



**STEPHANIE NGUYEN**  
Assemblymember, District 10



## FACT SHEET

### AB 46 - Diversion

#### SUMMARY

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AB 46 clarifies judicial discretion in California’s mental health diversion law and strengthens the public safety standard courts apply when determining whether a defendant is suitable for diversion. The bill ensures diversion remains available in suitable cases while providing courts clearer authority to deny diversion when public safety is at risk.

#### BACKGROUND

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California established mental health diversion in 2018 to provide treatment and rehabilitation for eligible defendants whose mental disorders were a significant factor in the commission of an offense.

Unfortunately, recent changes to the law have created dangerous loopholes that undermine public safety. In *People v. Whitmill* (2022), the Court of Appeal acknowledged that Penal Code §1001.36 limited how courts could consider a defendant’s dangerousness. The court recognized that once eligibility requirements are met, diversion may be denied *only* if the court finds that a defendant poses a risk of committing a new super strike offense (only extremely serious violent felonies).

As a result, prosecutors must effectively demonstrate that a defendant is likely to commit one of these super strike offenses for diversion to be denied. Courts have expressed concern that this framework restricts judicial discretion and does not allow for meaningful consideration of broader public safety risks that may not fall within that limited category.

This interpretation has also created confusion in lower courts and contributed to inconsistent application of the diversion statute. Clearer statutory guidance is necessary to restore clarity and ensure public safety is fully considered in diversion decisions.

#### SOLUTION

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AB 46 clarifies that courts retain discretion in diversion determinations and removes the statutory language that ties denial of diversion to the likelihood of a new super strike offense.

Specifically, this bill:

- Removes the super strike limitation from the diversion denial standard and allows courts to deny diversion when a defendant poses a public safety risk.
- Reinforces judicial discretion.

By clarifying the suitability standards and strengthening judicial discretion, AB 46 maintains access to treatment where appropriate while ensuring courts have the authority to protect victims and the broader community.

#### SUPPORT

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Sacramento County District Attorney’s Office  
(Sponsor)

California District Attorneys Association (co-sponsors)

#### CONTACT

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