

No. S268925

**In the Supreme Court of the State of California**

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THE PEOPLE OF THE STATE OF CALIFORNIA,  
*Plaintiff and Respondent,*

v.

CORY JUAN BRADEN, JR.,  
*Defendant and Appellant.*

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Fourth Appellate District, Division Two, Case No. E073204  
San Bernardino County Superior Court, Case No. FVI18001116  
The Honorable John M. Tomberlin, Judge

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**RESPONDENT'S MOTION FOR JUDICIAL NOTICE;  
PROPOSED ORDER**

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ROB BONTA (SBN 202668)  
*Attorney General of California*  
LANCE E. WINTERS (SBN 162357)  
*Chief Assistant Attorney General*  
STEVE OETTING (SBN 142868)  
*Acting Senior Assistant Attorney  
General*  
AMANDA LLOYD (SBN 239682)  
*Deputy Attorney General*  
600 West Broadway, Suite 1800  
San Diego, CA 92101  
P.O. Box 85266  
San Diego, CA 92186-5266  
Telephone: (619) 738-9015  
Fax: (619) 645-2044  
Amanda.Lloyd@doj.ca.gov  
*Attorneys for Plaintiff and Respondent*

January 28, 2022

Respondent respectfully moves this Court, pursuant to Evidence Code sections 452 and 459 and rule 8.252 of the California Rules of Court, to take judicial notice of the following legislative analyses, reports, and an enrolled bill:

1. Assembly Floor Analysis of A.B. 1810, as amended June 12, 2018 (pages 1-10)
2. California Health & Human Services, Enrolled Bill Report on S.B. 215 (pages 11-16)
3. Senate Committee on Budget and Fiscal Review Analysis of A.B. 1810, as amended June 12, 2018 (pages 17-19)
4. Senate Floor Analysis of S.B. 215, as amended August 23, 2018 (pages 20-23)
5. Assembly Committee on Public Safety Analysis of S.B. 215, as amended January 25, 2018 (pages 24-33)
6. Senate Floor Analysis of S.B. 215, as amended January 25, 2018 (pages 34-40)
7. Senate Committee on Public Safety Analysis of S.B. 215, as amended January 3, 2018 (pages 41-48)
8. Senate Committee on Appropriations Analysis of S.B. 215, as amended January 9, 2018 (pages 49-52)

These documents were not presented to the trial court for judicial notice, and are appended to this motion as Attachment Nos. 1 through 8.

These documents are relevant parts of the legislative history behind the addition of Penal Code section 1001.36. It is appropriate to take judicial notice of committee analyses and

reports. (*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 Cal.4th 580, 591, fn. 3 [judicial notice of committee reports].) This Court has also “routinely found enrolled bill reports, prepared by a responsible agency contemporaneous with passage and before signing, instructive on matters of legislative intent.” (*Elsner v. Uveges* (2004) 34 Cal.4th 915, 934, fn. 19.)

These records are relevant to the instant case because they demonstrate the reasons that motivated the Legislature to enact the pretrial diversion program in Penal Code section 1001.36. Specifically, as argued in greater detail in respondent’s Brief on the Merits, the legislative records demonstrate that the addition of the mental health diversion program was motivated, at least in part, to avoid expending state resources in trials of mentally ill individuals (including incompetency proceedings), to save resources at the Department of State Hospitals by utilizing county-run facilities, and to ensure early intervention and treatment for mentally ill offenders.

For all of these reasons, respondent respectfully requests that the Court take judicial notice of the above-named legislative history documents.

Respectfully submitted,

ROB BONTA

*Attorney General of California*

LANCE E. WINTERS

*Chief Assistant Attorney General*

STEVE OETTING

*Acting Senior Assistant Attorney  
General*

/AMANDA LLOYD/

AMANDA LLOYD

*Deputy Attorney General*

*Attorneys for Plaintiff and Respondent*

January 28, 2022

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**[PROPOSED] ORDER GRANTING MOTION FOR  
JUDICIAL NOTICE**

Good cause appearing, it is hereby ordered that Respondent's Motion for Judicial Notice of eight relevant legislative history records is GRANTED.

Dated: \_\_\_\_\_

Chief Justice

(Without Reference to File)

CONCURRENCE IN SENATE AMENDMENTS

AB 1810 (Committee on Budget)

As Amended June 12, 2018

Majority vote. Budget Bill Appropriation Takes Effect Immediately

ASSEMBLY: (May 10, 2018) SENATE: 24-12 (June 18, 2018)

(vote not relevant)

Original Committee Reference: **BUDGET**

**SUMMARY:** This is the Omnibus Health Trailer Bill for 2018-19. It contains necessary changes related to the Budget Act of 2018. This bill makes various statutory changes to implement the 2018-19 budget. Specifically, **this bill:**

1) **Health Care Cost Transparency Database.**

- a) Establishes legislative intent to establish a system to collect information regarding the cost of health care, and to aggregate this data to provide greater transparency on health care costs, achieve a sustainable health care system with equitable access to affordable and quality health care for all. Establishes legislative intent to encourage health care service plans, health insurers and providers to use data to develop innovative approaches, services and programs to deliver health care that is cost-effective and responsive to enrollees' needs, including recognizing the impact of diversity and social determinants of health.
- b) Requires the Office of Statewide Health Planning and Development (OSHPD) to establish, with the intent to be completed by July 1, 2023, the California Health Care Cost Transparency Database to collect information on the costs of health care in order to create transparency on health care costs, and to inform policy decisions, reduce disparities, and reduce costs.
- c) Requires OSHPD to convene a review committee, composed of health care stakeholders and experts, as specified, to provide advice on the establishment, implementation and ongoing administration of the database, including a business plan for long-term sustainability without General Fund. Requires the review committee to:
  - i) Not have decision-making authority related to the database;
  - ii) Not have a financial interest in the recommendations made; and
  - iii) Hold public meetings with stakeholders and set its own meeting agendas.
- d) Authorizes OSHPD to consider recommendations contained in the Health Care Cost, Quality, and Equity Data Atlas Technical Feasibility Analysis dated March 1, 2017.
- e) Authorizes OSHPD to contract with third-party vendors to assist with the implementation of the database.

- f) Requires OSHPD to develop a guidance to require data submission from the specified entities, including a methodology for the collection, validation, refinement, analysis, comparison, review and improvement of health care data. Requires the guidance to consider data elements proposed by the all-Payer Claims Database Council, the University of New Hampshire, the National Association of Health Data Organizations, Medi-Cal, and Medicare, among others.
- g) Requires OSHPD to submit a report to the Legislature based on recommendations of the review committee and any third-party vendor, no later than July 1, 2020, including:
  - i) Specified information such as types of data, entities and individuals required to report data, prioritized data elements to collect, analyzed data aggregation and advice on confidentiality, privacy and security, and advice regarding existing systems, data and other resources that can be used to streamline the system.
  - ii) Additional legislation needed to ensure database receives appropriate data and to protect privacy rights and confidentiality of the data, and to enforce compliance;
  - iii) A plan for long-term non-General Fund financing to support the ongoing costs of the database.
  - iv) Identification of governance structure; and
  - v) Description of how the database can map to other datasets.
- h) Requires health care service plans, health insurers, and other specified entities to provide the following to OSHPD:
  - i) Utilization data or encounter data; and
  - ii) Pricing information for health care items, services, and medical and surgical episodes of care.
- i) Requires OSHPD to:
  - i) Consult with state entities as necessary to implement the Database;
  - ii) Ensure all policies and procedures protect privacy, security, and confidentiality of health information;
  - iii) Develop policy regarding data aggregation; and
  - iv) Discontinue implementation or operation of the database if there is a determination, after consultation with the review committee, that OSHPD is unable to obtain necessary, reliable, and relevant data.

## 2) **Council on Health Care Delivery Systems.**

- a) Makes findings and declarations about health care costs, access to care, un- and under-insured rates in California, workforce shortages, and that health care is a human right.

- b) Establishes legislative intent to achieve universal health coverage in California, ensure all Californians have access to affordable coverage, address health care workforce shortages, and ensure access for all Californians to culturally and linguistically-appropriate health care.
  - c) Establishes the Council on Health Care Delivery Systems, as of January 1, 2019, as an independent body to develop a plan that includes options for advancing progress toward achieving a health care delivery system that provides coverage and access through a unified financing system for all Californians. Authorizes the California Health and Human Services agency to staff the Council. Implements the creation of this council by requiring:
    - i) The council to meet on or before July 1, 2019 and to meet at least quarterly at easily-accessible locations;
    - ii) The council to be comprised of five members, three appointed by the Governor, one by the Senate and one by the Assembly, who serve without compensation;
    - iii) The council to elect a chairperson on an annual basis;
  - d) Authorizes the council to establish advisory committees made up of members of the public.
  - e) Requires the council to:
    - i) Submit to the Legislature and Governor, and post on the Agency's website, a plan with options that include a timeline of benchmarks and steps necessary to implement health care delivery system changes including steps necessary to achieve a unified financing system, on or before October 1, 2021; and
    - ii) Provide an update on its progress to the Governor and the health committees of the Legislature on or before January 1, 2020, and every six months thereafter.
  - f) Requires the plan to include: key design options, potential requirements for federal waivers and federal statutory changes related to federal funds, current statutory requirements that could improve health care, options for financing, analysis of the need for voter approval, and the need for information technology systems and financial management systems.
- 3) **Health Benefit Exchange Affordability Options.** Requires the Exchange, in consultation with stakeholders and the Legislature, to develop options for providing financial assistance to low- and middle-income Californians to help them access health care coverage with respect to individual coverage made available in the Exchange. Specifically, the bill requires the Exchange to:
- a) Submit these options to the Legislature, Governor and Council on Health Care Delivery Systems by February 1, 2019, and post on their website;



- b) Include options for individuals paying a significant percentage of their income on premiums, even with federal financial assistance, and for those with an annual income of up to 600% of federal poverty; and
  - c) Consider maximizing all available federal funding and determine whether federal financial participation for Medi-Cal would be jeopardized.
- 4) **Breast and Cervical Cancer Treatment Caps.** Eliminates length-of-treatment caps for breast and cervical cancer treatments within the Breast and Cervical Cancer Treatment Program.
- 5) **Diabetes Prevention Program.** Streamlines the requirements of the Diabetes Prevention Program in order to implement the program in accordance with the federal Centers for Disease Control and Prevention Diabetes Prevention Recognition Program by removing program eligibility requirements related to age, body mass index and other specific qualifications.
- 6) **Erroneous Payments Recoupment Process.** Requires the Department of Health Care Services to arrange reasonable processes for the recoupment of erroneous overpayments to providers, when requested by providers who demonstrate hardship. Requires the Department to post on its website the mechanism by which providers may request a modification to the timing of the provider's required recoupment.
- 7) **Cost-Based Reimbursement clinics.** Establishes a directed payment program for certain cost-based reimbursement clinics (CBRCs), effective no sooner than July 1, 2019, to expand cost-based reimbursement for CBRCs that contract with managed care plans for services provided to Medi-Cal beneficiaries. Specifically, this bill:
- a) Requires the Department of Health Care Services to increase the capitation amounts paid to affected plans in each fiscal year by the amount the department deems necessary for the plan to comply with these new requirements;
  - b) Prohibits the directed payments to supplant amounts that would otherwise be payable by a plan to a CBRC, and prohibits the plan from imposing a fee or retention amount that would result in a reduction to the amounts required herein;
  - c) Authorizes the nonfederal share of the increases to be funded through voluntary, intergovernmental transfers from affected counties or other public entities;
  - d) Requires that the first \$30 million of nonfederal share in each fiscal year shall be financed by other state funds appropriated to the Department for this purpose;
  - e) Requires the Department to consult with affected counties periodically, as deemed appropriate, on the likeliness of federal approval and financial and programmatic support of these payments to the Medi-Cal program, thereafter authorizes the Department to either 1) reduce the size of the payments in that year; or 2) not implement the payments for the applicable year or years.
- 8) **Public Free-Standing Non-Hospital Based Clinics Supplemental Reimbursement Program.** Repeals this program.

- 9) **Community Treatment Facilities Technical Adjustment.** Eliminates the annual appropriation of \$45,000 General Fund to the Department of Health Care Services for the Community Treatment Facilities Program.
- 10) **General Fund Loan Authority.** Increases the authority for the maximum General Fund loan amount, and corresponding federal funds, from \$1 billion to \$2 billion in the event of a General Fund deficiency in the Medi-Cal program budget. Also clarifies that a General Fund loan may be repaid in the following state fiscal year (SFY) from the SFY in which the loan was provided. Authorizes the loan to be repaid either through the Budget act or by using the proceeds of a supplemental appropriations bill, and requires the Department of Health Care Services to inform the State Controller of the bill and SFY in which the loan will be repaid. Requires legislative notification when a loan is approved for the Medi-Cal program within 10 days of authorizing the loan, including the reasons for the transfer and the fiscal assumptions used to calculate the loan amount.
- 11) **Black Infant Health.** Establishes the California Perinatal Equity Initiative to expand the scope of interventions provided under the Black Infant Health Program. Specifically, the bill:
- a) Makes findings and declarations that there continues to be a statewide gap between mortality rates for black infants and those for other populations. The bill requires the initiative to foster Community Centers of Excellence in perinatal health and requires the Department to develop a process to allocate funds to up to 15 county health departments to improve black infant birth outcomes and infant mortality;
  - b) Establishes legislative intent to: promote the establishment of Community Centers of Excellence in perinatal health based on public health science on the causes of persistent inequality and current best practices to narrow the gap; and to direct funding to county health departments to create changes in public awareness and in public health and clinical practice.
  - c) Requires the Department of Public Health to expand the scope of intervention provided under the Black Infant Health Program;
  - d) Authorizes counties to participate in the program on an optional basis;
  - e) Specifies uses of the funding as being for: creating a local grant program to develop Community Centers of Excellence in perinatal health; providing technical assistance to recipients of local grants such as hospitals, clinics, or other community-based organizations; carrying out local public awareness efforts on birth outcome inequalities and the value of preconception health, group prenatal care, interventions to prevent preterm births and social support; participating in collaborative statewide learning efforts; and collecting and reporting data and information on process and outcome measures on programs and activities supported with these funds;
  - f) Requires the Department to consult with stakeholders, as specified; and
  - g) Prohibits the use of these funds to supplant funds from other sources.
- 12) **Syringe Exchange Programs.** Reauthorizes and makes changes to State-authorized syringe exchange programs by:

- a) Deleting the sunset;
  - b) Reducing the public comment period from 90 to 45 days;
  - c) Allowing the state to purchase materials necessary to prevent the spread of communicable diseases and to prevent drug overdose, injury or disability and protects all staff and volunteers participating in syringe exchange programs from being subject to criminal prosecution for the possession, furnishing, or transfer of these materials; and
  - d) Authorizing the Department, if it determines that a state authorized syringe exchange program continues to meet all standards and a public health need exists, may administratively approve amendments to a program's operations, including modifications to the time, location and type of services provided, without being subject to the public noticing requirements. Authorizes the Department 30 days to respond to a request for amendment, and if the Department does not respond in writing within 30 business days, deems the request denied.
- 13) **PrEP Assistance Program.** Expands and clarifies coverage under the PrEP Assistance Program. Specifically, this bill:
- a) Expands program eligibility to those who may consent to medical care related to the prevention of sexually transmitted diseases, per Section 6926 of the Family Code;
  - b) Requires that unemancipated minors between 12 and 17 years of age be considered a family size of one for determining financial eligibility for this program;
  - c) Extends funding to cover the costs of HIV medications and related medical services to uninsured individuals;
  - d) Clarifies that the use of the drug manufacturer's medication assistance program is not required if it is not accepted by the health plan or pharmacy contracted with the health plan;
  - e) Requires coverage of the costs of both PrEP (Pre-Exposure Prophylaxis)-related and PEP (Post-Exposure Prophylaxis)-related medical services for insured individuals;
  - f) Subsidizes premiums to purchase or maintain health insurance coverage for individuals using PrEP if the director determines it is feasible and would result in cost savings to the state;
  - g) Clarifies that, for this program, an insured individual on a parent's or partner's health plan shall be considered uninsured if he or she is unable to use his or her health insurance coverage for confidentiality or safety reasons; and
  - h) Authorizes the program to subsidize HIV-prevention medication costs for: i) up to 14 days of PrEP and PEP medications; and ii) up to 28 days of PEP medications for a victim of sexual assault.
- 14) **Lead Construction Certification Program.** Establishes the program fee at \$87 beginning July 1, 2018, and authorizes the program to increase program fees to cover the costs of operating this program, with the intent to reduce the application processing time from 120 to

60 days. Requires the Department to prepare a report to the budget committees of the Legislature, and post the report on its website, by February 1 of any year in which the Department raises or establishes new or additional fees.

- 15) **Licensing and Certification – Los Angeles Facilities Fee.** Authorizes the Department of Public Health to assess a supplemental license fee on facilities located in Los Angeles County to cover additional costs of regulating the health care facilities located in Los Angeles County, beginning in 2018-19. Requires the department to calculate the supplemental fee based on the difference between the estimated costs of regulating facility types licensed in Los Angeles County between those facilities for which licensing and certification activities are conducted by Los Angeles County versus those facilities for which licensing and certification facilities are conducted by the State. Requires that the additional fee revenue be used to cover the costs to administer and enforce state licensure standards and other federal compliance activities for facilities located in Los Angeles. Requires that the fees be based upon the fee methodology published in the Annual Fee Report.
- 16) **Licensing and Certification -- Federal Standards.** Reinstates authority to use federal certification standards for state licensure of chronic dialysis clinics, rehabilitation clinics, and ambulatory surgical clinics, and during the rulemaking process for Intermediate Care Facilities/Developmentally Disabled regulations.
- 17) **Incompetent to Stand Trial Mental Health Diversion Program.** Implements a mental health diversion program with a focus on reducing the number of Incompetent to Stand Trial referrals to the Department of State Hospitals. Specifically, this bill:
- a) Requires the Department to consider local discretion and flexibility in diversion activities that meet the community's needs.
  - b) Authorizes the Department to solicit proposals from, and contract with, a county to help fund the development or expansion of pretrial diversion for the population for whom the following circumstances exist:
    - i) Individuals diagnosed with schizophrenia, schizoaffective disorder, or bipolar disorder who have the potential to be found incompetent to stand trial for felony charges, or who have been found incompetent to stand trial;
    - ii) There is a significant relationship between the individual's serious mental disorder and the charged offense or between the individual's conditions of homelessness and the charged offense; and
    - iii) The individual does not pose an unreasonable risk of danger to public safety if treated in the community.
  - c) Requires a county applying for funding under this program to designate a lead entity and show support from other county entities, including courts.
  - d) Requires the Department to consult with the Council on Criminal Justice and Behavioral Health on reviewing county proposals for these funds, and shall prioritize proposals that demonstrate the potential to reduce incompetent to stand trial referrals to the Department and demonstrate the following:

- i) The proposal includes the provision of clinically appropriate or evidence-based mental health treatment and wraparound services across a continuum of care;
  - ii) Collaboration between community stakeholders and government agencies; and
  - iii) Connection of individuals to services in the community after they have completed diversion.
- e) Authorizes the Department to include funding in a contract with a county to:
- i) Cover the costs of postbooking assessment of defendants likely to be found incompetent to stand trial on felony charges to determine if the defendant would benefit from diversion; and
  - ii) Cover the costs of in-jail treatment prior to placement in the community for up to an average of 15 days for defendants who have been approved by the court for diversion.
- f) Requires a county in contract with the Department to implement a diversion program to report data and outcomes to the Department within 90 days of the end of each quarter, regarding the individuals targeted by the contract and in the program, including specified types of information.
- g) Requires a county to provide a 20% match in order to receive funds for this purpose, or 10% match for small counties -- population of 200,000 or less.
- h) Prohibits the use of these funds to supplant funds from other sources.
- i) Requires the Department to have access to the arrest records and state summary of criminal history of defendants participating or who have participated in the diversion program, solely for the purpose of looking at the recidivism rate for those defendants.
- j) Authorizes a court to grant pretrial diversion to a defendant who meets the requirements established in this bill, including:
- i) The court is satisfied that the defendant suffers from a mental disorder including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, and excluding antisocial personality disorder, borderline personality disorder, and pedophilia;
  - ii) The court is satisfied that the defendant's mental disorder played a significant role in the commission of the charged offense;
  - iii) The defendant's symptoms motivating the criminal behavior would respond to mental health treatment, in the opinion of a qualified mental health expert;
  - iv) The defendant consents to diversion and waives his or her right to a speedy trial, except those found to be incompetent to stand trial;
  - v) The defendant agrees to comply with treatment as a condition of diversion; and

- vi) The court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety if treated in the community.
- k) Defines "pretrial diversion" to mean the postponement of prosecution, temporarily or permanently, to allow the defendant to undergo mental health treatment, subject to all of the following:
  - i) The court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the needs of the defendant; and
  - ii) The defendant may be referred to a program of mental health treatment utilizing existing inpatient or outpatient mental health resources.
- l) Requires mental health providers serving defendants in this program to provide regular treatment progress reports to the court, the defense, and the prosecutor.
- m) Limits the period of time for which criminal proceedings may be diverted to no longer than two years.
- n) Requires the court to hold a hearing to determine whether criminal proceedings should be reinstated, whether treatment should be modified or whether the defendant should be conserved and referred to conservatorship proceedings if any of the following circumstances exist:
  - i) The defendant is charged with an additional misdemeanor that reflects a propensity for violence;
  - ii) The defendant is charged with an additional felony;
  - iii) The Defendant is engaged in criminal conduct rendering him or her unsuitable for diversion;
  - iv) The defendant is performing unsatisfactorily in the assigned program; or
  - v) The defendant is gravely disabled.
- o) Requires the court to dismiss the defendant's criminal charges if the defendant performed satisfactorily in diversion, by complying with the requirements of diversion, 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.
- p) Requires the court clerk to file a record with the Department of Justice indicating the disposition of the case diverted.
- q) Requires the charges to be deemed never to have occurred should diversion be completed successfully and prohibits a record pertaining to an arrest resulting in successful completion of diversion to be used to deny employment, benefit, license or certificate.
- r) Requires defendants to be advised that, regardless of the successful completion of diversion, both of the following apply:

- i) The arrest may be disclosed to any peace officer application request or in the course of an interview for a position as a peace officer; and
- ii) A sealed record has no effect on a criminal justice agency's ability to access and use sealed records on the relevant arrest.
- s) Prohibits the use of the defendant's mental health records to be used in any other proceeding without the defendant's consent, with exceptions as specified.
- t) Requires that, to the extent not prohibited by federal law, the defendant's mental health treatment providers, the public guardian or conservator and the court shall have access to the defendant's medical and psychological records, including progress reports, for the purpose of providing care and treatment.

**18) Competency Restoration Assessments.** Allows courts to make a determination that a defendant/patient, who has been found to be Incompetent to Stand Trial, has regained competency prior to admission into the proposed Los Angeles County Restoration in Community Treatment Program facility or a Department of State Hospitals facility where such patient would receive restoration of competency services.

**COMMENTS:** This bill is a budget trailer bill within the overall 2018-19 budget package to implement actions taken affecting the Departments of Health Care Services, Public Health, the California Health and Human Services Agency, and the California Health Benefits Exchange.

**Analysis Prepared by:** Andrea Margolis / BUDGET / (916) 319-2099

FN: 0003537

<b>CONFIDENTIAL- Not Subject to Disclosure under the Public Records Act</b>		
Department/Board: State Hospitals	Author: Beall	Bill Number/Version Date: SB 215/Enrolled
Sponsor:  <input type="checkbox"/> Admin Sponsored    Proposal No.	Related Bill(s)	Chaptering Order (if known)  <input type="checkbox"/> Attachment
Subject: Diversion: mental disorders		

**SUMMARY**

This bill amends AB 1810 (Committee on Budget, Chapter 34, Statutes of 2018) which authorized pre-trial diversion for defendants suffering from a mental disorder. The amendments made by this bill categorically exclude defendants charged with specified serious and violent offenses from the diversion program, require the court, upon request, to 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. The bill 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.

**RECOMMENDATION**

**SIGN.** The diversion program created by AB 1810 gave the Department of State Hospitals (DSH) flexibility in trying to address concerns with Incompetent to Stand Trial (IST) defendant waitlists for competency restoration by allowing pretrial diversion to community-based mental health treatment programs, thus potentially reducing the number of individuals referred to DSH for treatment. This bill simply clarifies that specified serious and violent offences are not eligible for pre-trial diversion and that restitution to any victim is owed during diversion.

Departments That May Be Affected:			
<input type="checkbox"/> New / Increased Fee	<input type="checkbox"/> Governor's Appointment	<input type="checkbox"/> Legislative Appointment	
<input type="checkbox"/> State Mandate	<input type="checkbox"/> Urgency Clause	<input type="checkbox"/> Regulations Required	<input type="checkbox"/> Legislative Report
Dept/Board Position <input checked="" type="checkbox"/> Sign <input type="checkbox"/> Veto <input type="checkbox"/> Defer to:	Agency Secretary Position <input checked="" type="checkbox"/> Sign <input type="checkbox"/> Veto <input type="checkbox"/> Defer to:		
Director /Chair <i>Pam Ahlin</i> Pam Ahlin	Date 8/30/18	Agency Secretary <i>Michael Wilkening</i> Michael Wilkening	Date 9/4/18
<i>Chief Deputy Director for</i>			



## REASON FOR THE BILL

According to the author, "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."

## ANALYSIS

The pre-trial diversion program created by AB 1810 (Committee on Budget, Chapter 34, Statutes of 2018) allows courts, with input from the defense and District Attorney, to grant pretrial diversion to individuals with mental disorders who do not pose an unreasonable safety risk if treated in the community. Individuals may be diverted to a community-based mental health treatment program for a period of up to two years. Upon successful completion of the program, the defendant's criminal charges will be dismissed. This will allow defendants with mental illness, where their mental illness played a significant role in the commission of the offense to receive mental health treatment in the community rather than be further criminalized.

Since FY 2013-14, DSH has experienced a 33% increase in the number of Incompetent to Stand Trial (IST) defendants referred annually for restoration of competency services in DSH programs. Despite the addition of 411 state hospital beds and over 300 jail-based competency treatment beds, the number of IST defendants pending placement into DSH facilities continues to grow. As of the end of August 2018, a total of 666 IST defendants are awaiting admission. The majority of patients referred to DSH have a major psychotic or mood disorder and have had multiple arrests, 47% are in an unsheltered homeless status at the time of arrest, and 47% did not access Medi-Cal reimbursable mental health services in the six months prior to their arrest.

As it applies to DSH, diversion allows individuals who have been found incompetent to stand trial on felony or misdemeanor charges to be diverted to community-based mental health treatment thus potentially reducing the number of individuals referred to DSH for treatment. This effective, sustainable solution is necessary to divert potential IST referrals, who are willing to comply with treatment, to more appropriate community-based mental health treatment and supportive services to prevent entry or reentry into the criminal justice system.

SB 215 clarifies that those accused of the serious and violent offences listed below are not eligible for pre-trial diversion and that the court must determine if restitution to any victim is owed during diversion.

- Murder or voluntary manslaughter.
- An offense for which a person, if convicted, would be required to register as a sex offender.
- Rape.
- Lewd or lascivious act on a child under 14 years of age.
- Assault with intent to commit rape, sodomy, or oral copulation.
- Commission of rape or sexual penetration in concert with another person.
- Continuous sexual abuse of a child.
- The use of a weapon of mass destruction that causes widespread great bodily injury or death or widespread damage to or disruption of the food supply or drinking water.

The Budget Act of 2018 authorized \$100 million for DSH to contract with counties to expand existing or create new diversion programs to serve individuals who have the potential to be found or who have been found incompetent to stand trial on felony charges. This bill will not impact the ability of DSH to meet the goals of this program.

## LEGISLATIVE HISTORY

AB 1810 (Committee on Budget, Chapter 34, Statutes of 2018) created a pretrial diversion program for felony and misdemeanor defendants with certain mental health disorders and authorized DSH, with consultation from the Council on Criminal Justice and Behavioral Health, to solicit proposals and contract with counties for the development of diversion programs for individuals with serious mental disorders with the potential to be found or who have been found Incompetent to Stand Trial on felony charges. This bill also authorizes a court to make a determination that an IST defendant has regained competency prior to admission into a DSH facility. It also allows an entity contracted by DSH to provide restoration of competency services in the community to declare an individual competent and file a report on competency with the court.

SB 1187 (Beall) would reduce the maximum term for felony Incompetent to Stand Trial competency restoration from three years to two years. The bill also allows a person committed to a facility pending the restoration of mental competence to earn credits against a sentence imposed for the underlying criminal case, requires a court to appoint a director of a regional center to examine the person to determine if they have a developmental disability, requires a regional center director to provide reports to the committing court for IST defendants with developmental disabilities who are placed on outpatient status, and deletes the requirement that a defendant be returned to court for a hearing if they are still incompetent after 18 months. This bill is in Engrossing and Enrolling.

SB 8 (Beall, 2017) 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.

AB 154 (Levine, 2017), would have required 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.

SB 1054 (Steinberg, Chapter 436, Statutes of 2014) clarified that mental health grants be divided equally between adult and juvenile mentally ill offender crime reduction grants and streamlined the grant process.

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.

## PROGRAM BACKGROUND

DSH manages the nation's largest inpatient forensic mental health hospital system. Its mission is to provide evaluation and treatment in a safe and responsible manner, seeking innovation and excellence in state hospital operations, across a continuum of care and settings. DSH is responsible for the daily care and provision of mental health treatment of its patients. DSH oversees five state hospitals, four of which provide competency restoration services for Incompetent to Stand Trial patients. DSH also contracts for jail-based competency treatment (JBCT) programs and conditional release programs (CONREP) throughout the state. In FY 2016-17, DSH served 13,403 patients with an average daily census of 7,087; and the jail-based competency programs served a total of 729 patients with a capacity of 178. CONREP maintains an average daily census of approximately 636. DSH's five state hospitals are Atascadero, Coalinga, Metropolitan – Los Angeles, Napa and Patton. Prior to July 2017, DSH oversaw three inpatient psychiatric programs through an interagency agreement with the California Department of Corrections and Rehabilitation (CDCR), treating inmates at state prisons in Vacaville, Salinas Valley and Stockton. The State Budget transferred the authority and resources for the prison-based inpatient psychiatric programs from DSH to CDCR in fiscal year 2017-18.

#### **OTHER STATES' INFORMATION**

None identified.

#### **FISCAL IMPACT**

None identified.

#### **ECONOMIC IMPACT**

None identified.

#### **LEGAL IMPACT**

None identified.

#### **APPOINTMENTS**

None.

#### **SUPPORT/OPPOSITION**

Support:     ACLU  
              Anti-Recidivism Coalition  
              CA Council of Behavioral Health Agencies  
              CA Judges Association  
              Friends Committee on Legislation  
              Judicial Council of CA  
              National Association of Social Workers

Opposition:  None.

**ARGUMENTS**

## Proponents:

- This bill gives courts the flexibility to offer diversion to defendants who suffer from mental illness when charged with low level felony offenses, after a showing that mental illness played a significant role in the commission of the underlying offense.
- Diversionary programs take advantage of pre-existing community resources for the mentally ill and will save money in the short-term on reduced trial and incarceration costs, and in the long-term on reduced recidivism rates.

## Opponents:

- None on file.

**VOTES**

<b>VOTES</b>	<b>DATE</b>	<b>RESULT</b>	<b>TALLY</b>
Senate Concurrence	8/29/18	Pass	36-2
Assembly Floor	8/28/18	Pass	79-0

**LEGISLATIVE STAFF CONTACT**

Contact	Work	Cell Phone	Home
Agency Secretary, Michael Wilkening	654-3724	[REDACTED]	
Agency Legislative Director, Kiyomi Burchill	651-6450	[REDACTED]	
Acting Department Director, Stephanie Clendenin	654-2309	[REDACTED]	
Department Assistant Director of Legislation, Tom Dey	562-2286	[REDACTED]	[REDACTED]

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## SENATE COMMITTEE ON BUDGET AND FISCAL REVIEW

Senator Holly Mitchell, Chair  
2017 - 2018 Regular

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<b>Bill No:</b>	AB 1810	<b>Hearing Date:</b>	June 18, 2018
<b>Author:</b>	Committee on Budget		
<b>Version:</b>	June 12, 2018 Amended		
<b>Urgency:</b>	Yes	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Scott Ogus		

**Subject:** Health

**Summary:** This bill is the omnibus health trailer bill, and contains changes to implement the 2018-19 budget.

**Proposed Law:** This bill makes technical and clarifying statutory revisions affecting health programs necessary to implement the Budget Act of 2018. Specifically, this bill:

- 1) **Medi-Cal General Fund Loan Authority.** Augments General Fund loan authority to the Department of Health Care Services (DHCS) from \$1 billion to \$2 billion for operation of the Medi-Cal program for years in which there is a deficiency, and appropriates the corresponding federal matching funds for payments made with loan funds.
- 2) **Covered California Options for Affordable Coverage.** Directs the California Health Benefits Exchange (Covered California) to, in consultation with stakeholders and the Legislature, develop and report options for providing financial assistance to help low- and middle-income Californians access health care coverage by February 1, 2019.
- 3) **Council on Health Care Delivery Systems.** Establishes the intent of the Legislature to provide coverage and access through a unified financing system for all Californians, to control health care and administrative costs, to ensure high-quality health care, to limit out-of-pocket costs, to train and employ an adequate health care workforce, and to ensure all Californians have timely access to necessary health care. Creates the Council on Health Care Delivery Systems, with three members appointed by the Governor and one each from the Senate Rules Committee and Speaker of the Assembly. Directs the council, on or before October 1, 2021, to submit a plan to the Legislature and Governor with options that include a timeline of the benchmarks and steps necessary to implement health care delivery system changes, including steps necessary to achieve a unified financing system.
- 4) **Use of Federal Standards for State Regulation of Facilities.** Authorizes the Department of Public Health (DPH) to continue using federal regulatory standards for state licensing standards for chronic dialysis clinics, rehabilitation clinics, and ambulatory surgical clinics. Authorizes DPH to continue using federal regulatory standards during the rulemaking process for regulations for intermediate care facilities for individuals with developmental disabilities.

- 5) **Los Angeles County Supplemental Licensing Fee.** Authorizes DPH to assess a supplemental licensing fee on facilities located in Los Angeles County. The fee will be used to cover the costs to administer and enforce state licensure standards and other federal compliance activities for facilities located in the county, as described in the department's annual fee report.
- 6) **Sunset Extension for Needle Exchange Programs.** Eliminates the sunset for authorization of needle exchange programs. Allows a state-funded syringe exchange supply clearing house to provide materials that are needed to prevent the transmission of viral hepatitis, fatal overdose, and other potentially deadly or disabling conditions.
- 7) **Eliminate Treatment Limits for Breast and Cervical Cancer Treatment.** Removes the current treatment limitations for beneficiaries in the state-funded Breast and Cervical Cancer Treatment Program of 18 months for breast cancer treatment and 24 months for cervical cancer treatment, consistent with other beneficiaries of the program.
- 8) **Lead-Related Construction Certification.** Sets the application fee for certification to perform lead-related construction work in residential and public buildings under the Lead-Related Construction program at a level sufficient to ensure that application processing times do not exceed an average of 60 days.
- 9) **Modify and Expand Pre-Exposure Prophylaxis (PrEP) Assistance Program.** Expands eligibility requirements, benefits, and confidentiality provisions for the PrEP Assistance Program within the AIDS Drug Assistance Program.
- 10) **Expansion of the Black Infant Health Program.** Expands the Black Infant Health Program by providing grants to counties to develop local Community Centers of Excellence in perinatal health. Directs Community Centers of Excellence to adopt evidence-based or evidence-informed strategies to reduce black infant mortality and prevent preterm births.
- 11) **Health Care Cost Transparency Database.** Directs the Office of Statewide Health Planning and Development (OSHPD) to establish and administer the Health Care Cost Transparency Database to collect data from health care service plans, health insurers and other payers regarding payments and pricing for health care services. Directs OSHPD to convene a review committee of health care stakeholders and experts to provide guidance for developing the database.
- 12) **Incompetent to Stand Trial Mental Health Diversion.** Authorizes pre-trial diversion program for individuals with certain mental disorders alleged to have committed a misdemeanor or felony offense. Directs the Department of State Hospitals (DSH), in consultation with the Council on Criminal Justice and Behavioral Health, to establish a county grant program for counties to develop or expand pretrial diversion programs for individuals with certain mental disorders alleged to have committed a misdemeanor or felony offense. Requires county programs to provide clinically appropriate or evidence-based mental health treatment and wraparound services across a continuum of care to meet the individual needs of

diversion participants, as well as a connection to services in the community upon completion of the diversion program.

- 13) **Competency Restoration Assessments.** Authorizes a court to make a determination that a patient has regained competency prior to admission into the proposed Los Angeles County Restoration in Community Treatment Program facility or a DSH facility.
- 14) **Repeal of Clinic and Community Treatment Facility Supplemental Payment Program.** Repeals statutory provisions requiring the establishment of a supplemental payment program in Medi-Cal for certain clinics and community treatment facilities, as conditions of federal approval resulted in few facilities being eligible for the program.
- 15) **Diabetes Prevention Program Implementation.** Revises eligibility requirements for the Diabetes Prevention Program at DHCS authorized in the 2017 Budget Act to be consistent with requirements for the federal Centers for Disease Control and Prevention's Diabetes Prevention Recognition Program.
- 16) **Cost-Based Reimbursement Clinic Directed Payment Program.** Authorizes DHCS to implement the Cost-Based Reimbursement Clinic (CBRC) Directed Payment Program to provide additional reimbursement to CBRCs that contract with a Medi-Cal managed care plan.
- 17) **Erroneous Payment Correction Recoupment.** Authorizes DHCS, when seeking to recoup or recover funds from Medi-Cal fee-for-service providers for overpayments, federally approved rate or payment reductions, or audit-related payment recoveries, to allow for modification of the amounts withheld from a provider payment or the timing of repayments upon request of the provider and a demonstration of hardship.

**Fiscal Effect:** This bill augments General Fund loan authority to the Department of Health Care Services from \$1 billion to \$2 billion for operation of the Medi-Cal program for years in which there is a deficiency, and appropriates the corresponding federal matching funds for payments made with loan funds.

**Support:** None on file.

**Opposed:** None on file.

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UNFINISHED BUSINESS

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

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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

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**SUBJECT:** Diversion: mental disorders

**SOURCE:** Author

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**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** \*\*\*\*

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 diveree 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 diveree 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

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THIRD READING

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Bill No: SB 215  
Author: Beall (D), et al.  
Amended: 1/9/18  
Vote: 21

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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

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**SUBJECT:** Diversion: mental disorders

**SOURCE:** California Public Defenders Association

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**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.

**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) A violent felony as defined in subdivision (c) of Penal Code Section 667.5;
  - f) Child endangerment, corporal injury on a spouse or cohabitant, elder abuse, animal cruelty, and stalking;
  - g) An offense resulting in damages of more than \$5,000; and,
  - h) 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 judgement, 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. /  
1/24/18 15:53:55

\*\*\*\* END \*\*\*\*

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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair  
2017 - 2018 Regular

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**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 --

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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Ricardo Lara, Chair  
2017 - 2018 Regular Session

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### SB 215 (Beall) - Diversion: mental disorders

**Version:** January 9, 2018

**Policy Vote:** PUB. S. 7 - 0

**Urgency:** No

**Mandate:** Yes

**Hearing Date:** January 16, 2018

**Consultant:** Shaun Naidu

**This bill meets the criteria for referral to the Suspense File.**

**Bill Summary:** SB 215 would authorize pretrial diversion for defendants who, because of a mental disorder, are charged with committing a misdemeanor or realigned felony offense.

#### **Fiscal Impact:**

- 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.

**Background:** Generally, pretrial diversion results in the defendant avoiding a criminal conviction for the offense for which he or she was charged and a dismissal of the charge if the defendant meets the terms of the diversion program to the court's satisfaction. If the defendant performs unsatisfactorily during the period of diversion, the prosecution of the charged offenses may recommence. Currently, pretrial diversion, to varying degrees, is available for misdemeanor charges when the defendant has cognitive disabilities; misdemeanor charges stemming from an active service member or veteran's service-related trauma, substance abuse, or mental health problems;

misdemeanor non-driving-under-the-influence offenses; writing bad checks; and offenses relating to controlled substances, alcohol, and prostitution. Existing law also provides for post-plea alternatives under which the entry of the court's judgment is deferred pending the defendant's participation in a treatment program.

**Proposed Law:** This bill seeks to allow pretrial diversion of misdemeanor and realigned felony charges for defendants whose mental disorder played a significant role in the commission of the charged offense. Specifically, this bill:

- Authorizes a court to grant pretrial diversion, regardless of any other law, in a case alleging the commission of a misdemeanor offense or a felony offense punishable with incarceration in county jail, except as specified, if all of the following criteria are met:
  - The court is satisfied that the defendant suffers from a mental disorder identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders;
  - The court is satisfied that the defendant's mental disorder played a significant role in the commission of the offense;
  - The court is satisfied that the defendant would benefit from mental health treatment; and
  - The defendant consents to diversion and waives his or her right to a speedy trial.
- Defines "pretrial diversion" to mean temporary or permanent postponement of prosecution 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.
- Requires the defense to arrange, to the court's satisfaction, for a mental health treatment program using existing inpatient or outpatient mental health resources.
- Allows treatment to be procured using private or public funds but limits referrals to a county mental health agency to when the agency has resources available and accepts responsibility for the defendant's treatment and the defendant is eligible for those mental health services.
- Requires the defense to provide reports by the treatment provider to the court and the prosecutor of the defendant's progress at least once a month for a diverted felony charge and at least every three months for a diverted misdemeanor charge.
- Allows the court to hold a hearing to determine if criminal proceedings should be reinstated only if:
  - It appears to the court that the divertee is performing unsatisfactorily in the program or is not benefiting from the treatment and services; and
  - After notice is provided to the divertee, defense counsel, and prosecution.
- Limits diversion of criminal proceedings to no more than two years.
- Requires dismissal of criminal charges after the defendant's satisfactory performance during the term of diversion.
- Provides, after the defendant's satisfactory performance during the term of diversion, that the arrest upon which the diversion was based is deemed never to have occurred and allows the defendant to respond accordingly except in response to an application for any peace officer position.
- Prohibits, in any other proceeding, the use of a finding that the defendant suffers from a mental disorder, any progress reports about the defendant's treatment, or any

other records related to a mental disorder that were created as a result of the diversion, except with the defendant's consent or by a court in determining whether to grant a diversion.

**Prior Legislation:** SB 8 (Beall, 2017) would have authorized pretrial diversion similar to this bill for defendants who, because of a mental disorder, are charged with committing specified offenses. SB 8 was held on the Suspense File of the Assembly Committee on Appropriations.

SB 1227 (Hancock, Ch. 658, Stats. 2013) authorized pretrial diversion for active service members and veterans alleged to have committed misdemeanor offenses if the person suffers from trauma, substance abuse, or mental health problems resulting from his or her military service.

**Staff Comments:** This bill potentially would create significant new and ongoing workload to the courts to administer a pretrial diversion program. It is unknown approximately how many people would fall under the purview of a mental health pretrial diversion program, but it could be sizeable. The author estimates that “[r]oughly one-third of inmates in California’s jails suffer from a serious mental illness.” Additionally, looking at Los Angeles County specifically, it has been reported that, while the overall population of inmates has decreased, the percentage of inmates with mental health illnesses has increased. (<http://www.latimes.com/local/california/la-me-mentally-ill-inmate-snap-story.html>). To the extent that the court considers pretrial diversion as an alternative to prosecution, there is a potentially-large segment of defendants on whom trial courts may be conducting suitability determinations. In addition to conducting mental health assessments, the courts offering pretrial diversion would need to assess appropriate program placements, provide notice to defendants of hearings, hold periodic hearings to monitor progress and determine whether prosecution should resume, review the treatment providers’ progress reports, file disposition records, and collaborate with various public agencies and private entities. Ongoing costs for these activities are unknown but could be significant.

This bill also requires the defense to provide reports from the treatment provider to the court and the prosecution on the defendant’s progress in the diversion program at least every six months for up to two years (the maximum term of diversion). To the extent that a county mental health agency is the treatment provider, it would be tasked with drafting and submitting the periodic reports. The courts, local prosecutors, and defense counsel (including local public defender’s offices) would, in turn, be required to review these reports. By increasing the duties of local agencies, this bill would impose a higher level of service. The magnitude of costs would be dependent on the volume of defendants participating in these programs, the frequency of reports submitted, and the time required to compile and review the reports.

To the extent this bill results in the successful completion of treatment programs by defendants, it could result in significant future cost savings to the criminal justice system. By diverting misdemeanor and realigned felony offenders from prosecution and keeping potential convictions off records, this bill not only potentially lessens and avoids criminal proceedings and saves local incarceration and supervision costs but also removes barriers to community participation and the ability to potentially secure stable employment for these individuals. Indeed, at least one study has concluded that “a



mental health court can reduce recidivism and violence by people with mental disorders who are involved in the criminal justice system.”

(<http://www.courtinnovation.org/sites/default/files/EffectivenessMentalHealthCourt.pdf>)

**Staff notes** that SB 215 precludes non-realigned felony offenses from diversion provided for by the bill. Additionally, it includes a list of felony offenses that the court may divert only with the approval of the prosecution. Within that conditional list are “violent felon[ies],” which are non-realigned felonies. Moreover, the bill states that specified impaired driving offenses are categorically ineligible for diversion. Despite stating in one provision that non-realigned felonies are not eligible for diversion, SB 215 could be interpreted as allowing violent felony charges to be diverted as the offenses are included in the conditional list of divertible charges. The ambiguity is further increased by having a conditional prohibited offenses list and an absolute prohibited offenses list and including violent felonies in the former. The author may wish to clarify the language to avoid a possible unintended interpretation.

-- END --

DECLARATION OF SERVICE

Case Name: *People v. Braden*

No.:S268925

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 600 West Broadway, Suite 1800, P.O. Box 85266, San Diego, CA 92186-5266. On January 28, 2022, I served the following document(s):

**RESPONDENT'S MOTION FOR JUDICIAL NOTICE; PROPOSED ORDER**

(A) **By Facsimile:** I served the attached document by transmitting a true copy by facsimile machine, pursuant to California Rules of Court, rule 2.306. The facsimile machine I used complied with Rule 2.306, and no error was reported by the machine. Pursuant to rule 2.306(h)(4), I caused the machine to print a record of the transmission, a copy of which is attached to this declaration.

on the parties through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below for service as designated below:

(B) **By First Class Mail:** I caused each such envelope to be placed in the internal mail collection system at the Office of the Attorney General in a sealed envelope, for deposit in the United States Postal Service with postage thereon fully prepaid, that same day in the ordinary course of business.

(C) **By Certified Mail:** I caused each such sealed envelope to be placed in the internal mail collection system at the Office of the Attorney General as certified mail with return receipt requested.

(D) **By Messenger Service:** I caused each such envelope to be delivered to a courier employed by a professional messenger service, with whom we have a direct billing account, who personally delivered each such envelope to the office of the addresses listed below. Name of messenger service: \_\_\_\_\_

(E) **By Overnight Mail:** I caused each such envelope to be placed in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided. Name of overnight service: \_\_\_\_\_

on the parties through their attorneys of record, by electronic mail for service as designated below:

- (F) **By TrueFiling:** Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically.
- (G) **By E-mail:** I served the attached document by transmitting a true copy via electronic mail.

TYPE OF SERVICE: [F]

Cindy Goldman Brines, Attorney at Law  
*Served via TrueFiling*

San Bernardino County Superior Court  
*Served via TrueFiling*

San Bernardino County District Attorney  
*Served via TrueFiling*

California Court of Appeal  
Fourth Appellate Dist., Div. 2  
*Courtesy Copy filed separately via  
TrueFiling*

Appellate Defenders, Inc.  
*Served via TrueFiling*

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on January 28, 2022, at San Diego, California.

Kimberly Wickenhagen

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Declarant

/Kimberly Wickenhagen/

---

Signature

83242720.DOCX

SD2021801494

83242720.docx

STATE OF CALIFORNIA  
Supreme Court of California

**PROOF OF SERVICE**

STATE OF CALIFORNIA  
Supreme Court of California

Case Name: **PEOPLE v. BRADEN**  
Case Number: **S268925**  
Lower Court Case Number: **E073204**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **amanda.lloyd@doj.ca.gov**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
MOTION	Respondent's Motion for Judicial Notice; Proposed Order

Service Recipients:

Person Served	Email Address	Type	Date / Time
Cindy Brines Attorney at Law 169125	cindybrines@sbcglobal.net	e-Serve	1/28/2022 1:03:02 PM
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

1/28/2022

Date

/s/Kimberly Wickenhagen

Signature

Lloyd, Amanda (239682)

Last Name, First Name (PNum)

Department of Justice, Office of the Attorney General-San Diego

Law Firm

