on Budget), Chapter 34, Statutes of 2018, which authorized pre-trial diversion for defendants suffering from a mental disorder, when specified criteria are met, to require the court, upon request, to a hearing to determine whether restitution is owed to any victim as a result of the diverted offense and, if owed, order its payment during the period of diversion. Specifies that a defendant's inability to pay restitution due to indigence or mental disorder shall not be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion.

EXISTING LAW:

- 1) Allows a court to grant pretrial diversion to a defendant suffering from a mental disorder if all of the following criteria are met:
 - a) The court is satisfied that 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. Evidence of the defendant's mental disorder shall be provided by the defense and shall include a recent diagnosis by a qualified mental health expert. In opining that a defendant suffers from a qualifying disorder, the qualified mental health expert may rely on an examination of the defendant, the defendant's medical records, arrest reports, or any other relevant evidence;
 - b) The court is satisfied that the defendant's mental disorder played a significant role in the commission of the charged offense. A court may conclude that a defendant's mental disorder played a significant role in the commission of the charged offense if, after reviewing 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, the court concludes that the defendant's

- mental disorder substantially contributed to the defendant's involvement in the commission of the offense;
- c) In the opinion of a qualified mental health expert, the defendant's symptoms motivating the criminal behavior would respond to mental health treatment;
 - d) The defendant consents to diversion and waives his or her right to a speedy trial;
 - e) The defendant agrees to comply with treatment as a condition of diversion; and
 - f) The court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety, as specified, if treated in the community. The court may consider the opinions of the district attorney, the defense, or a qualified mental health expert, and may consider the defendant's violence and criminal history, the current charged offense, and any other factors that the court deems appropriate.
- 2) States that if the defendant has performed satisfactorily in diversion, at the end of the period of diversion, the court shall dismiss the defendant's criminal charges.
 - 3) Specifies 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.
 - 4) Provides for pretrial diversion of a misdemeanor offense when the defendant was or is currently a member of the military who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her military service.
 - 5) States that pretrial diversion refers to the procedure of postponing prosecution of an offense filed as a misdemeanor either temporarily or permanently at any point in the judicial process from the point at which the accused is charged until adjudication.
 - 6) Provides for diversion of misdemeanors when the defendant is a person with cognitive disabilities.
 - 7) Provides for diversion of bad check cases.
 - 8) Establishes the Law Enforcement Assisted Diversion program for offenses related to controlled substances, alcohol and prostitution.
 - 9) Authorizes a trial court to "defer entry of judgment" (DEJ) for eligible drug offenders, provided the offender pleads guilty and completes an approved drug program, as specified.
 - 10) Authorizes a "preguilty plea" diversion for eligible drug offenders in counties where the court, the prosecutor and the public defender agree to use such a process.
 - 11) Authorizes the District Attorney to approve pretrial diversion programs within the county of their jurisdiction, for misdemeanors that do not include DUIs.

- 12) Requires non-violent drug possession offenders and parolees to receive drug treatment instead of incarceration.
- 13) Specifies that when a person is charged with driving under the influence of alcohol or drugs, the court shall not suspend or dismiss the criminal proceedings because the defendant participates in education, training, or treatment programs.

FISCAL EFFECT: According to the Assembly Appropriations Committee, negligible fiscal impact.

COMMENTS: According to the author, "Roughly a third of inmates in California's jails suffer from serious mental illness. At least one study has concluded that California's jail system has become de facto the largest mental health service provider in the United States, despite being ill-equipped to do so. In the last decade alone, lawsuits resulting from jail overcrowding and inmate death or injuries relating to inadequate mental health care or mistreatment of the mentally ill have cost California hundreds of millions of dollars.

"One reason for the constant jailing of mentally ill Californians is that under current law, trial courts have little ability to rehabilitate mentally ill Californians charged with even minor criminal offenses, without first convicting them of the underlying offense, thereby damaging their prospects for future employment and housing. For example, even where a defendant's offense is clearly a product of mental illness, a court cannot order mental health treatment, relevant counselling, or adherence to a medication regime unless the person suffering from mental illness is first convicted, and then placed on probation or sent to jail at county expense." The proposed bill would grant trial courts the discretion to offer diversion to defendants who suffer from mental illness when charged with low level offenses, after a showing that mental illness played a significant role in the commission of the underlying offense, that the defendant would benefit from mental health treatment AND that there is an available treatment program or programs available for the defendant.

"In essence, if appropriate, a court may (but is not required to) impose the same rehabilitative probationary conditions on a defendant it would have imposed had the defendant been convicted (including that the defendant comply with a mental health treatment plan, obey all laws and make restitution to any victims), with the added incentive that successful completion of diversion would result in dismissal of the criminal case, without the permanent detriment of a criminal record.

"Because such diversionary sentences take advantage of existing community resources for the mentally ill, research suggests that such sentences will save counties money in the short-term on reduced trial and incarceration costs, and in the long-term based on reduced recidivism rates.

"Importantly, a court will not be authorized to grant diversion where no treatment program for the defendant exists. Thus, because the diversionary sentence authorized under this bill relies entirely on pre-existing and available space in community based mental health treatment programs, counties will not be required to create or pay for new treatment facilities or programs."

Please see the policy committee analysis for a full discussion of this bill.

ATTACHMENT F

Senate Third Reading
Analysis of Senate Bill 215 as
amended August 23, 2018

pages 1 through 3
(complete)

SENATE THIRD READING
SB 215 (Beall)
As Amended August 23, 2018
Majority vote

SENATE VOTE: 38-0

Committee	Votes	Ayes	Noes
Public Safety	6-0	Jones-Sawyer, Lackey, Carrillo, McCarty, Kiley, Weber	
Appropriations	17-0	Gonzalez Fletcher, Bigelow, Bloom, Bonta, Brough, Calderon, Carrillo, Chau, Eggman, Fong, Friedman, Gallagher, Eduardo Garcia, Nazarian, Obernolte, Quirk, Reyes	

SUMMARY: Amends AB 1810 (Budget Committee), Chapter 34, Statutes of 2018, which authorized pre-trial diversion for defendants suffering from a mental disorder, when specified criteria are met, to require the court, upon request, to a hearing to determine whether restitution is owed to any victim as a result of the diverted offense and, if owed, order its payment during the period of diversion. Specifies that a defendant's inability to pay restitution due to indigence or mental disorder shall not be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion. Exclude defendants charged with specified serious and violent offenses from the diversion program.

EXISTING LAW:

- 1) Allows a court to grant pretrial diversion to a defendant suffering from a mental disorder if all of the following criteria are met:
 - a) The court is satisfied that 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. Evidence of the defendant's mental disorder shall be provided by the defense and shall include a recent diagnosis by a qualified mental health expert. In opining that a defendant suffers from a qualifying disorder, the qualified mental health expert may rely on an examination of the defendant, the defendant's medical records, arrest reports, or any other relevant evidence;
 - b) The court is satisfied that the defendant's mental disorder played a significant role in the commission of the charged offense. A court may conclude that a defendant's mental disorder played a significant role in the commission of the charged offense if, after reviewing 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, the court concludes that the defendant's mental disorder substantially contributed to the defendant's involvement in the commission of the offense;
- c) In the opinion of a qualified mental health expert, the defendant's symptoms motivating the criminal behavior would respond to mental health treatment;
 - d) The defendant consents to diversion and waives his or her right to a speedy trial;
 - e) The defendant agrees to comply with treatment as a condition of diversion; and
 - f) The court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety, as specified, if treated in the community. The court may consider the opinions of the district attorney, the defense, or a qualified mental health expert, and may consider the defendant's violence and criminal history, the current charged offense, and any other factors that the court deems appropriate.
- 2) States that if the defendant has performed satisfactorily in diversion, at the end of the period of diversion, the court shall dismiss the defendant's criminal charges.
 - 3) Specifies 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.
 - 4) Provides for pretrial diversion of a misdemeanor offense when the defendant was or is currently a member of the military who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her military service.
 - 5) States that pretrial diversion refers to the procedure of postponing prosecution of an offense filed as a misdemeanor either temporarily or permanently at any point in the judicial process from the point at which the accused is charged until adjudication.
 - 6) Provides for diversion of misdemeanors when the defendant is a person with cognitive disabilities.
 - 7) Provides for diversion of bad check cases.
 - 8) Establishes the Law Enforcement Assisted Diversion program for offenses related to controlled substances, alcohol and prostitution.
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 - 11) Authorizes the District Attorney to approve pretrial diversion programs within the county of their jurisdiction, for misdemeanors that do not include DUIs.

- 12) Requires non-violent drug possession offenders and parolees to receive drug treatment instead of incarceration.
- 13) Specifies that when a person is charged with driving under the influence of alcohol or drugs, the court shall not suspend or dismiss the criminal proceedings because the defendant participates in education, training, or treatment programs.

FISCAL EFFECT: According to the Assembly Appropriations Committee, negligible fiscal impact.

COMMENTS: According to the author, "Roughly a third of inmates in California's jails suffer from serious mental illness. At least one study has concluded that California's jail system has become de facto the largest mental health service provider in the United States, despite being ill-equipped to do so. In the last decade alone, lawsuits resulting from jail overcrowding and inmate death or injuries relating to inadequate mental health care or mistreatment of the mentally ill have cost California hundreds of millions of dollars.

"One reason for the constant jailing of mentally ill Californians is that under current law, trial courts have little ability to rehabilitate mentally ill Californians charged with even minor criminal offenses, without first convicting them of the underlying offense, thereby damaging their prospects for future employment and housing. For example, even where a defendant's offense is clearly a product of mental illness, a court cannot order mental health treatment, relevant counselling, or adherence to a medication regime unless the person suffering from mental illness is first convicted, and then placed on probation or sent to jail at county expense.

"The proposed bill would grant trial courts the discretion to offer diversion to defendants who suffer from mental illness when charged with low level offenses, after a showing that mental illness played a significant role in the commission of the underlying offense, that the defendant would benefit from mental health treatment AND that there is an available treatment program or programs available for the defendant.

"In essence, if appropriate, a court may (but is not required to) impose the same rehabilitative probationary conditions on a defendant it would have imposed had the defendant been convicted (including that the defendant comply with a mental health treatment plan, obey all laws and make restitution to any victims), with the added incentive that successful completion of diversion would result in dismissal of the criminal case, without the permanent detriment of a criminal record.

"Because such diversionary sentences take advantage of existing community resources for the mentally ill, research suggests that such sentences will save counties money in the short-term on reduced trial and incarceration costs, and in the long-term based on reduced recidivism rates.

"Importantly, a court will not be authorized to grant diversion where no treatment program for the defendant exists. Thus, because the diversionary sentence authorized under this bill relies entirely on pre-existing and available space in community based mental health treatment programs, counties will not be required to create or pay for new treatment facilities or programs."

Please see the policy committee analysis for a full discussion of this bill.

PROOF OF SERVICE

I, Cindy Brines, declare that: I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is P.O. Box 2712, San Pedro, CA 90731.

I further declare that I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United State Postal Service; and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business.

On October 26, 2021, I caused to be served the following document: **APPELLANT'S REQUEST FOR JUDICIAL NOTICE; PROPOSED ORDER**, by placing a true copy in a separate envelope addressed to each addressee, respectively, as follows:

Cory Braden, Jr.	County of San Bernardino
16429 Lariat Rd. #5	Appeals and Appellate Div.
Victorville, CA 92395	The Honorable John M. Tomberlin
	8303 Haven Avenue, 1st Floor
	Rancho Cucamonga, CA 91730

I then sealed the envelope and, with the postage fully prepaid, I placed the envelop in the United States mail, this same day, at San Pedro, California.

On October 26, 2021, I electronically served the attached **APPELLANT'S REQUEST FOR JUDICIAL NOTICE; PROPOSED ORDER** by transmitting a true copy via this Court's TrueFiling system.

I electronically served from my electronic service address of cindybrines@sbcglobal.net, **APPELLANT'S REQUEST FOR JUDICIAL NOTICE; PROPOSED ORDER** on October 26, 2021 to the following entities:
Appellate Defenders Inc., eservice-court@adi-sandiego.com

Attorney General's Office, sdag.docketing@doj.ca.gov
District Attorney, appellateservices@sbcda.org
Court of Appeal Fourth Appellate District, Division II, via
Truefiling
Daniel Messner, daniel.messner@pd.sbcounty.gov

I declare under penalty of perjury under the laws of the
State of California that the foregoing is true and correct.

Executed on October 26, 2021

/s/ Cindy Brines

CINDY BRINES