

## **Assembly Bill No. 3234**

### **CHAPTER 334**

An act to amend Section 3055 of, and to add Chapter 2.96 (commencing with Section 1001.95) to Title 6 of Part 2 of, the Penal Code, relating to public safety.

[Approved by Governor September 30, 2020. Filed with  
Secretary of State September 30, 2020.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 3234, Ting, Public Safety.

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 authorize a judge in the superior court in which a misdemeanor is being prosecuted to offer misdemeanor diversion to a defendant over the objection of a prosecuting attorney, except as specified. The bill would authorize 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 bill would require the judge, at the end of the diversion period and if the defendant complies with all required terms, conditions, and programs, to dismiss the action against the defendant, and would deem the arrest upon which diversion was imposed to have never occurred, as specified. The bill would authorize the court to end the diversion and order resumption of the criminal proceedings if the court finds that the defendant is not complying with the terms and conditions of diversion.

Existing law establishes the Elderly Parole Program for the purpose of reviewing the parole suitability of inmates who are 60 years of age or older and who have served a minimum of 25 years of continuous incarceration on their sentence.

This bill would modify the minimum age limitation for that program to 50 years of age and instead require the inmate to have served a minimum of 20 years of continuous incarceration in order to be eligible for that program.

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

SECTION 1. Chapter 2.96 (commencing with Section 1001.95) is added to Title 6 of Part 2 of the Penal Code, to read:

## CHAPTER 2.96. COURT INITIATED MISDEMEANOR DIVERSION

1001.95. (a) A judge in the superior court in which a misdemeanor is being prosecuted may, at the judge's discretion, and over the objection of a prosecuting attorney, offer diversion to a defendant pursuant to these provisions.

(b) A judge may continue a diverted case for a period not to exceed 24 months and order the defendant to comply with terms, conditions, or programs that the judge deems appropriate based on the defendant's specific situation.

(c) If the defendant has complied with the imposed terms and conditions, at the end of the period of diversion, the judge shall dismiss the action against the defendant.

(d) 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 reinstituted. If the court finds that the defendant has not complied with the terms and conditions of diversion, the court may end the diversion and order resumption of the criminal proceedings.

(e) A defendant may not be offered diversion pursuant to this section for any of the following current charged offenses:

(1) Any offense for which a person, if convicted, would be required to register pursuant to Section 290.

(2) A violation of Section 273.5.

(3) A violation of subdivision (e) of Section 243.

(4) A violation of Section 646.9.

1001.96. A defendant who is diverted pursuant to this chapter shall be required to complete all of the following in order to have their action dismissed:

(a) Complete all conditions ordered by the court.

(b) Make full restitution. However, 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.

(c) Comply with a court-ordered protective order, stay-away order, or order prohibiting firearm possession, if applicable.

1001.97. (a) Upon successful completion of the terms, conditions, or programs ordered by the court pursuant to Section 1001.95, the arrest upon which diversion was imposed shall be deemed to have never occurred. The defendant may indicate in response to any question concerning their prior criminal record that they were not arrested. A record pertaining to an arrest resulting in successful completion of the terms, conditions, or programs ordered by the court shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(b) The defendant shall be advised that, regardless of their successful completion of diversion, the arrest upon which the diversion was based may be disclosed by the Department of Justice in response to a peace officer

application request and that, notwithstanding subdivision (a), this section does not relieve them of the obligation to disclose the arrest in response to a direct question contained in a questionnaire or application for a position as a peace officer, as defined in Section 830.

SEC. 2. Section 3055 of the Penal Code is amended to read:

3055. (a) The Elderly Parole Program is hereby established, to be administered by the Board of Parole Hearings, for purposes of reviewing the parole suitability of any inmate who is 50 years of age or older and has served a minimum of 20 years of continuous incarceration on the inmate's current sentence, serving either a determinate or indeterminate sentence.

(b) (1) For purposes of this code, the term "elderly parole eligible date" means the date on which an inmate who qualifies as an elderly offender is eligible for release from prison.

(2) For purposes of this section, "incarceration" means detention in a city or county jail, local juvenile facility, a mental health facility, a Division of Juvenile Justice facility, or a Department of Corrections and Rehabilitation facility.

(c) When considering the release of an inmate specified by subdivision (a) pursuant to Section 3041, the board shall give special consideration to whether age, time served, and diminished physical condition, if any, have reduced the elderly inmate's risk for future violence.

(d) When scheduling a parole suitability hearing date pursuant to subdivision (b) of Section 3041.5 or when considering a request for an advance hearing pursuant to subdivision (d) of Section 3041.5, the board shall consider whether the inmate meets or will meet the criteria specified in subdivision (a).

(e) An individual who is subject to this section shall meet with the board pursuant to subdivision (a) of Section 3041. If an inmate is found suitable for parole under the Elderly Parole Program, the board shall release the individual on parole as provided in Section 3041.

(f) If parole is not granted, the board shall set the time for a subsequent elderly parole hearing in accordance with paragraph (3) of subdivision (b) of Section 3041.5. No subsequent elderly parole hearing shall be necessary if the offender is released pursuant to other statutory provisions prior to the date of the subsequent hearing.

(g) This section does not apply to cases in which sentencing occurs pursuant to Section 1170.12, subdivisions (b) to (i), inclusive, of Section 667, or in cases which an individual was sentenced to life in prison without the possibility of parole or death.

(h) This section does not apply if the person was convicted of first-degree murder if the victim was a peace officer, as defined in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12, who was killed while engaged in the performance of their duties, and the individual knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of their duties, or the victim was a peace officer or a former peace officer

under any of the above-enumerated sections, and was intentionally killed in retaliation for the performance of their official duties.

(i) This section does not alter the rights of victims at parole hearings.

(j) By December 31, 2022, the board shall complete all elderly parole hearings for individuals who were sentenced to determinate or indeterminate terms and who, on the effective date of the bill that added this subdivision, are or will be entitled to have their parole suitability considered at an elderly parole hearing before January 1, 2023.