

ASSEMBLY BILL

No. 2309

Introduced by Assembly Member Brown

February 21, 2014

An act to amend Section 1000 of the Penal Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 2309, as introduced, Brown. Controlled substances: possession: deferred entry of judgment.

Existing law provides that entry of judgment may be deferred with respect to a defendant who is charged with certain crimes involving possession of controlled substances and who meets certain criteria, including that he or she has no prior convictions for any offense involving controlled substances and has had no felony convictions within the 5 years prior, as specified. Existing law requires the prosecuting attorney to review his or her file to determine whether or not these criteria apply to the defendant.

This bill would add possession of Chlordiazepoxide, Clonazepam, Clorazepate, Diazepam, Flurazepam, Lorazepam, Mebutamate, Oxazepam, Prazepam, Temazepam, Halazepam, Alprazolam, Propoxyphene, Diethylpropion, Phentermine, Pemoline, Fenfluramine, and Triazolam without a prescription to the list of violations to which these provisions apply.

By increasing the duties of a local prosecutor in regard to determining whether a defendant charged with these types of controlled substance offenses qualify for deferred entry of judgment, 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 no reimbursement is required by this act for a specified reason.

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 1000 of the Penal Code is amended to
2 read:

3 1000. (a) This chapter shall apply whenever a case is before
4 any court upon an accusatory pleading for a violation of Section
5 11350, 11357, 11364, or 11365, paragraph (2) of subdivision (b)
6 of Section 11375, Section 11377, or Section 11550 of the Health
7 and Safety Code, or subdivision (b) of Section 23222 of the Vehicle
8 Code, or Section 11358 of the Health and Safety Code if the
9 marijuana planted, cultivated, harvested, dried, or processed is for
10 personal use, or Section 11368 of the Health and Safety Code if
11 the narcotic drug was secured by a fictitious prescription and is
12 for the personal use of the defendant and was not sold or furnished
13 to another, or subdivision (d) of Section 653f if the solicitation
14 was for acts directed to personal use only, or Section 381 or
15 subdivision (f) of Section 647 of the Penal Code, if for being under
16 the influence of a controlled substance, or Section 4060 of the
17 Business and Professions Code, and it appears to the prosecuting
18 attorney that, except as provided in subdivision (b) of Section
19 11357 of the Health and Safety Code, all of the following apply
20 to the defendant:

21 (1) The defendant has no conviction for any offense involving
22 controlled substances prior to the alleged commission of the
23 charged offense.

24 (2) The offense charged did not involve a crime of violence or
25 threatened violence.

26 (3) There is no evidence of a violation relating to narcotics or
27 restricted dangerous drugs other than a violation of the sections
28 listed in this subdivision.

29 (4) The defendant’s record does not indicate that probation or
30 parole has ever been revoked without thereafter being completed.

1 (5) The defendant's record does not indicate that he or she has
2 successfully completed or been terminated from diversion or
3 deferred entry of judgment pursuant to this chapter within five
4 years prior to the alleged commission of the charged offense.

5 (6) The defendant has no prior felony conviction within five
6 years prior to the alleged commission of the charged offense.

7 (b) The prosecuting attorney shall review his or her file to
8 determine whether or not paragraphs (1) to (6), inclusive, of
9 subdivision (a) apply to the defendant. Upon the agreement of the
10 prosecuting attorney, law enforcement, the public defender, and
11 the presiding judge of the criminal division of the superior court,
12 or a judge designated by the presiding judge, this procedure shall
13 be completed as soon as possible after the initial filing of the
14 charges. If the defendant is found eligible, the prosecuting attorney
15 shall file with the court a declaration in writing or state for the
16 record the grounds upon which the determination is based, and
17 shall make this information available to the defendant and his or
18 her attorney. This procedure is intended to allow the court to set
19 the hearing for deferred entry of judgment at the arraignment. If
20 the defendant is found ineligible for deferred entry of judgment,
21 the prosecuting attorney shall file with the court a declaration in
22 writing or state for the record the grounds upon which the
23 determination is based, and shall make this information available
24 to the defendant and his or her attorney. The sole remedy of a
25 defendant who is found ineligible for deferred entry of judgment
26 is a postconviction appeal.

27 (c) All referrals for deferred entry of judgment granted by the
28 court pursuant to this chapter shall be made only to programs that
29 have been certified by the county drug program administrator
30 pursuant to Chapter 1.5 (commencing with Section 1211) of Title
31 8, or to programs that provide services at no cost to the participant
32 and have been deemed by the court and the county drug program
33 administrator to be credible and effective. The defendant may
34 request to be referred to a program in any county, as long as that
35 program meets the criteria set forth in this subdivision.

36 (d) Deferred entry of judgment for a violation of Section 11368
37 of the Health and Safety Code shall not prohibit any administrative
38 agency from taking disciplinary action against a licensee or from
39 denying a license. Nothing in this subdivision shall be construed
40 to expand or restrict the provisions of Section 1000.4.

1 (e) Any defendant who is participating in a program referred to
2 in this section may be required to undergo analysis of his or her
3 urine for the purpose of testing for the presence of any drug as part
4 of the program. However, urine analysis results shall not be
5 admissible as a basis for any new criminal prosecution or
6 proceeding.

7 SEC. 2. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.