

Staff Memorandum 2026–01
Diversion, Criminal Record Relief, and Related Matters

At its April 2026 meeting, the Committee on Revision of the Penal Code will consider both diversion laws that allow people who satisfy specified conditions to avoid receiving criminal convictions and record relief laws that limit public access to criminal records.

This memorandum gives general background and staff recommendations for the Committee’s consideration.

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Introduction

California has significantly expanded both diversion programs that allow people to avoid receiving a criminal conviction and record relief laws, which lessen the continuing impacts of criminal arrests and convictions.¹

Though there is no comprehensive statewide data detailing how often diversion programs are used, what data exists suggests that such programs can be an effective way to reduce court costs while improving public safety outcomes.

Record relief laws can have immediate and tangible positive impacts on people who benefit from them. Research from the California Policy Lab suggests that almost 90% of adults who are convicted of criminal offenses in California every year are likely eligible to have their criminal record given automatic relief by the California Department of Justice once the applicable waiting period has passed.²

Diversion

In California, diversion programs allow a person to avoid a criminal conviction and potential incarceration by fulfilling certain conditions. Diversion programs may connect people with treatment, targeted programs, community service, or court supervision to “divert” them from the traditional approach of the criminal legal system. The programs discussed here are all “pre-plea” diversion programs, meaning the defendant does not need to plead guilty to be eligible.³

The conditions of diversion are set by the court and vary in intensity depending on the type of program. Courts may grant diversion over objection, after hearing from both sides, and sometimes after receiving input from a third party, such as a mental health clinician.⁴ Important victim rights — including restitution and orders of protection limiting contact with victims — can be honored during the diversion period.⁵ Once the program is successfully completed charges are dismissed.⁶ If a person does not complete the terms of diversion, the case

¹ While California law also allows juvenile records to be granted record relief, both automatically and in a petition-based process, depending on the circumstances, this memo will only address the process for adults with criminal convictions. Welfare & Institutions Code §§ 781 (petition process), § 786 (automatic sealing).

² Alissa Skog, et al., *Who Benefits from Automatic Record Relief in California?*, California Policy Lab, 4 (October 2024).

³ California law provides other programs that may eventually result in dismissal of charges but require an admission of guilt. See, e.g., Health and Safety Code § 11395 (treatment-mandated drug-possession felony created by Proposition 36 in 2024); Penal Code § 1000.7 (deferred entry of judgement pilot program for defendants under 25 years of age).

⁴ See, e.g., Penal Code §§ 1001.36(a), 1001.95.

⁵ See, e.g., Penal Code §§ 136.2(a)(1)(G); 1001.36(f)(1)(D). A pending bill would further expand restitution requirements. See AB 2297 (Stefani).

⁶ See, e.g., Penal Code § 1001.36(j).

proceeds in the usual manner and the person may ultimately end up convicted and potentially incarcerated.

As the Committee has explored in prior meetings, California also uses “collaborative courts,” which share many characteristics with pre-plea diversion programs and can also result in dismissal of charges if completed successfully.⁷ In collaborative courts, a judge oversees a team with a prosecutor, defense attorney, probation officer, and case management that provides treatment and rehabilitation.⁸ While collaborative courts have traditionally required a guilty plea, practitioners report that that is no longer a reliable distinction and diversion and collaborative courts in some counties operate together in the same courtroom.

A developing body of research shows that avoiding a criminal conviction has long-term impacts to preserving employment and increasing public safety. A study in Suffolk County, Massachusetts, found that nonprosecution of a nonviolent misdemeanor led to a 60% reduction in the number of new criminal complaints over the following two years.⁹ Another study in Harris County, Texas, of first-time felony defendants, found that diversion reduced recidivism by half and increased employment rates by 53% over 10 years.¹⁰

The Penal Code has several different diversion programs. The most prominent are mental health diversion, military diversion, and court-initiated misdemeanor diversion, which are described below.¹¹

⁷ See Staff Memorandum 2020-4; Staff Memorandum 2024-01.

⁸ As of March 2025, all but two counties in California have at least one collaborative court, amounting to over 400 across the state. The most common collaborative courts are drug court, mental health court, and veterans treatment court. Judicial Council of California, *Fact Sheet: Collaborative Justice Court*, updated March 2025.

⁹ Amanda Agan, Jennifer L. Doleac, & Anna Harvey, *Misdemeanor Prosecution*, *The Quarterly Journal of Economics*, 138:3, August 2023.

¹⁰ Michael Mueller-Smith & Kevin Schnepel, *Diversion in the Criminal Justice System*, *The Review of Economic Studies*, Volume 88, Issue 2, March 2021. See also John Eric Humphries et al., *Conviction, Incarceration, and Recidivism: Understanding the Revolving Door*, *Quarterly Journal of Economics*, Volume 140, Issue 4 (November 2025) (study of Virginia defendants finding that, compared to dismissing charges, convictions without an incarceration sentence “leads to a large and long-lasting increase in recidivism for felony defendants”); Alexa Cinque et al., *Program Outcomes in a Light-Touch Prosecutor-Led Misdemeanor Diversion Program*, *Journal of Criminal Justice*, Volume 101, November–December 2025 (misdemeanor diversion program where requirements were two meetings with a social service provider led to a reduction in future arrests and incarceration).

¹¹ Other programs include primary caregiver diversion, Penal Code § 1001.83, cognitive disability diversion, Penal Code §§ 1001.20–1001.34, and theft diversion. Penal Code § 1001.81.

A. Court-Initiated Misdemeanor Diversion

Since January 2021, courts have had the ability to grant diversion in many misdemeanor cases.¹² Excluded from the program are misdemeanors that require sex offender registration, domestic violence, stalking, and DUI.¹³ The court has discretion to set conditions of diversion, which may last up to 24 months.¹⁴

As noted, some consequences of a conviction for a misdemeanor offense may apply to people who receive diversion, such as paying victim restitution. But some do not, such as receiving “points” on a drivers license that would be applied upon conviction, including for vehicular manslaughter.¹⁵

Misdemeanor offenses make up 72% of criminal filings, though a significant portion of those are DUI offenses that are not eligible for diversion.¹⁶

B. Mental Health Diversion

Created in 2018, mental health diversion allows people with mental health diagnoses to complete a court-ordered treatment plan instead of receiving a criminal conviction.¹⁷ As explained in the Penal Code, the purposes of the program are:

- “Increasing diversion of individuals with mental disorders to mitigate the individuals’ entry and reentry into the criminal justice system while protecting public safety.”

¹² This program was created by AB 3234 (Ting 2020), which added Penal Code §§ 1001.95–97. Prior to this general statute, a pilot project giving judges in Los Angeles County similar ability to order misdemeanor diversion was in effect from 2015 to 2017. See AB 2124 (Lowenthal 2014). Judge Daniel Lowenthal of Los Angeles County Superior Court described the success of the pilot program to the Committee at its April 2020 meeting.

¹³ See Vehicle Code § 23640(a). See also, e.g., *Tan v. Superior Court of San Mateo County*, 76 Cal.App.5th 130 (2022).

¹⁴ Penal Code § 1001.95(b)–(c).

¹⁵ Vehicle Code § 12810(d)(1). See also Robert Lewis, *How a speeding ticket can be worse than killing someone with your car in California*, CalMatters, December 17, 2025. The DMV also possesses statutory authority to investigate the driver in any fatal or serious crash for possible license suspension and other penalties without the driver needing to be convicted. Vehicle Code § 13800. See also Robert Lewis, *After his crash killed a child, the DMV renewed his license — then it hid his records*, CalMatters, March 9, 2026 (“Data provided to CalMatters show that, from 2022 through 2024, the agency opened just 3,300 investigations into drivers for their role in a fatal or serious-injury crash, a time in which California tallied nearly 56,000 such collisions.”).

¹⁶ In FY 2023–2024, there were 168,614 traffic misdemeanor filings, 283,033 non-traffic misdemeanor filings, and 179,821 felony filings. Judicial Council of California, *2025 Court Statistics Report, Statewide Caseload Trends 2014–15 Through 2023–24*, 85. There were 98,758 arrests for misdemeanor driving under the influence in 2024. California Department of Justice, *Crime in California 2024*, Table 25.

¹⁷ Penal Code § 1001.36.

- “Allowing local discretion and flexibility for counties in the development and implementation of diversion for individuals with mental disorders across a continuum of care settings.”
- “Providing diversion that meets the unique mental health treatment and support needs of individuals with mental disorders.”¹⁸

While many offenses are eligible to be considered diversion, murder, voluntary manslaughter, sex offenses, and DUI are not.¹⁹ In the counties reporting data to the Judicial Council, about 57% of granted mental health diversion requests are in felony cases while the other 43% are in misdemeanor cases.²⁰

Eligibility and suitability criteria

Mental health diversion has two “eligibility” and four “suitability” criteria:²¹

Eligibility

- Diagnosed mental disorder, excluding antisocial personality disorder and pedophilia, within the last 5 years.
- The mental disorder was a “significant factor” in the offense. Under a change to the law effective in 2023, based on the Committee’s recommendation, the court must presume this connection, unless proven otherwise by clear and convincing evidence.²²

Suitability

- Based on a mental health expert’s opinion, symptoms contributing to criminal behavior would respond to mental health treatment.
- Consent to diversion and waiver of speed trial rights.
- Agreement to comply with treatment.
- No unreasonable risk of danger to public safety if treated in the community. The public safety risk is one of committing a “super strike,” a number of sex offenses and other offenses, including homicide or attempted murder.²³

¹⁸ Penal Code § 1001.35(a)–(c).

¹⁹ Penal Code § 1001.36(d). DUI offenses are also generally not eligible, unless the defendant has been found incompetent to stand trial. See *Persiani v. Superior Court of Orange County*, 100 Cal.App.5th 48 (2024).

²⁰ Judicial Council of California, *2025 Mental Health Diversion Data Summary Report*, July 1, 2025.

²¹ Penal Code § 1001.36(b) & (c).

²² SB 1223 (Becker 2022).

²³ Penal Code §§ 1001.36(c)(4), 667(e)(2)(C)(iv).

Appellate courts have held that courts are “not permitted to redefine public safety in a manner inconsistent with the Legislature’s expressed intent.”²⁴ But the public safety standard can sometimes be quickly dispatched: one appellate court found that a defendant was an unreasonable risk to public safety based entirely on two prior residential burglary convictions.²⁵ Another appellate court reversed a grant of diversion because a defendant had not complied with mental health treatment in the past, which increased his public safety risk.²⁶ Other appellate courts have closely reviewed the circumstances of the current offense and the defendant’s prior convictions to find the defendant did not present a public safety risk as defined in the statute.²⁷

And even if all the above criteria are satisfied, a court still has “residual discretion” on whether to grant diversion.²⁸ While the boundaries of this discretion have not been fully explored in caselaw, “denial of mental health diversion using [a court’s] residual discretion should be limited to those situations where the purposes of the statute would not be achieved.”²⁹

A pending bill, AB 46 (Nguyen), would modify the public safety standard to require that the person will not pose a “substantial and undue risk to the physical safety of another person if treated in the community.” The prosecutor offices sponsoring the bill argue this language would restore judicial discretion.³⁰

Timeline for requesting diversion

An application for mental health diversion can be brought “until adjudication.”³¹ In 2023, the California Supreme Court interpreted this language to mean the request can be made until a jury is sworn for a trial or a defendant enters a guilty plea.³² Justices Kelli Evans and Goodwin Liu dissented because, in their view, “until adjudication” was better interpreted to mean until sentencing occurred.³³

²⁴ *Sarmiento v. Superior Court of San Diego County*, 98 Cal.App.5th 882, 896 (2024).

²⁵ *People v. Nelson*, 342 Cal.Rptr.3d 40, 42 (2026) (“Finally, appellant contends he is not a danger to the community because he has no convictions involving ‘violence.’ This may be true, but two of his prior theft-related offenses were for first degree residential burglary. This crime may easily lead to violence.”).

²⁶ *People v. Superior Court of Los Angeles County (Taylor)*, 338 Cal.Rptr.3d 809, 817–818 (2025).

²⁷ *People v. Moine*, 62 Cal.App.5th 440, 450–451 (2021); *People v. Whitmill*, 86 Cal.App.5th 1138, 1151–1156 (2022); *People v. Calabar*, 117 Cal.App.5th 41, 55–56 (2025).

²⁸ *Siam v. Superior Court of Orange County*, 341 Cal.Rptr.3d 156, 171 (2026). See also *People v. Braden*, 14 Cal.5th 791, 814 (2023) (“the court’s decision to refer the defendant to mental health diversion is discretionary”); *People v. Cabalar*, 117 Cal.App.5th 41, 58 (2025) (caselaw is “growing and evolving”).

²⁹ *Siam v. Superior Court of Orange County*, 341 Cal.Rptr.3d 156, 171 (2026) (quoting *Vaughn v. Superior Court of Los Angeles County*, 105 Cal.App.5th 123, 138 (2024)).

³⁰ Senate Committee on Public Safety Bill Analysis of AB 46, 6–7, March 16, 2026.

³¹ Penal Code § 1001.36(f)(1).

³² *People v. Braden*, 14 Cal.5th 791, 819 (2023).

³³ *Id.* at 825 (Evans, J., dissenting).

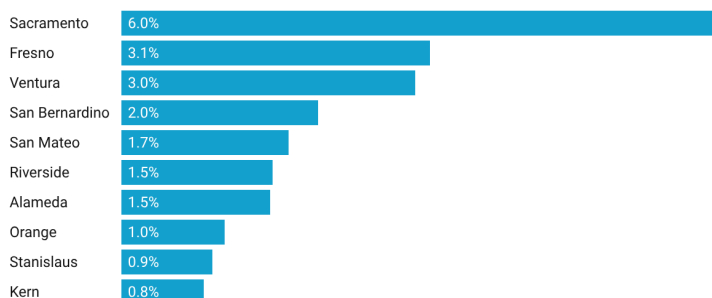
According to Justice Evans, the decision to enter mental health treatment is not always made “on a neat and tidy timeline.”³⁴ The defendant in the case at issue had a schizophrenia diagnosis and had represented himself at trial and been convicted; as soon as counsel was appointed after trial, a request for mental health diversion was made.³⁵ Justice Evans also pointed out that in rare cases “a trial court may determine it is only capable of making an informed determination regarding this eligibility factor [about the connection between the mental health disorder and the offense] or the defendant’s suitability for diversion for the first time during trial.”³⁶

Data on granted applications

Some counties report granting no applications for diversion, while others make more regular use of the program.³⁷ In the ten largest counties that reported complete data to the Judicial Council, an average of 7,835 felony cases were filed in FY 2023–24 while an average of 171 petitions for mental health diversion in felony cases were granted. County specific data is shown below.

Felony mental health diversions as percentage of felony filings

Data is from Fiscal Year 2023-2024 and is the number of granted petitions for mental health diversion in felony cases divided by the total number of felony filings.



These are the ten largest counties that fully reported felony mental health diversion information to the Judicial Council. The average number of felony filings for these counties is 7,835; the average number of felony diversion petitions granted is 171.

Chart: Committee on Revision of the Penal Code • Source: Judicial Council of California. Granted felony petitions are from the Judicial Council’s Pretrial Mental Health Diversion dashboard. Felony filings are from 2025 Court Statistics Report, Statewide Caseload Trends 2014–15 Through 2023–24, Table 7a. • Created with Datawrapper

Data on outcomes

Los Angeles County created a Rapid Diversion Program (RDP), which initially focused on people facing low-level nonviolent misdemeanor charges and has expanded to include some felony charges. RDP embeds the diversion infrastructure within courts, including clinical evaluators and case managers, allowing defendants to be quickly assessed.³⁸ From March 2022 to April 2024,

³⁴ Id. at 837.

³⁵ Id. at 825 (Evans, J., dissenting).

³⁶ Id. at 832 (Evans, J., dissenting).

³⁷ Judicial Council of California, *2025 Mental Health Diversion Data Summary Report*, July 1, 2025. Amador, Glenn, Imperial, Madera, Modoc, Plumas, Sierra, Tehama, and Trinity County report granting zero petitions. Yolo County reports granting no petitions in felony cases.

³⁸ Stephanie Brooks Holliday, Elizabeth Marsolais, and Samantha Matthews, *Process Evaluation of the Los Angeles County Rapid Diversion Program*, RAND, 19 September 30, 2024.

more than 4,300 people were evaluated for RDP and more than 1,200 people diverted.³⁹ A study conducted by RAND found that of 669 people who finished RDP, 91% of them did not have a new case filed for an offense occurring after their graduation.⁴⁰

In contrast, outcomes for people sentenced to prison appear worse: 48% of people who received treatment in prison for a serious mental health issue are reconvicted of a new offense within 3 years of release from prison.⁴¹ Nearly 40% people in prison receive mental health services yet the state has struggled to meet the staffing needs for these services, leaving patients with delayed or inadequate treatment.⁴² In 2024, 56% of mental health appointments were not completed as scheduled and 47% of the outpatient population did not receive the necessary number of treatment hours.⁴³ A federal judge appointed a receiver in September 2025 to oversee mental health care — one of the most extreme remedies available to the court.⁴⁴

C. Military Diversion

Pre-plea military diversion, first available in 2015, allows current and former members of the U.S. 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 their military service” to be diverted instead of being prosecuted.⁴⁵ Unlike other diversion programs, military diversion is available on misdemeanor charges of DUI or DUI causing injury.⁴⁶

³⁹ Id. at v.

⁴⁰ Id at 39. The recidivism data included only people who had been clients of the Los Angeles County Public Defender’s Office. The follow-up period for the recidivism measurement is unclear from the report.

⁴¹ This recidivism rate is for people in the Enhanced Outpatient Program at CDCR who received a determinate sentence and were released in FY 2019–20, the most recent release cohort that has recidivism data reported by CDCR. CDCR Recidivism Dashboard.

⁴² Orlando Sanchez Zavala, *Addressing Chronic Vacancies in Prison Mental Health Care*, Legislative Analyst’s Office, 5, 13 (February 2026).

⁴³ Id. at 13. Approximately 97% of people receiving mental health treatment at CDCR receive an outpatient level of care, meaning they “typically live in a prison housing unit and receive regular mental health treatment but do not require 24-hour care.” Id. at 7. Inpatient level of care is provided by mental health crisis beds, acute psychiatric programs, and intermediate care facilities. Id. at 7–8.

⁴⁴ Id. at 6.

⁴⁵ Penal Code § 1001.80. The program was created by SB 1227 (Hancock 2014).

⁴⁶ Penal Code § 1001.80(l).

Military diversion was limited to misdemeanors until January 2025, when most felony offenses became eligible.⁴⁷ Unlike with misdemeanor offenses, with a felony charge, the defendant's condition must be a significant factor in the commission of the offense, though there is a presumption of a connection unless there is clear and convincing evidence otherwise (the same process used for mental health diversion).⁴⁸

While the statute is clear on eligibility, there is little specificity on how a court should exercise its discretion to find a person suitable for diversion.⁴⁹ One appellate court has noted that courts may identify their own factors or criteria for suitability as long as they are consistent with the statutory objectives of treatment and rehabilitation.⁵⁰

One appellate court recently called on the Legislature to fix an inconsistency in the military diversion statute.⁵¹ While the statute specifically describes the type of evidence or record the court may consider for felony eligibility — such as a police report, statement by the defendant's mental health treatment provider, or medical records — the statute does not similarly address what is appropriate evidence for misdemeanor offenses.⁵²

⁴⁷ SB 1025 (Eggman 2024). Ineligible felonies are the same as those ineligible for mental health diversion and include sex offenses, murder, and voluntary manslaughter. Penal Code § 1001.80(o).

⁴⁸ Penal Code § 1001.80(c)(2)(B).

⁴⁹ *Wade v. Superior Court*, 33 Cal.App.5th 694, 709–710 (2019).

⁵⁰ *Id.* at 715.

⁵¹ *People v. Holliday*, 116 Cal.App.5th 664, 675 (2025).

⁵² Compare § 1001.80(c)(2)(C) (felonies) with § 1001.80(b) (misdemeanors).

Record Relief

A criminal record can have lasting and profound impacts on employment, professional licensing, immigration status, stable housing, and parental rights.⁵³ Limiting public access to certain criminal records after a person completes their sentence can increase employment and earnings and reduce recidivism.⁵⁴

California does not have total expungement or sealing of arrest or conviction records except in limited circumstances for factual innocence.⁵⁵ Instead, record relief in California limits *public* disclosure of relieved records and, for those entities still able to access relieved records, requires notating the record that certain relief has been provided. In other words, record relief does not erase the actual record that a person had been convicted of a crime; it merely relieves the person from many civil penalties and disabilities as a result of the conviction.⁵⁶

As explored below, obtaining any sort of record relief historically required a court to take action. More recently, the California Department of Justice has taken a larger role by automating record relief.

A. Effect of Record Relief

Whether relief is obtained automatically or through court action, an “expunged” or “sealed” criminal record remains accessible to law enforcement, courts, and certain government entities, but not to public view. Record relief does not restore gun rights, driving privileges, end the obligation to register as a sex offender, terminate restitution or an order of protection, remove a person’s DNA profile from the state data bank, or prevent the conviction from being proved as a prior conviction to enhance future sentencing.⁵⁷

A person receiving conviction relief must only disclose a conviction in response to any direct question in an application for public office and licensing by any state or local agency.⁵⁸

⁵³ Beth Hustedt, Kristin Bechtel, & Pamela Lattimore, *Understanding the Intent and Impact of State-Initiated Record Clearing Policies*, 22 Ohio State Journal of Criminal Law 219, 221 (2025).

⁵⁴ *Id.* at 222–223.

⁵⁵ See Penal Code §§ 851.86 & 851.8. Courts can order arrest records destroyed only after concluding that “no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made.” Penal Code § 851.8(b). See also *People v. Adair*, 129 Cal.Rptr.2d 799, 806–807 (2003).

⁵⁶ *Adams v. County of Sacramento*, 235 Cal.App.3d 872, 877–878 (1991). See also *People v. E.B.*, 51 Cal. App. 5th 47, 57 (2020) (“It does not, in other words, act to nullify, annul, cancel, or make void a conviction.”).

⁵⁷ Penal Code §§ 1203.4(a), 1203.425(a)(4), 299 (a person may apply to remove their DNA no charges were filed after their arrest, the underlying conviction was reversed, or the person was acquitted or found factually innocent).

⁵⁸ Penal Code § 1203.4(a)(1).

However, while the individual may not be required to disclose the arrest or conviction, an employer may nonetheless discover it. For employers who are mandated and authorized by law to conduct fingerprint-based background checks through the California Department of Justice, arrests and convictions may still be disclosed to them. This includes numerous professional licenses, including educators and childcare employees, healthcare professionals, and real estate and financial services.⁵⁹ If an arrest or conviction is disclosed, the notification of record relief is also provided.⁶⁰

For example, the state medical board tells applicants they are no longer required to disclose prior criminal history but that any criminal record history, including dismissals and expungements, will be discovered upon fingerprinting and that the applicant may then provide an explanation and evidence of rehabilitation.⁶¹

B. Automatic Record Relief

Beginning with AB 1076 in 2019, the Legislature enacted a series of laws automating record relief, putting the burden on the California Department of Justice to identify eligible records and grant relief. Subsequent legislation extended the reach of automatic record relief, both in time, requiring the California Department of Justice to grant relief going back to 1973, and in scope, extending relief to include more felonies.⁶²

Current law requires the California Department of Justice to search its Automated Criminal History System (ACHS) for eligible arrest and conviction records on a monthly basis.⁶³ Once identified, the California Department of Justice then adds a notation to each eligible arrest or conviction stating that relief has been granted pursuant to the relevant Penal Code section, either 851.92 (arrests) or 1203.425 (convictions), and then sends an electronic notification to the court that relief was granted.⁶⁴ The court then cannot disclose information about an arrest or conviction given relief, except to the person whose conviction or arrest was granted relief or a criminal justice agency.⁶⁵ Prosecutors have an opportunity to object on public safety grounds to the application of automatic conviction relief in individual cases.⁶⁶

⁵⁹ Penal Code § 11105(k)–(p).

⁶⁰ California Department of Justice, *Automatic Record Relief – Penal Code sections 851.93 and 1203.425*.

⁶¹ Medical Board of California, *Frequently Asked Questions: Criminal Convictions*.

⁶² AB 145 (2021), SB 731 (2022), AB 567 (2023), AB 168 (2024). A pending bill, SB 1342 (Durazo), would further adjust timelines for some convictions and clarify other aspects of the process.

⁶³ Penal Code §§ 1203.425(a)(1)(A), 851.93(a)(1).

⁶⁴ Penal Code §§ 1203.425(a)(2)(B), 1203.425(a)(3)(A), 851.93(b)(2).

⁶⁵ Penal Code §§ 1203.425(a)(3)(A), 851.93(c).

⁶⁶ Penal Code § 1203.425(b).

Records eligible for relief are specified here:

Automatic record relief

Penal Code §	Offense	Disposition	Waiting period
851.93(a)(2)(B)	Misdemeanor	Arrest with no charges or acquittal	1 year from arrest
851.93(a)(2)(A)	Misdemeanor	Arrest with charges dismissed	Immediately
1203.425(a)(1)(B)(iv)(I)(ia)	Misdemeanor	Conviction with probation completed without revocation	Immediately
1203.425(a)(1)(B)(iv)(I)(ib)	Misdemeanor or infraction	Conviction without probation or with unsuccessful probation	1 year after date of judgment
851.93(a)(2)(C)	Felony	Arrest with no charges or acquittal	3 years or 6 years (if offense is punishable by more than 8 years in prison) after arrest
1203.425(a)(1)(B)(iv)(I)(ia)	Felony	Conviction with probation completed without revocation	Immediately
1203.425(a)(1)(B)(iv)(II)	Felony	Conviction without probation or with unsuccessful probation (excludes serious, violent, or sex offender crimes)	4 years after completion of sentence without a new felony conviction

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Automatic conviction relief will not be applied to anyone subject to sex offender registration, with pending charges, or serving a sentence or supervision.⁶⁷

According to a report from California Policy Lab, almost 90% of Californians with criminal records are likely to benefit from automatic record relief, largely because most people with conviction records have misdemeanors.⁶⁸

The California Department of Justice began clearing eligible records on a monthly basis in 2022. In the first two years — which required looking back to 1973 — more than 6.8 million people received automatic record relief, which included nearly 12 million records, of which 2.84 million were convictions.⁶⁹

A limitation of automatic record relief is that individuals are not notified once their record is relieved — in contrast to the petition-based process where petitioners receive notice of the court's decision. Under automatic record relief, an individual can only know what has been automatically relieved by requesting their own criminal record from the California Department of Justice, which

⁶⁷ Penal Code § 1203.425(a)(1)(B).

⁶⁸ Alissa Skog et al., *Who Benefits from Automatic Record Relief in California*, California Policy Lab, 4 (October 2024).

⁶⁹ California Department of Justice, *Demographic Analysis of AB 1076 Automatic Record Relief Cases*, 5 (November 2024).

requires submitting LiveScan fingerprint images and a processing fee.⁷⁰ As a result, some people may continue to disclose criminal convictions or arrests that have in fact been relieved.

C. Court-Granted Conviction Relief

Before the process was automated for some records, conviction relief was accomplished under Penal Code section 1203.4 and related statutes, which still exist today. If a court grants relief under these statutes, the conviction is “dismissed” and replaced with a “not guilty” plea. However, this modification does not actually erase the conviction and it is still available for law enforcement — including for use as a prior conviction — and many licensing purposes.⁷¹

Penal Code section 1203.4 mandates conviction relief in several circumstances, that overlap with automatic record relief (e.g. successful completion of probation),⁷² but also allows relief for convictions that are not covered by automatic record relief.⁷³ That statute, along with other laws, means that all convictions are now eligible for relief at the court’s discretion, including felonies with state prison sentences, excluding felonies that resulted in a requirement to register as a sex offender.⁷⁴

Court-ordered discretionary conviction record relief

Penal Code §	Qualifying convictions	Waiting period
1203.4	Convictions with a probation sentence that do not qualify for mandatory relief.	None
1203.4a	Misdemeanor and infraction sentences that did not receive probation.	1 year after pronouncement of judgment.
1203.4b	Completed fire camp while in prison.	Can apply immediately upon release from prison without completing probation, parole, or supervised release.
1203.41	Any felony, including a felony that resulted in a state prison, as long as the felony did not result in a requirement to register as a sex offender. Can not be on parole, probation, or other supervision.	1 or 2 years after completion of sentence, depending on sentence type.

Penal Code § 288(c) and Vehicle Code §§ 42002.1 and 42001 are not eligible for relief under Penal Code § 1203.4a. Not all offenses are eligible for fire camp relief under Penal Code § 1203.4b, including murder, kidnapping, sex offenses, arson, and any felony punishable by death or life imprisonment. Penal Code § 1203.4b(a)(1)(A)-(H). Relief under Penal Code § 1203.41 extends to people whose prison sentence resulted from a probation violation. *People v. Brown*, 111 Cal.App.5th 384, 387 (2025).

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⁷⁰ California Department of Justice, Criminal Records – Request Your Own.

⁷¹ Penal Code § 1203.4(a)(1). This process is sometimes referred to as “expunging” a conviction, but this is an imprecise description. See, e.g., *People v. Guillen*, 218 Cal. App. 4th 975, 996 (2013).

⁷² Relief is mandatory for a misdemeanor or felony conviction if the defendant (1) “fulfilled the conditions of probation for the entire period of probation” or (2) was “discharged prior to the termination of the period of probation.” Penal Code § 1203.4(a)(1). See also *People v. Chavez*, 5 Cal.App.5th 110, 115 (2016) (limiting relief under § 1203.4 to convictions that received probation).

⁷³ Some offenses are exempted from relief entirely under Penal Code § 1203.4, including several sex offenses. Penal Code § 1203.4(b).

⁷⁴ Penal Code § 1203.41(a)(6). Arrests can be given relief by a separate petition process. See, e.g., Penal Code § 851.91 (arrests that did not result in a conviction).

D. Sealing After Diversion

As explained above, once a diversion program is successfully completed charges are dismissed. The statutes for mental health diversion, military diversion, and misdemeanor diversion take similar approaches to limiting access to criminal records related to the arrest and diversion proceedings by stating that, unless applying to be a peace officer, “the arrest upon which diversion was imposed shall be deemed to have never occurred.”⁷⁵

But the statutes are not consistent with each other on how this legal finding is to be implemented. The mental health diversion statute is the most detailed as it directs notice to the California Department of Justice about the successful diversion and also requires a general sealing of the arrest records.⁷⁶ The military diversion statute directs notice to the Department of Justice, but does not directly address sealing arrest records.⁷⁷ The misdemeanor diversion statute does not directly address notice to the Department of Justice or sealing of arrest records.⁷⁸ These inconsistencies in notice may delay or impede record relief, which would apply automatically in some of these scenarios.⁷⁹

⁷⁵ See, e.g., Penal Code § 1001.36(h).

⁷⁶ Penal Code § 1001.36(h).

⁷⁷ Penal Code § 1001.80(k).

⁷⁸ Penal Code § 1001.97(a).

⁷⁹ Penal Code § 851.93(a)(2)(D).

Staff Recommendations

Diversions

- **Expand judicial diversion to low-level felonies.**

Consistent with prior Committee support, judge-led misdemeanor diversion should be expanded from misdemeanor offenses to low-level felonies. AB 1231, a bill pending in the Legislature from Committee member Assemblymember Elhawary, would implement this recommendation.

- **Specify the evidence a court may consider for misdemeanor military diversion.**

The military diversion statute describes the type of evidence a court may rely on to determine whether diversion is appropriate in felony cases but does not provide similar guidance for misdemeanors, which may have the effect of making misdemeanor military diversion harder to grant than for felony cases. An appellate court called on the Legislature to fix this inconsistency.⁸⁰

- **Clarify that requests for mental health diversion can be made until sentencing.**

This recommendation would implement the dissenting opinion from Justices Evans and Liu in the California Supreme Court case *People v. Braden*.⁸¹ It would also be consistent with a change made last year by the Legislature increasing the opportunities for a court to reduce certain felony offenses to misdemeanors under Penal Code section 17(b).⁸²

- **Comprehensive mental health diversion study.**

A statewide study on mental health diversion is challenging because detailed data on diversion requests and dispositions is maintained at the local level. In a similar context involving prosecutor-initiated resentencings, the Legislature and Governor funded a study to measure the impact of the program and required data to be disclosed to the evaluator.⁸³ A similar mandated-study of mental health diversion would help evaluate the effectiveness of the program and its impact on public safety.

⁸⁰ *People v. Holliday*, 116 Cal.App.5th 664, 675 (2025).

⁸¹ *People v. Braden*, 14 Cal.5th 791, 825 (2023).

⁸² AB 321 (Schultz 2025).

⁸³ Penal Code § 1172(j).

- **Allow license points for vehicular-manslaughter misdemeanor diversion.**

While DUI offenses are not eligible for misdemeanor diversion, the misdemeanor offense of vehicular manslaughter without gross negligence is eligible for diversion. But a person who successfully completes diversion for this offense will likely not receive “points” on their license — which can lead to a license suspension — as they would if convicted.⁸⁴ Two currently pending bills would require the DMV to assess license points for people who are diverted for this offense.⁸⁵

Record relief

- **Eventually destroy misdemeanor records that have received automatic relief.**

California does not destroy criminal records unless a person is found to be factually innocent. Misdemeanor records that have already received automatic record relief (which only limits access to records) could be destroyed some period of time after the automatic relief has been granted. Misdemeanor convictions that can be relied on later to enhance punishment — most prominently DUI and domestic violence offenses — should be exempted from this new process. As is the case with automatic record relief, prosecutors should be able to object to destruction of any record on public safety grounds.

- **Notify new recipients of automatic record relief.**

The California Department of Justice does not notify people who have received automatic record relief and many people are likely unaware they have received relief. To begin to remedy this, people who are convicted of an offense that may be eligible for automatic record relief should have the option of providing contact information, including a cell phone number for text messages, to receive updates about automatic record relief. Courts are already required to inform people at sentencing about automatic record relief.⁸⁶

- **Harmonize sealing obligations after diversion is completed.**

Mental health, military, and court-led misdemeanor diversion do not consistently specify how arrests and related records should be sealed following successful diversion. These statutes should apply a consistent approach to this issue.

⁸⁴ Vehicle Code § 12810(d)(1).

⁸⁵ AB 1662 (Wilson); SB 953 (Niello). AB 1662 would also add license points for a range of other traffic-related offenses resolved with diversion.

⁸⁶ Penal Code § 1203.425(c).

- **Require courts to explain the denial of a discretionary relief petition.**
There is no statutory requirement for the court to explain why it is denying discretionary record relief. A person who desires to re-apply for relief may be similarly denied again because they failed to meet some unstated condition, such as a longer time period following the conviction or more evidence of rehabilitation. Requiring an explanation of why relief was not granted would allow people to take the steps necessary to obtain future relief.

Conclusion

California's recent expansions of diversion and record relief have created important tools to allow people to avoid or mitigate the effects of criminal convictions in appropriate cases. The Committee should consider recommendations that strengthen these policies while continuing to protect public safety.

Respectfully submitted,

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