



JUDICIAL COUNCIL OF CALIFORNIA

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TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

September 10, 2020

Hon. Gavin Newsom
Governor of California
State Capitol, First Floor
Sacramento, California 95814

Subject: Assembly Bill 3234 (Ting) – Request for Veto

Dear Governor Newsom:

The Judicial Council respectfully requests your veto on AB 3234, which, among other things, authorizes a judge to offer misdemeanor diversion to a defendant over the objection of a prosecuting attorney and allows the judge to continue a diverted case for a period not to exceed 24 months and order the defendant to comply with the terms, conditions, and programs the judge deems appropriate based on the defendant's specific situation.

The Judicial Council has no objections to the policy of the bill and in fact is generally supportive of diversion programs. Instead the council adopted an oppose unless amended and funded position due to concerns related to the new workload burdens the bill would place on courts. To that end, the council understands that AB 3234 is intended to establish a statewide misdemeanor diversion program that is similar to the Los Angeles County pilot program created by AB 2124 (Stats. 2014, ch. 372), which the council supported. While the pilot program excluded many misdemeanors from eligibility under the bill and included eligibility criteria, AB 3234 does not exclude most of those misdemeanors, save for four listed exceptions, nor does it include AB 2124's eligibility criteria. (See attached comparison of the pilot program and AB 3234.)

While the council appreciates the amendments made on August 24, 2020 to exclude four crimes from eligibility (290 sex offender registrant crimes, domestic violence, domestic battery, and

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stalking), unfortunately those exclusions are not sufficient to address the council's concerns about the new workload AB 3234 places on trial courts.

The council believes that defense counsel will file motions for diversion in most, if not all, eligible misdemeanor cases to avoid charges of ineffective assistance of counsel. As such, even though a judge likely would not be inclined to order diversion for certain misdemeanors based on legitimate public safety concerns, AB 3234 would require courts, upon a petition for diversion by defense counsel, to hold hearings in order to consider the petition. For these reasons, the Judicial Council requested that the bill be amended to align with the type of exclusions provided in AB 2124 to avoid this unnecessary workload.

In addition, AB 3234 provides that if it appears to the court that the defendant is not complying with the terms and conditions of diversion, after notice to the defendant, the court must hold a hearing to determine whether the criminal proceedings should be reinstated. This procedure also places new workload on the courts by requiring hearings in every case in which a defendant is not compliant. Moreover, this provision also appears to contemplate that the court, rather than the prosecution or probation officer, would be responsible for notifying the defendant of the hearing, which also places new costs on the trial courts.

Finally, it's important to note that although AB 3234 is keyed fiscal, the bill was not heard in the Assembly Appropriations Committee, and escaped committee hearings altogether in the Senate. Nonetheless, given that it is likely courts will be required to conduct diversion hearings in many misdemeanor cases, a new additional workload, the Judicial Council estimates the fiscal impact of AB 3234 at between \$5 million to \$10 million annually, as a result of increased trial court workloads.

For these reasons, the Judicial Council requests your veto on AB 3234.

Should you have any questions or require additional information, please contact Sharon Reilly at 916-323-3121.

Sincerely,

Sent September 10, 2020

Cory T. Jaspersen
Director, Governmental Affairs

CTJ/SR/jh

cc: Hon. Philip Y. Ting, Member of the Assembly
Mr. Anthony Williams, Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California

Attachment (1)

Comparison of AB 2124 (2014) Misd. Diversion Program to AB 3234 Misd. Diversion Program

Topic	AB 2124 (2014)	AB 3234 (2020) Misd. Diversion Program
<i>General</i>	A 3-year pilot program in the Los Angeles Superior Court that ended in January 2018.	Statewide diversion option available effective January 1, 2021.
<i>Eligibility</i>	Offenders who have not been convicted of a misdemeanor in the previous 10 years and the current crime does not fall into an excluded category.	Individuals who are charged with a misdemeanor.
<i>Exclusions</i>	<p>A defendant was ineligible for this program if they or their current offense met any of the following criteria:</p> <p>(a) The defendant has been convicted of any misdemeanor in the previous 10 years, a misdemeanor involving force or violence, or a felony.</p> <p>(b) The defendant has previously had his or her sentence deferred pursuant to this chapter or any other law.</p> <p>(c) Incarceration is mandatory upon the defendant’s conviction.</p> <p>(d) The defendant is required to register as a sex offender pursuant to Section 290.</p> <p>(e) The magistrate determines that the offense will be prosecuted as a misdemeanor pursuant to paragraph (5) of subdivision (b) of Section 17.</p> <p>(f) The defendant is a partnership, firm, association, corporation, limited liability company, or other legal entity.</p> <p>(g) The victim is a person identified in Section 6211 of the Family Code, a minor, or an elder or dependent adult pursuant to Section 368.</p> <p>(h) The charge includes any of the following:</p> <p>(1) Force or violence against a peace officer.</p> <p>(2) The unlawful use, possession, sale, or transfer of a dangerous weapon, firearm, or ammunition.</p> <p>(3) Violation of Section 23152 or 23153 of the Vehicle Code. <i>(DUI)</i></p> <p>(4) Violation of either subdivision (c) of Section 192 or subdivision (b) of Section 191.5. <i>(vehicular manslaughter)</i></p> <p>(5) Violation of Section 186.22. <i>(gang enhancement)</i></p> <p>(6) Violation of Section 273.5 or 273.6. <i>(domestic violence / violating a restraining order)</i></p> <p>(7) Violation of an environmental or workplace safety crime, including, but not limited to, subdivision (a) of Section 5650 of the Fish and Game Code, Section 8670.64 of the Government Code, Section 25507 of the Health and Safety Code, Section 6423 or 6425 of the Labor Code, Section 387 of this code, or Section 13387 of the Water Code.</p>	<p>A defendant is ineligible for this program if their current offense meets any of the following criteria:</p> <p>(1) Any offense for which a person, if convicted, would be required to register as a sex offender pursuant to Section 290.</p> <p>(2) A violation of Section 273.5. <i>(domestic violence)</i></p> <p>(3) A violation of subdivision (e) of Section 243. <i>(domestic battery)</i></p> <p>(4) A violation of Section 646.9. <i>(stalking)</i></p>

Comparison of AB 2124 (2014) Misd. Diversion Program to AB 3234 Misd. Diversion Program

<i>Length of Diversion</i>	Up to 12 months	Up to 24 months
<i>Restitution</i>	Required payment of full restitution and compliance with applicable protective orders.	States that a defendant must pay full restitution but has an exception that a defendant's inability to pay restitution due to indigence shall not be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion. Requires compliance with applicable protective orders
<i>Removal</i>	If defendant reoffended or did not meet conditions, the court, DA, or probation officer could move for entry of judgment.	If it appears to the court that the defendant is not complying with the terms and conditions of diversion, after notice to the defendant, the court shall hold a hearing to determine whether the criminal proceedings should be reinstated. Note it's unclear how notice is provided to the defendant.



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CORY T. JASPERSON
Director, Governmental Affairs

August 26, 2020

Hon. Philip Ting
Member of the Assembly
State Capitol, Room 6026
Sacramento, California 95814

Subject: Assembly Bill 3234 (Ting), as amended August 24, 2020 – Oppose unless funded and amended

Dear Assembly Member Ting:

The Judicial Council has an oppose unless funded and amended position on AB 3234, which, among other things, authorizes a judge to offer misdemeanor diversion to a defendant over the objection of a prosecuting attorney and allows the judge to continue a diverted case for a period not to exceed 24 months and order the defendant to comply with the terms, conditions, and programs the judge deems appropriate based on the defendant's specific situation.

The Judicial Council has no objections to the policy of the bill and in fact is generally supportive of diversion programs. Instead the council's concerns are related to the new burdens the bill will place on courts. To that end, the council understands that AB 3234 is intended to establish a statewide misdemeanor diversion program that is similar to the Los Angeles County pilot program created by AB 2124 (Stats. 2014, ch. 372), which the council supported. However, while AB 2124 excluded many misdemeanors from eligibility under the bill, AB 3234 does not exclude most of those misdemeanors. For example, AB 2124 excluded misdemeanor DUI offenses, misdemeanor domestic violence charges, and certain misdemeanors relating to firearms. In contrast, AB 3234 would extend to these and all misdemeanors, with four exceptions, even though there is little chance a judge would order diversion for certain misdemeanors for public safety reasons. While the council appreciates the amendments made on August 24, 2020 to exclude four crimes from eligibility, unfortunately those exclusions are not sufficient to address the council's concerns about the new burdens AB 3234 will place on courts.

The council believes that defense counsel will file motions for diversion in most, if not all, misdemeanor cases to avoid charges of ineffective assistance of counsel. As such, even though a judge likely would not be inclined to order diversion for certain misdemeanors based on legitimate public safety concerns, AB 3234 would require courts, upon a petition for diversion by defense counsel, to have hearings to consider the petition. For these reasons, the Judicial Council respectfully requests that the bill be amended to align with the type of exclusions provided in AB 2124 to reduce the workload burdens on courts.

In addition, AB 3234 provides that if it appears to the court that the defendant is not complying with the terms and conditions of diversion, after notice to the defendant, the court must hold a hearing to determine whether the criminal proceedings should be reinstated. This procedure alone places new burdens on the courts by requiring hearings in every case in which a defendant is not compliant. Moreover, this provision also appears to contemplate that the court, rather than the prosecution or probation officer, would be responsible for notifying the defendant of the hearing, which also places new burdens on courts.

For these reasons, the Judicial Council has an oppose unless funded and amended --support if amended and funded if amended position on AB 3234.

Should you have any questions or require additional information, please contact me at 916-323-3121.

Sincerely,

Mailed August 26, 2020

Sharon Reilly
Attorney

SR/jh

cc: Ms. Jessica Devencenzi, Deputy Legislative Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California