

AMENDED IN ASSEMBLY MAY 23, 2014
AMENDED IN ASSEMBLY MARCH 28, 2014
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2124

Introduced by Assembly Member Lowenthal

February 20, 2014

An act to add Chapter 2.96 (commencing with Section 1001.95) to Title 6 of Part 2 of the Penal Code, relating to criminal sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2124, as amended, Lowenthal. Misdemeanor offenses: deferral of sentencing.

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 the county in which a misdemeanor is being prosecuted, at his or her discretion, to defer sentencing a defendant who has submitted a plea of guilty or nolo contendere for a period not to exceed 24 months and of a county that has a specified diversion program to offer that misdemeanor diversion to a defendant over the objection of a prosecuting attorney. The bill also would authorize a judge in the superior court in a county in which a misdemeanor is being prosecuted, if the county does not have a diversion program, and at the judge's discretion, to defer sentencing a defendant who has submitted a plea of guilty or nolo contendere for a period not to exceed 12 months. The bill would~~

authorize the judge to order the defendant to comply with terms, conditions, and programs, as specified. The bill would require the judge, at the end of the deferral period and if the defendant complies with all terms, conditions, and programs required by the court, to strike the defendant’s plea and dismiss the action against the defendant. The bill would require the court, a probation officer, or the prosecuting attorney to make a motion for entry of judgment, and would require the court to sentence the defendant, if the defendant reoffends or fails to comply with the terms, conditions, or programs ordered by the court.

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

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

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

3
 4 CHAPTER 2.96. DEFERRAL OF SENTENCING

5
 6 1001.95. (a) (1) A judge in the superior court ~~in~~ of a county
 7 that has established a misdemeanor diversion program pursuant
 8 to Chapter 2.7 (commencing with Section 1001) or Chapter 2.9
 9 (commencing with Section 1001.50) may, at his or her discretion
 10 and over the objection of a prosecuting attorney, offer
 11 misdemeanor diversion to a defendant pursuant to those provisions.

12 (2) A defendant may make a motion for imposition of diversion
 13 pursuant to this subdivision.

14 (b) (1) A judge in the superior court in the county in which a
 15 misdemeanor is being prosecuted that has not established a
 16 misdemeanor diversion program pursuant to Chapter 2.7
 17 (commencing with Section 1001) or Chapter 2.9 (commencing
 18 with Section 1001.50) may, at his or her discretion, defer sentencing
 19 a defendant who has submitted a plea of guilty or nolo contendere
 20 pursuant to this chapter. Sentencing may be deferred for a period
 21 not to exceed ~~24~~ 12 months, and the judge may order the defendant
 22 to comply with terms, conditions, or programs that the judge deems
 23 appropriate based on the defendant’s specific situation.

24 (2) A defendant may make a motion for deferral of sentencing
 25 pursuant to this subdivision.

1 1001.96. (a) If the defendant, during the period of deferral
2 *imposed pursuant to subdivision (b) of Section 1001.95*, complies
3 with all terms, conditions, and programs required by the court,
4 then, the judge shall, at the end of the period, strike the defendant's
5 plea and dismiss the action against the defendant.

6 (b) Upon successful completion of the terms, conditions, or
7 programs ordered by the court, the arrest upon which sentencing
8 was deferred shall be deemed to have never occurred. The
9 defendant may indicate in response to any question concerning his
10 or her prior criminal record that he or she was not arrested or
11 granted deferred entry of judgment for the offense, except as
12 specified in subdivision (c). A record pertaining to an arrest
13 resulting in successful completion of the terms, conditions, or
14 programs ordered by the court shall not, without the defendant's
15 consent, be used in any way that could result in the denial of any
16 employment, benefit, license, or certificate.

17 (c) The defendant shall be advised that, regardless of his or her
18 successful completion of the terms, conditions, or programs ordered
19 by the court pursuant to this chapter, the arrest upon which the
20 judgment was deferred may be disclosed by the Department of
21 Justice in response to ~~any~~ a peace officer application request and
22 that, notwithstanding Section 1001.95, this section does not relieve
23 him or her of the obligation to disclose the arrest in response to a
24 direct question contained in a questionnaire or application for a
25 position as a peace officer, as defined in Section 830.

26 1001.97. If, during the period of deferral *imposed pursuant to*
27 *subdivision (b) of Section 1001.95*, the defendant reoffends or fails
28 to comply with the terms, conditions, or programs required by the
29 court, then the court, *the probation officer, or the prosecuting*
30 *attorney* shall make a motion for entry of judgment, and *the court*
31 shall sentence the defendant as if deferral had not occurred.