

MEMORANDUM

DATE	May 2, 2017
TO	Policy and Advocacy Committee
FROM	 Konnor Leitzell Central Services Student Assistant
SUBJECT	Agenda Item #6(c)(36) – SB 8 (Beall) Diversion: mental disorders

Background:

This bill would authorize a court, with the consent of the defendant and a waiver of the defendant's speedy trial right, 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 that 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. The bill would also allow the defense to arrange for a program of mental health treatment utilizing existing inpatient or outpatient mental health resources.

Location: Senate Committee on Appropriations

Status: Placed on Senate Committee on Appropriations Suspense File

Votes: 04/03/2017 Senate Committee on Appropriations - To Suspense (7-0-0)
03/21/2017 Senate Committee on Public Safety (5-2-0)

Action Requested:

No action is required at this time. Staff will continue to watch SB 8 (Beall) to determine if the pretrial diversion program will affect the licensing and enforcement programs ability to effectively screen applicants for licensure and effectively enforce the Psychology Licensing Law.

Attachment A: SB 8 (Beall) Text

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SECTION 1. Chapter 2.9D (commencing with Section 1001.82) is added to Title 6 of Part 2 of the Penal Code, to read:

CHAPTER 2.9D. Diversion of Low-Level Offenders Whose Offense is a Product of Mental Illness

1001.82. (a) Notwithstanding any other law, in any case before the court on an accusatory pleading alleging the commission of a misdemeanor offense or felony offense punishable in a county jail pursuant to subdivision (h) of Section 1170, the court may grant pretrial diversion to a defendant pursuant to this section if he or she meets all of the requirements specified in subdivision (b).

(b) Pretrial diversion may be granted pursuant to this section if all of the following criteria are met:

(1) 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.

(2) 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.

(3) The court is satisfied that the defendant would benefit from mental health treatment.

(4) The defendant consents to diversion and waives his or her right to a speedy trial.

(c) As used in this chapter, "pretrial diversion" means 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:

(1) 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. The treatment may be procured using private or public funds, but a referral may be made to a county mental health agency 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 mental health services. The defense shall provide reports to the court and the prosecutor from the divertee's mental health provider on the divertee's progress in the diversion program not less than every six months.

(2) 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, hold a hearing to determine whether the criminal proceedings should be reinstated.

(3) The period during which criminal proceedings against the defendant may be diverted shall be no longer than two years.

(d) 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. 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. Upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed never to have occurred. The divertee who successfully completes the diversion program may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as specified in subdivision (e).

(e) 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. Notwithstanding subdivision (d), this section does not relieve the divertee who successfully completes diversion pursuant to this section 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, as defined in Section 830. The divertee shall be advised of the requirements of this subdivision upon the successful completion of diversion.

(f) 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.

SEC. 2. *If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.*