

**REPORT OF THE
CHIEF LEGISLATIVE ANALYST**

DATE: July 17, 2013

TO: Honorable Members of the Rules, Elections and Intergovernmental Relations
Committee

FROM: Gerry F. Miller *Motion: July For* Council File No: 13-0002-S93
Chief Legislative Analyst Assignment No: 13-06-0491

SUBJECT: Resolution (Englander - Buscaino) to oppose AB 994, which would require that every county in California administer pre-trial diversion programs through their county superior courts

CLA RECOMMENDATION: Adopt Resolution (Englander - Buscaino) to include in the City's 2013 – 2014 State Legislative Program OPPOSITION to AB 994 (Lowenthal), which would require that every county in California administer pre-trial diversion programs through their county superior courts, would give the courts the ability to grant diversion in lieu of jail time for nearly every misdemeanor charge, and would remove all prosecutorial discretion in the application of misdemeanor pre-trial diversion programs.

SUMMARY

On June 4, 2013, a Resolution (Englander - Buscaino) was introduced to oppose AB 994 (Lowenthal), legislation which would require that every county in the state of California administer pre-trial diversion programs through their superior courts. The Resolution states that under current law, district attorneys may employ pre-trial diversion in misdemeanor cases in order to divert individuals from jail to alternative programs for certain misdemeanor charges. The Resolution further states that while pre-trial diversion is appropriate in many cases, AB 994 would remove prosecutorial discretion in the application of pre-trial diversion.

The Resolution states that AB 994 would allow for judges to offer pre-trial diversion in nearly every misdemeanor case, including charges involving stalking, child abuse, domestic violence, and other serious misdemeanor offenses. The Resolution, therefore, seeks an official position of the City of Los Angeles to oppose AB 994, which would require every county in California to administer pre-trial diversion programs through their superior courts, would give the courts the ability to grant diversion in lieu of jail time for nearly every misdemeanor charge, and would remove all prosecutorial discretion in the application of misdemeanor pre-trial diversion programs.

BACKGROUND

Under current law, county district attorneys in California are able to create and utilize pre-trial diversion programs to keep some offenders charged with misdemeanors out of jail. These programs are designed to offer offenders a punishment other than jail time, and to help appropriately selected offenders avoid the stigma of a criminal conviction. District attorneys

have the discretion to offer pre-trial diversion in lieu of jail time for misdemeanors, and are not required to do so; not all district attorneys utilize pre-trial diversion.

In an effort to extend pre-trial diversion programs across the state, AB 994 would mandate that each county administer a program. Under AB 994, misdemeanor pre-trial diversion programs would be established under the supervision of the county superior court. Further, the court would have the ability to offer pre-trial diversion to individuals charged with misdemeanors without the district attorney's consent.

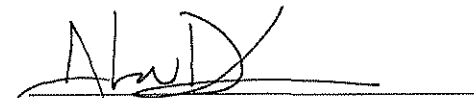
While the goals of AB 994 are commendable, there are significant issues with this bill. AB 994 removes prosecutorial discretion, and would allow judges to grant pre-trial diversion for nearly every misdemeanor without input from district attorneys. This includes misdemeanor charges of child abuse, domestic violence, and stalking, among other charges. Further, AB 994 would allow for diversion pre-plea, and requires no admission of guilt to be eligible for pre-trial diversion. This would make renewed prosecution difficult in cases where an individual fails to meet the requirements imposed upon them as part of their pre-trial diversion program. The California District Attorneys Association has indicated it opposes AB 994 for these reasons. The City Attorney's Office is also opposed to this bill.

DEPARTMENTS NOTIFIED

City Attorney's Office

BILL STATUS

02/22/2013	Bill introduced
04/25/2013	Passed in Assembly's committee on Public Safety
05/24/2013	Passed in Assembly's committee on Appropriations
05/30/2013	Passed in Assembly (47-29); referred to Senate
07/02/2013	Passed in Senate committee on Public Safety; re-referred to Senate committee on Appropriations


Joshua Drake
Analyst

GFM:MF:jwd

Attachment: Resolution (Englander - Buscaino)

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, under current law, district attorneys may employ pre-trial diversion in order to divert some individuals charged with misdemeanors from jail to alternative programs; and

WHEREAS pre-trial diversion programs are a valid option for district attorneys to employ, but are not appropriate for all types of misdemeanor charges, including cases of domestic violence, child abuse, elder abuse, or other serious misdemeanors; and

WHEREAS, any efforts to remove this prosecutorial discretion and mandate that counties offer pre-trial diversion for most misdemeanor charges would pose a threat to public safety; and

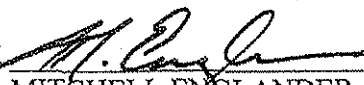
WHEREAS, AB 994 (Lowenthal) would require that every county administer pre-trial diversion programs, through their county superior courts, removing all prosecutorial discretion; and

WHEREAS, AB 994 would allow judges to offer pre-trial diversion in lieu of jail time for most misdemeanor cases, including cases involving stalking, child abuse, domestic violence, violation of a restraining order, and other crimes; and

WHEREAS, by requiring cash strapped county superior courts to administer pre-trial diversion programs, AB 994 creates a scenario where pre-trial diversion programs could be employed in nearly all misdemeanor cases in order to conserve judicial resources;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2013 - 2014 State Legislative Program OPPOSITION to AB 994 (Lowenthal), which would require that every county in California administer pre-trial diversion programs though their county superior courts, would give the courts the ability to grant diversion in lieu of jail time for nearly every misdemeanor charge, and would remove all prosecutorial discretion in the application of misdemeanor pre-trial diversion programs.


PRESENTED BY


MITCHELL ENGLANDER
Councilmember, 12th District

SECONDED BY



Jwd


JUN - 4 2013

ORIGINAL