

AMENDED IN SENATE MAY 31, 2016

SENATE BILL

No. 1110

**Introduced by Senator Hancock
(Principal coauthor: Senator Anderson)**

February 17, 2016

An act to add *and repeal* Chapter 2.92 (commencing with Section 1001.85) of Title 6 of Part 2 of the Penal Code, relating to diversion.

LEGISLATIVE COUNSEL'S DIGEST

SB 1110, as amended, Hancock. Law Enforcement Assisted Diversion.

Existing law authorizes a county to establish a pretrial diversion program for defendants who have been charged with a misdemeanor offense and authorizes other diversion programs, including for defendants with cognitive developmental disabilities, defendants in nonviolent drug cases, and traffic violations.

~~This bill would require the Board of State and Community Corrections to approve three counties for the establishment of a Law Enforcement Assisted Diversion (LEAD) pilot program. The bill would require the LEAD pilot programs to authorize designated officers to take a person for whom the officer has probable cause for arrest for specified controlled substances offenses, including possession of a controlled substance or other prohibited substance, or prostitution, to treatment programs and services in lieu of that arrest.~~

This bill, until January 1, 2020, would establish the Law Enforcement Assisted Diversion (LEAD) pilot program, to be administered by the Board of State and Community Corrections, to improve public safety and reduce recidivism by increasing the availability and use of social service resources while reducing costs to law enforcement agencies

and courts stemming from repeated incarceration. The bill would require the board to award grants, on a competitive basis, to up to 3 jurisdictions to establish LEAD programs and would require the board to establish minimum standards, funding schedules, and procedures for awarding grants. The bill would establish requirements for referral of people who may be arrested for, or who have a history of, low-level drug offenses or prostitution, as defined, to social services in lieu of prosecution. The bill would require the board to contract with a nonprofit research entity, university, or college to evaluate the effectiveness of the LEAD program and submit a report of the findings to the Governor and the Legislature by January 1, 2020.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 2.92 (commencing with Section 1001.85)
2 is added to Title 6 of Part 2 of the Penal Code, to read:

3
4 CHAPTER 2.92. LAW ENFORCEMENT ASSISTED DIVERSION
5 (LEAD) PILOT PROGRAM

6
7 1001.85. (a) *The Law Enforcement Assisted Diversion (LEAD)*
8 *pilot program is hereby established. The purpose of the LEAD*
9 *program is to improve public safety and reduce recidivism by*
10 *increasing the availability and use of social service resources*
11 *while reducing costs to law enforcement agencies and courts*
12 *stemming from repeated incarceration.*

13 (b) *LEAD pilot programs shall be consistent with the following*
14 *principles, implemented to address and reflect the priorities of the*
15 *community in which the program exists:*

16 (1) *Providing intensive case management services and an*
17 *individually tailored intervention plan that acts as a blueprint for*
18 *assisting LEAD participants.*

19 (2) *Prioritizing temporary and permanent housing that includes*
20 *individualized supportive services, without preconditions of drug*
21 *or alcohol treatment or abstinence from drugs or alcohol.*

22 (3) *Employing human and social service resources in*
23 *coordination with law enforcement in a manner that improves*

1 individual outcomes and community safety, and promotes
2 community wellness.

3 (4) Participation in LEAD services shall be voluntary throughout
4 the duration of the program and shall not require abstinence from
5 drug or alcohol use as a condition of continued participation.

6 1001.86. (a) The LEAD program shall be administered by the
7 Board of State and Community Corrections.

8 (b) The board shall award grants, on a competitive basis, to up
9 to three jurisdictions as authorized by this chapter. The board
10 shall establish minimum standards, funding schedules, and
11 procedures for awarding grants, which shall take into
12 consideration, but not be limited to, all of the following:

13 (1) Information from the applicant demonstrating a clear
14 understanding of the program's purpose and the applicant's
15 willingness and ability to implement the LEAD program as
16 described in this chapter.

17 (2) Key local partners who would be committed to, and involved
18 in, the development and successful implementation of a LEAD
19 program, including, but not limited to, balanced representation
20 from law enforcement agencies, prosecutorial agencies, public
21 defenders and defense counsel, public health and social services
22 agencies, case management service providers, and any other
23 entities identified by the applicant as integral to the successful
24 implementation of a LEAD program in the jurisdiction.

25 (3) The jurisdiction's capacity and commitment to coordinate
26 social services, law enforcement efforts, and justice system
27 decisionmaking processes, and to work to ensure that the
28 discretionary decisions made by each participant in the
29 administration of the program operates in a manner consistent
30 with the purposes of this chapter.

31 (c) Successful grant applicants shall collect and maintain data
32 pertaining to the effectiveness of the program as indicated by the
33 board in the request for proposals.

34 1001.87. (a) LEAD programs funded pursuant to this chapter
35 shall consist of a strategy of effective intervention for eligible
36 participants consistent with the following gateways to services:

37 (1) Prebooking referral. As an alternative to arrest, a law
38 enforcement officer may take or refer a person for whom the officer
39 has probable cause for arrest for any of the offenses in subdivision

40 (b) to a case manager to be screened for immediate crisis services

1 *and to schedule a complete assessment intake interview.*
2 *Participation in LEAD diversion shall be voluntary, and the person*
3 *may decline to participate in the program at any time. Criminal*
4 *charges based on the conduct for which a person is diverted to*
5 *LEAD shall not be filed, provided that the person finishes the*
6 *complete assessment intake interview within a period set by the*
7 *local jurisdictional partners, but not to exceed 30 days after the*
8 *referral.*

9 *(2) Social contact referral. A law enforcement officer may refer*
10 *an individual to LEAD whom he or she believes is at high risk of*
11 *arrest in the future for any of the crimes specified in subdivision*
12 *(b), provided that the individual meets the criteria specified in this*
13 *paragraph and expresses interest in voluntarily participating in*
14 *the program. LEAD may accept these referrals if the program has*
15 *capacity after responding to prebooking diversion referrals*
16 *described in paragraph (1). All social contact referrals to LEAD*
17 *shall meet the following criteria:*

18 *(A) Verification by law enforcement that the individual has had*
19 *prior involvement with low-level drug activity or prostitution.*
20 *Verification shall consist of any of the following:*

21 *(i) Criminal history records, including, but not limited to, prior*
22 *police reports, arrests, jail bookings, criminal charges, or*
23 *convictions indicating that he or she was engaged in low-level*
24 *drug or prostitution activity.*

25 *(ii) Law enforcement has directly observed the individual's*
26 *low-level drug or prostitution activity on prior occasions.*

27 *(iii) Law enforcement has a reliable basis of information to*
28 *believe that the individual is engaged in low-level drug or*
29 *prostitution activity, including, but not limited to, information*
30 *provided by another first responder, a professional, or a credible*
31 *community member.*

32 *(B) The individual's prior involvement with low-level drug or*
33 *prostitution activity occurred within the LEAD pilot program area.*

34 *(C) The individual's prior involvement with low-level drug or*
35 *prostitution activity occurred within 24 months of the date of*
36 *referral.*

37 *(D) The individual does not have a pending case in drug court*
38 *or mental health court.*

1 (E) *The individual is not prohibited, by means of an existing*
2 *no-contact order, temporary restraining order, or antiharassment*
3 *order, from making contact with a current LEAD participant.*

4 (b) *The following offenses are eligible for either prebooking*
5 *diversion, social contact referral, or both:*

6 (1) *Possession for sale or transfer of a controlled substance or*
7 *other prohibited substance where the circumstances indicate that*
8 *the sale or transfer is intended to provide a subsistence living or*
9 *to allow the person to obtain or afford drugs for his or her own*
10 *consumption.*

11 (2) *Sale or transfer of a controlled substance or other prohibited*
12 *substance where the circumstances indicate that the sale or transfer*
13 *is intended to provide a subsistence living or to allow the person*
14 *to obtain or afford drugs for his or her own consumption.*

15 (3) *Possession of a controlled substance or other prohibited*
16 *substance.*

17 (4) *Being under the influence of a controlled substance or other*
18 *prohibited substance.*

19 (5) *Being under the influence of alcohol and a controlled*
20 *substance or other prohibited substance.*

21 (6) *Prostitution pursuant to subdivision (b) of Section 647.*

22 1001.88. (a) *Services provided pursuant to this chapter may*
23 *include, but are not limited to, case management, housing, medical*
24 *care, mental health care, treatment for alcohol or substance use*
25 *disorders, nutritional counseling and treatment, psychological*
26 *counseling, employment, employment training and education, civil*
27 *legal services, and system navigation. Grant funding may be used*
28 *to support any of the following:*

29 (1) *Project management and community engagement.*

30 (2) *Temporary services and treatment necessary to stabilize a*
31 *participant's condition, including necessary housing.*

32 (3) *Outreach and direct service costs for services described in*
33 *this section.*

34 (4) *Civil legal services for LEAD participants.*

35 (5) *Dedicated prosecutorial resources, including for*
36 *coordinating any nondiverted criminal cases of LEAD participants.*

37 (6) *Dedicated law enforcement resources, including for overtime*
38 *required for participation in operational meetings and training.*

39 (7) *Training and technical assistance from experts in the*
40 *implementation of LEAD in other jurisdictions.*

(8) Collecting and maintaining the data necessary for program evaluation.

(b) The board shall contract with a nonprofit research entity, university, or college to evaluate the effectiveness of the LEAD program. The evaluation design shall include measures to assess the cost-benefit outcomes of LEAD programs compared to booking and prosecution, and may include evaluation elements such as comparing outcomes for LEAD participants to similarly situated offenders who are arrested and booked, the number of jail bookings, total number of jail days, the prison incarceration rate, subsequent felony and misdemeanor arrests or convictions, and costs to the criminal justice and court systems. Savings will be compared to costs of LEAD participation. By January 1, 2020 a report of the findings shall be submitted to the Governor and the Legislature pursuant to Section 9795 of the Government Code.

(c) The board may contract with experts in the implementation of LEAD in other jurisdictions for the purpose of providing technical assistance to participating jurisdictions.

(d) The board shall not spend more than 5 percent annually of the moneys allocated to the program for its administrative costs, excluding the contracts authorized in subdivisions (b) and (c).

1001.89. This chapter shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

~~SECTION 1. Chapter 2.92 (commencing with Section 1001.85) is added to Title 6 of Part 2 of the Penal Code, to read:~~

~~CHAPTER 2.92. LAW ENFORCEMENT ASSISTED DIVERSION~~

~~1001.85. (a) The Board of State and Community Corrections shall approve three counties for the establishment of a Law Enforcement Assisted Diversion (LEAD) pilot program. Interested counties shall submit applications to the board, including information on the manner in which the program will operate in that county, as required by the board.~~

~~(b) LEAD pilot programs shall include both of the following:~~

~~(1) Authorization for designated peace officers to take a person for whom the officer has probable cause for arrest for any of the following offenses to a drug treatment facility or program for~~

1 treatment, including detoxification and related services in lieu of
2 that arrest:

3 (A) Possession for sale or transfer of a controlled substance or
4 other prohibited substance where the circumstances indicate that
5 the sale or transfer is intended to provide a subsistence living or
6 to allow the person to obtain or afford drugs for his or her own
7 consumption.

8 (B) Sale or transfer of a controlled substance or other prohibited
9 substance where the circumstances indicate that the sale or transfer
10 is intended to provide a subsistence living or to allow the person
11 to obtain or afford drugs for his or her own consumption.

12 (C) Possession of a controlled substance or other prohibited
13 substance.

14 (D) Being under the influence of a controlled substance or other
15 prohibited substance.

16 (E) Being under the influence of alcohol and a controlled
17 substance or other prohibited substance.

18 (2) Authorization for designated peace officers to take a person
19 for whom the officer has probable cause for arrest for prostitution
20 pursuant to subdivision (b) of Section 647, to an agency or entity
21 that will provide services to that person in lieu of that arrest.
22 Services pursuant to this paragraph may include, but are not limited
23 to, housing, medical care, child care, treatment for alcohol or
24 substance abuse, nutritional counseling and treatment,
25 psychological counseling, employment, and employment training
26 and education.

27 (e) The Legislature finds and declares that a program similar to
28 the LEAD program has been demonstrated in Seattle, Washington
29 to lower recidivism of participants, increase cooperation by
30 participants in treatment and related programs, and significantly
31 reduce law enforcement and court costs.