

AMENDED IN ASSEMBLY APRIL 17, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 994

Introduced by Assembly Member Lowenthal

February 22, 2013

An act to amend Section ~~1001.2~~ of 1001 of, to repeal Sections 1001.8 and 1001.9 of, and to repeal and add Sections 1001.1, 1001.2, 1001.3, 1001.4, 1001.6, and 1001.7 of, the Penal Code, relating to diversion programs.

LEGISLATIVE COUNSEL'S DIGEST

AB 994, as amended, Lowenthal. Misdemeanor diversion programs.

Under existing law, prosecution of an offense filed as a misdemeanor may be postponed, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, for the person charged to participate in a diversion program for the treatment of problem drinking or alcoholism. Existing law requires the district attorney of each county annually to review any diversion program. Existing law prohibits a program from continuing without the approval of the district attorney and prohibits a person from participating in a diversion program without the authorization of the district attorney.

This bill would require each county to establish and maintain a *pretrial diversion* program, *to be administered by the superior court of that county*, and would remove the requirement for approval, both of the program and the participation by an individual, by the district attorney. *The program would specify the administrative procedures and who would be eligible for the pretrial diversion program.* By requiring

diversion programs in additional counties this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 *SECTION 1. Section 1001 of the Penal Code is amended to*
2 *read:*

3 1001. It is the intent of the Legislature that neither this chapter,
4 Chapter 2.5 (commencing with Section 1000) of this title, nor any
5 other provision of law be construed to preempt other current or
6 future pretrial or precomplaint diversion programs. It is also the
7 intent of the Legislature that current or future posttrial diversion
8 programs not be preempted, except as provided in Section 13201
9 or 13352.5 of the Vehicle Code. ~~Sections 1001.2 to 1001.11,~~
10 ~~inclusive, of this chapter shall apply only to pretrial diversion~~
11 ~~programs as defined in Section 1001.1.~~

12 *SEC. 2. Section 1001.1 of the Penal Code is repealed.*

13 ~~1001.1. As used in Sections 1001.2 to 1001.11, inclusive, of~~
14 ~~this chapter, pretrial diversion refers to the procedure of postponing~~
15 ~~prosecution of an offense filed as a misdemeanor either temporarily~~
16 ~~or permanently at any point in the judicial process from the point~~
17 ~~at which the accused is charged until adjudication.~~

18 *SEC. 3. Section 1001.1 is added to the Penal Code, to read:*

19 1001.1. Each county shall establish a pretrial diversion
20 program, administered by the superior court of the county, by
21 which a defendant may be offered, at the discretion of the court,
22 diversion in lieu of sentencing as provided in this chapter.

23 *SEC. 4. Section 1001.2 of the Penal Code is repealed.*

24 ~~1001.2. (a) This chapter shall not apply to any pretrial~~
25 ~~diversion or posttrial programs for the treatment of problem~~
26 ~~drinking or alcoholism utilized for persons convicted of one or~~

1 ~~more offenses under Section 23152 or 23153 or former Section~~
2 ~~23102 of the Vehicle Code or to pretrial diversion programs~~
3 ~~established pursuant to Chapter 2.5 (commencing with Section~~
4 ~~1000) of this title nor shall this chapter be deemed to authorize~~
5 ~~any pretrial diversion or posttrial programs for persons alleged to~~
6 ~~have committed violation of Section 23152 or 23153 of the Vehicle~~
7 ~~Code.~~

8 ~~(b) The district attorney of each county shall review annually~~
9 ~~any diversion program established pursuant to this chapter, and~~
10 ~~no program shall continue without the approval of the district~~
11 ~~attorney. No person shall be diverted under a program unless it~~
12 ~~has been approved by the district attorney. Nothing in this~~
13 ~~subdivision shall authorize the prosecutor to determine whether a~~
14 ~~particular defendant shall be diverted.~~

15 *SEC. 5. Section 1001.2 is added to the Penal Code, to read:*

16 *1001.2. (a) The pretrial diversion program established by this*
17 *chapter shall apply whenever a case is before a court upon an*
18 *accusatory pleading concerning the commission of a misdemeanor,*
19 *except a misdemeanor specified in subdivision (b).*

20 *(b) This program shall not apply to a diversion program for the*
21 *treatment of problem drinking or alcoholism utilized for persons*
22 *convicted of one or more offenses under Section 23152 or 23153*
23 *or former Section 23105 of the Vehicle Code, or to pretrial*
24 *diversion programs established pursuant to Chapter 2.5*
25 *(commencing with Section 1000).*

26 *(c) Diversion shall not be an option under this chapter whenever*
27 *the accusatory pleading charges the commission of a misdemeanor*
28 *for which any of the following apply:*

29 *(1) Incarceration would be mandatory upon conviction of the*
30 *defendant.*

31 *(2) Registration would be required upon conviction pursuant*
32 *to Section 290.*

33 *(3) The granting of probation is prohibited.*

34 *(4) The magistrate determines that the offense shall be*
35 *prosecuted as a misdemeanor pursuant to paragraph (5) of*
36 *subdivision (b) of Section 17.*

37 *SEC. 6. Section 1001.3 of the Penal Code is repealed.*

38 ~~1001.3. At no time shall a defendant be required to make an~~
39 ~~admission of guilt as a prerequisite for placement in a pretrial~~
40 ~~diversion program.~~

1 SEC. 7. Section 1001.3 is added to the Penal Code, to read:

2 1001.3. (a) At the time of filing a criminal complaint, or before
3 the defendant's arraignment, the prosecuting attorney shall
4 determine whether the defendant is eligible for the misdemeanor
5 diversion program. If the prosecuting attorney determines that the
6 defendant is eligible for the program, he or she shall advise the
7 defendant and his or her attorney of that determination. This
8 notification shall include all of the following:

9 (1) A full description of the procedures for diversion.

10 (2) A clear statement that in lieu of trial, the court may grant
11 diversion provided that the defendant waives time for arraignment
12 and plea.

13 (3) A clear statement that upon failure to perform a term or
14 condition under the program, or to comply with a court order, the
15 prosecuting attorney or the court shall reinstate proceedings.

16 (b) The period during which diversion is granted shall be no
17 longer than 365 days.

18 (c) Every defendant who chooses to participate in the program
19 shall be required to complete each of the following:

20 (1) Enroll in and complete an educational program as accepted
21 by the court.

22 (2) Make full restitution.

23 (3) Comply with any court-ordered protective orders or
24 stay-away orders.

25 (d) At no time shall a defendant be required to make an
26 admission of guilt as a prerequisite for placement in a pretrial
27 diversion program under this chapter.

28 (e) At the end of the pretrial diversion program, the defendant
29 shall be ordered back to court for pretrial or, if in compliance,
30 dismissal.

31 (f) If, before the time of the dismissal hearing, the prosecuting
32 attorney files charges for the commission of a new criminal offense
33 during the diversion period, has failed to complete the assigned
34 educational program, has willfully failed to make full restitution,
35 has failed to pay all fees, or has failed to complete or comply with
36 any other term or condition of the diversion program, the
37 prosecuting attorney or the court may reinstate proceedings and
38 set the matter for pretrial.

39 (g) The diversion program shall not be deemed to have been
40 successfully completed, nor can the defendant's charge or charges

1 *be dismissed, until all terms and conditions of the program have*
2 *been met.*

3 *(h) After notice to the defendant, the court shall hold a hearing*
4 *to determine whether criminal proceedings should be reinstated.*
5 *If the defendant has performed satisfactorily during the period in*
6 *which diversion was granted, at the end of that period, the criminal*
7 *charge or charges shall be dismissed.*

8 *(i) When a defendant's case is diverted, a bail bond or*
9 *undertaking, or a deposit held in lieu thereof, shall be ordered*
10 *exonerated by the court.*

11 *SEC. 8. Section 1001.4 of the Penal Code is repealed.*

12 ~~1001.4. A divertee is entitled to a hearing, as set forth by law,~~
13 ~~before his or her pretrial diversion can be terminated for cause.~~

14 *SEC. 9. Section 1001.4 is added to the Penal Code, to read:*

15 *1001.4. (a) A case in which the defendant may owe restitution*
16 *shall be handled as follows:*

17 *(1) If, at the time of the defendant's admission into the program,*
18 *the defendant, the prosecuting attorney, and the victim agree as*
19 *to the amount of restitution owed, the court shall order the*
20 *defendant to pay that agreed upon amount of restitution.*

21 *(2) If, at the time of the defendant's admission into the program,*
22 *there is insufficient information, or the parties disagree, about the*
23 *nature or amount of restitution owed, the prosecuting attorney*
24 *will determine the amount of restitution owed to a victim or other*
25 *injured or damaged party. If the defendant disagrees with the*
26 *amount of restitution, he or she shall have a right to a hearing at*
27 *which the court shall determine the amount of restitution owed.*
28 *The defendant may waive the right to a restitution hearing and*
29 *stipulate to the amount of restitution determined by the prosecuting*
30 *attorney.*

31 *(b) At the time that restitution is ordered, the defendant shall*
32 *be ordered to complete, and shall complete, a "Financial*
33 *Disclosure Statement" as described in paragraph (5) of subdivision*
34 *(f) of Section 1202.4.*

35 *(c) At the time that diversion is granted, the defendant shall be*
36 *ordered to pay restitution in full prior to the scheduled pretrial*
37 *date.*

38 *SEC. 10. Section 1001.6 of the Penal Code is repealed.*

39 ~~1001.6. At such time that a defendant's case is diverted, any~~
40 ~~bail bond or undertaking, or deposit in lieu thereof, on file by or~~

1 on behalf of the defendant shall be exonerated, and the court shall
2 enter an order so directing.

3 SEC. 11. Section 1001.6 is added to the Penal Code, to read:

4 1001.6. (a) Before the defendant may be deemed to have
5 successfully completed the diversion program, he or she shall pay
6 in full the following costs and fees:

7 (1) The costs of the required educational program, to be paid
8 directly to the provider of the educational program.

9 (2) The prosecuting attorney's administrative fee in an amount
10 authorized by the board of supervisors.

11 (3) Any fees required by the court pursuant to Section 1001.16.

12 (b) The prosecuting attorney's administrative fee shall not be
13 waived or discounted by the court, unless the court first determines
14 that the person is unable to pay all or part of that fee.

15 (c) The costs and fees listed in this section shall be paid in full
16 prior to completion of the diversion program.

17 SEC. 12. Section 1001.7 of the Penal Code is repealed.

18 ~~1001.7. If the divertee has performed satisfactorily during the~~
19 ~~period of diversion, the criminal charges shall be dismissed at the~~
20 ~~end of the period of diversion.~~

21 SEC. 13. Section 1001.7 is added to the Penal Code, to read:

22 1001.7. (a) Any record filed with the Department of Justice
23 shall indicate the disposition in those cases diverted pursuant to
24 this chapter. Upon successful completion of a diversion program,
25 the arrest upon which the case was diverted shall be deemed to
26 have never occurred. The defendant may indicate in response to
27 any question concerning his or her prior criminal record that he
28 or she was not arrested or granted deferred entry of judgment for
29 the offense, except as specified in subdivision (b). A record
30 pertaining to an arrest resulting in successful completion of a
31 diversion program shall not, without the defendant's consent, be
32 used in any way that could result in the denial of any employment,
33 benefit, license, or certificate.

34 (b) The defendant shall be advised that, regardless of his or her
35 successful completion of the diversion program, the arrest upon
36 which the case was diverted may be disclosed by the Department
37 of Justice in response to any peace officer application request and
38 that, notwithstanding subdivision (a), this section does not relieve
39 him or her of the obligation to disclose the arrest in response to

1 *any direct question contained in any questionnaire or application*
2 *for a position as a peace officer, as defined in Section 830.*

3 *SEC. 14. Section 1001.8 of the Penal Code is repealed.*

4 ~~1001.8. Any record filed with the Department of Justice shall~~
5 ~~indicate the disposition of those cases diverted pursuant to this~~
6 ~~chapter.~~

7 *SEC. 15. Section 1001.9 of the Penal Code is repealed.*

8 ~~1001.9. (a) Any record filed with the Department of Justice~~
9 ~~shall indicate the disposition in those cases diverted pursuant to~~
10 ~~this chapter. Upon successful completion of a diversion program,~~
11 ~~the arrest upon which the diversion was based shall be deemed to~~
12 ~~have never occurred. The divertee may indicate in response to any~~
13 ~~question concerning his or her prior criminal record that he or she~~
14 ~~was not arrested or diverted for the offense, except as specified in~~
15 ~~subdivision (b). A record pertaining to an arrest resulting in~~
16 ~~successful completion of a diversion program shall not, without~~
17 ~~the divertee's consent, be used in any way that could result in the~~
18 ~~denial of any employment, benefit, license, or certificate.~~

19 ~~(b) The divertee shall be advised that, regardless of his or her~~
20 ~~successful completion of diversion, the arrest upon which the~~
21 ~~diversion was based may be disclosed by the Department of Justice~~
22 ~~in response to any peace officer application request and that,~~
23 ~~notwithstanding subdivision (a), this section does not relieve him~~
24 ~~or her of the obligation to disclose the arrest in response to any~~
25 ~~direct question contained in any questionnaire or application for~~
26 ~~a position as a peace officer, as defined in Section 830.~~

27 *SECTION 1. Section 1001.2 of the Penal Code is amended to*
28 *read:*

29 ~~1001.2. (a) This chapter shall not apply to a pretrial diversion~~
30 ~~or posttrial program for the treatment of problem drinking or~~
31 ~~alcoholism utilized for persons convicted of one or more offenses~~
32 ~~under Section 23152 or 23153 or former Section 23102 of the~~
33 ~~Vehicle Code or to a pretrial diversion program established~~
34 ~~pursuant to Chapter 2.5 (commencing with Section 1000) of this~~
35 ~~title. Nor shall this chapter be deemed to authorize a pretrial~~
36 ~~diversion or posttrial program for persons alleged to have~~
37 ~~committed a violation of Section 23152 or 23153 of the Vehicle~~
38 ~~Code.~~

39 ~~(b) Each county shall establish and maintain a diversion program~~
40 ~~pursuant to this chapter.~~

1 ~~SEC. 2.~~

2 *SEC. 16.* If the Commission on State Mandates determines that
3 this act contains costs mandated by the state, reimbursement to
4 local agencies and school districts for those costs shall be made
5 pursuant to Part 7 (commencing with Section 17500) of Division
6 4 of Title 2 of the Government Code.

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