



June 21, 2022

Honorable Reginald Byron Jones-Sawyer Sr.
Chair, Assembly Public Safety Committee
1020 N Street, Room 111
Sacramento, California 95814

Dear Chairman Jones-Sawyer and members of the Assembly Public Safety Committee,

I write on behalf of the National Association of Criminal Defense Lawyers (NACDL) to express support for Senate Bill 1021 (“SB 1021”), as amended, which would allow those convicted of certain first-time misdemeanor DUI offenses to be granted diversion.

NACDL is the preeminent organization advancing the mission of the criminal defense bar to ensure justice and due process for persons accused of crime or wrongdoing. NACDL’s nearly 10,000 members (40,000 with state affiliate members) include private criminal defense lawyers, public defenders, military defense counsel, law professors and judges committed to preserving fairness and promoting a rational and humane criminal justice system. Critical to this mission are NACDL’s efforts to identify and reform flaws and inequities in the criminal legal system, and specifically address systemic racism and its impact on the administration of justice.

Pre-trial diversion is designed to avoid the traditional path to criminal prosecution, and instead, reroute the accused toward individualized, rehabilitative services. As recent experience shows, diversion programs allow courts to make the punishment fit the conduct and also alleviate jail and prison overcrowding, delays in the legal process due to caseloads, and the many collateral consequences associated with saddling individuals with criminal records.

As with other criminal conduct, criminal prosecution of DUI offenses is not always the best course of action. Diversion programs that involve rehabilitative treatment, rather than incarceration, can be much more effective at enhancing public safety. Further, research suggests that racial bias plays a role in DUI convictions. For example, Latino men in California are disproportionately more likely to be convicted of a DUI offense, despite similar rates of DUI behavior by their white counterparts.¹ As a result, diversion can offer an equitable alternative to addressing these disparities without generating harmful outcomes, such as family separation, loss of employment and housing, and other collateral consequences that result from entering the criminal legal system. State dollars spent to prosecute and incarcerate individuals for these offenses can then be redirected

¹ Kagawa, Rose M.C., et al. *Racial bias and DUI enforcement: Comparing conviction rates with frequency of behavior*. (2021), <https://onlinelibrary.wiley.com/doi/full/10.1111/1745-9133.12558>

The findings in this study suggest that “racial bias plays a role in DUI convictions, with White men experiencing a lower probability of conviction than Latino/Hispanic men who engage in similar behavior.”



back into diversion and substance use treatment programs to ensure each individual gets the rehabilitative services they need.

Legislation² was signed into law in 2020 permitting California courts to offer diversion to individuals convicted of certain misdemeanor offenses. However, due to several court rulings, this law has been interpreted to exclude those convicted of misdemeanor DUI offenses.³ Under the proposed SB 1021, as amended, diversion programs would be limited to those who have no prior DUI convictions; are not currently enrolled in, or have not completed, a DUI diversion program within the past ten years; do not hold a commercial driver's license; and were not operating a commercial vehicle at the time of the offense.

Several states have already enacted policies allowing those charged with drug offenses and/or with substance use related needs to enter diversion programs,⁴ including neighboring Oregon,⁵ which offers a statewide program for those specifically charged with DUI offenses.

Further, research overwhelmingly shows that individuals who are diverted away from the criminal justice system are less likely to reoffend. One study conducted by the University of Pennsylvania examined the effectiveness of Philadelphia's diversion program for those charged with low-level misdemeanors. Researchers found that the diversion program "reduced five-year reconviction rates by 35 percent and led to an estimated 45 percent reduction in future sentenced supervision time."⁶

In another study examining diversion programs in Harris County, Texas, researchers found that "defendants without a prior felony conviction who participated in Texas' deferred adjudication program experienced an immediate and dramatic reduction in subsequent offending." In total,

² California Legislative Information, Assembly Bill 3234 (2020),

https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201920200AB3234.

³ Saavedra, Tony. Orange County Register. *DUIs don't qualify for new diversion law, appeals court rules*. (2021), <https://www.msn.com/en-us/news/crime/duis-don-t-qualify-for-new-diversion-law-appeals-court-rules/ar-AA5fWUA>.

⁴ National Conference of State Legislatures, Pretrial Diversion, <https://www.ncsl.org/research/civil-and-criminal-justice/pretrial-diversion.aspx#:~:text=Statutory%20pretrial%20diversion%20is%20well%20established%20in%2048,prior%20to%20adjudication%20or%20final%20entry%20of%20judgment>, last viewed June 16, 2022.

⁵ Oregon Judicial Department, Programs & Services – Clatsop County Circuit Court, DUII Diversion, <https://www.courts.oregon.gov/courts/clatsop/programs-services/Pages/duii-diversion.aspx>, last viewed June 16, 2022.

⁶ Nguyen, Viet. Department of Criminology, University of Pennsylvania. *The efficacy of prosecutor-led, adult diversion for misdemeanor offenses*. (2022), <https://vietnguyen.netlify.app/files/SSRN%20Diversion.pdf>.



reconvictions subsequently decreased by about 75 percent over the following decade. Data from this study also suggests an increased likelihood of employment for these individuals.⁷

Allowing those convicted of a first-time DUI offense to participate in diversion programs in certain cases in lieu of criminal prosecution enhances the fairness and effectiveness of DUI enforcement, while being a more effective avenue for improving public safety. For these reasons, NACDL urges members of the committee to support the passage of SB 1021.

Sincerely,

Martín A. Sabelli, President
National Association of Criminal Defense Lawyers

⁷ Love, Margaret, et al. The Crime Report. *Texas Study Shows Diversion Curbs Recidivism, Strengthens Job Prospects*. (2021), <https://thecrimereport.org/2021/02/25/texas-study-shows-diversion-curbs-recidivism-strengthens-job-prospects/>.