

AMENDED IN ASSEMBLY APRIL 16, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1351

Introduced by Assembly Member Eggman

February 27, 2015

An act to amend Sections 1000, 1000.1, 1000.2, 1000.3, 1000.4, 1000.5, and 1000.6 of the Penal Code, relating to deferred entry of judgment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1351, as amended, Eggman. Deferred entry of judgment: pretrial diversion.

~~(1) Existing~~

~~Existing~~ law allows individuals ~~convicted of~~ *charged with* specified crimes to qualify for deferred entry of judgment. A defendant qualifies ~~if they have~~ *he or she has* no conviction for any offense involving controlled substances, the charged offense did not involve violence, there is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation that qualifies for the program, the defendant's record does not indicate that probation or parole has ever been revoked without being completed, and the defendant's record does not indicate that he or she has been granted diversion, deferred entry of judgment, or was convicted of a felony within 5 years prior to the alleged commission of the charged offense.

Under the existing deferred entry of judgment program, ~~defendants can plead guilty and~~ *an eligible defendant may* have entry of judgment deferred, ~~in return for~~ *upon pleading guilty to the offenses charged and* entering a drug treatment program for 18 months to 3 years. If the defendant does not perform satisfactorily in the program, does not

benefit from the program, is convicted of specified crimes, or engages in criminal activity rendering ~~them~~ *him or her* unsuitable for deferred entry of judgment, the defendant’s guilty plea is entered and the court *enters judgment and* proceeds to schedule a sentencing hearing. If the defendant completes the program, the criminal charges are dismissed. Existing law allows the presiding judge of the superior court, with the district attorney and public defender, to establish a pretrial diversion drug program.

~~(2) This~~

*This bill would change the deferred entry of judgment program into a pretrial diversion program. Under the pretrial diversion program created by this bill, a defendant ~~qualifies if they have~~ would qualify if *he or she has* no prior conviction for any offense involving controlled substances other than the offenses that qualify for diversion, the charged offense did not involve violence, there is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation that qualifies for the program and the defendant has no prior ~~felony~~ conviction for a serious or violent ~~felony~~. *felony within 5 years prior to the alleged commission of the charged offense.**

Under the pretrial diversion program created by this bill, a qualifying defendant would not enter a guilty plea, but instead would suspend the proceedings in order to enter a drug treatment program for 6 months to one year. If the defendant does not perform satisfactorily in the program or is convicted of specified crimes, the court would terminate the program and the criminal proceedings would be reinstated. If the defendant completes the program, the criminal charges would be dismissed.

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

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

1 marijuana planted, cultivated, harvested, dried, or processed is for
2 personal use, or Section 11368 of the Health and Safety Code if
3 the narcotic drug was secured by a fictitious prescription and is
4 for the personal use of the defendant and was not sold or furnished
5 to another, or subdivision (d) of Section 653f if the solicitation
6 was for acts directed to personal use only, or Section 381 or
7 subdivision (f) of Section 647 of the Penal Code, if for being under
8 the influence of a controlled substance, or Section 4060 of the
9 Business and Professions Code, and it appears to the prosecuting
10 attorney that, except as provided in subdivision (b) of Section
11 11357 of the Health and Safety Code, all of the following apply
12 to the defendant:

13 (1) The defendant has no prior conviction for any offense
14 involving controlled substances other than the offenses listed in
15 this subdivision.

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

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

21 (4) The defendant has no prior conviction *within five years prior*
22 *to the alleged commission of the charged offense* for a serious
23 felony, as defined in subdivision (c) of Section 1192.7, or a violent
24 felony, as defined in subdivision (c) of Section 667.5.

25 (b) The prosecuting attorney shall review his or her file to
26 determine whether or not paragraphs (1) to (4), inclusive, of
27 subdivision (a) apply to the defendant. If the defendant is found
28 eligible, the prosecuting attorney shall file with the court a
29 declaration in writing or state for the record the grounds upon
30 which the determination is based, and shall make this information
31 available to the defendant and his or her attorney. This procedure
32 is intended to allow the court to set the hearing for pretrial diversion
33 of judgment at the arraignment. If the defendant is found ineligible
34 for pretrial diversion, the prosecuting attorney shall file with the
35 court a declaration in writing or state for the record the grounds
36 upon which the determination is based, and shall make this
37 information available to the defendant and his or her attorney. The
38 sole remedy of a defendant who is found ineligible for pretrial
39 diversion is a postconviction appeal.

1 (c) All referrals for pretrial diversion granted by the court
 2 pursuant to this chapter shall be made only to programs that have
 3 been certified by the county drug program administrator pursuant
 4 to Chapter 1.5 (commencing with Section 1211) of Title 8, or to
 5 programs that provide services at no cost to the participant and
 6 have been deemed by the court and the county drug program
 7 administrator to be credible and effective. The defendant may
 8 request to be referred to a program in any county, as long as that
 9 program meets the criteria set forth in this subdivision.

10 (d) Pretrial diversion for an alleged violation of Section 11368
 11 of the Health and Safety Code shall not prohibit any administrative
 12 agency from taking disciplinary action against a licensee or from
 13 denying a license. Nothing in this subdivision shall be construed
 14 to expand or restrict the provisions of Section 1000.4.

15 (e) Any defendant who is participating in a program referred to
 16 in this section may be required to undergo analysis of his or her
 17 urine for the purpose of testing for the presence of any drug as part
 18 of the program. However, urine analysis results shall not be
 19 admissible as a basis for any new criminal prosecution or
 20 proceeding.

21 SEC. 2. Section 1000.1 of the Penal Code is amended to read:

22 1000.1. (a) If the prosecuting attorney determines that this
 23 chapter may be applicable to the defendant, he or she shall advise
 24 the defendant and his or her attorney in writing of that
 25 determination. This notification shall include all of the following:

- 26 (1) A full description of the procedures for pretrial diversion.
- 27 (2) A general explanation of the roles and authorities of the
 28 probation department, the prosecuting attorney, the program, and
 29 the court in the process.
- 30 (3) A clear statement that ~~in lieu of trial~~, the court may grant
 31 pretrial diversion with respect to any crime specified in subdivision
 32 (a) of Section 1000 that is charged, provided that the defendant
 33 ~~waive~~ *waives* the right to a speedy ~~trial~~ and preliminary hearing,
 34 if applicable, and that upon the defendant's successful completion
 35 of a program, as specified in subdivision (c) of Section 1000, the
 36 positive recommendation of the program authority and the motion
 37 of the defendant, prosecuting attorney, the court, or the probation
 38 department, but no sooner than six months and no later than one
 39 year from the date of the defendant's referral to the program, the
 40 court shall dismiss the charge or charges against the defendant.

1 (4) A clear statement that upon any failure of treatment or
2 condition under the program, or any circumstance specified in
3 Section 1000.3, the prosecuting attorney or the probation
4 department or the court on its own may make a motion to the court
5 to terminate pretrial diversion and schedule further proceedings
6 as otherwise provided in this code.

7 (5) An explanation of criminal record retention and disposition
8 resulting from participation in the pretrial diversion program and
9 the defendant's rights relative to answering questions about his or
10 her arrest and ~~deferred entry of judgment~~ *pretrial diversion*
11 following successful completion of the program.

12 (b) If the defendant consents and waives his or her right to a
13 speedy trial ~~or~~ and a speedy preliminary hearing, *if applicable*, the
14 court may refer the case to the probation department or the court
15 may summarily grant pretrial diversion. When directed by the
16 court, the probation department shall make an investigation and
17 take into consideration the defendant's age, employment and
18 service records, educational background, community and family
19 ties, prior controlled substance use, treatment history, if any,
20 demonstrable motivation, and other mitigating factors in
21 determining whether the defendant is a person who would be
22 benefited by education, treatment, or rehabilitation. The probation
23 department shall also determine which programs the defendant
24 would benefit from and which programs would accept the
25 defendant. The probation department shall report its findings and
26 recommendations to the court. The court shall make the final
27 determination regarding education, treatment, or rehabilitation for
28 the defendant. If the court determines that it is appropriate, the
29 court shall grant pretrial diversion if the defendant waives the right
30 to a speedy trial and to a speedy preliminary hearing, if applicable.

31 (c) (1) No statement, or any information procured therefrom,
32 made by the defendant to any probation officer or drug treatment
33 worker, that is made during the course of any investigation
34 conducted by the probation department or treatment program
35 pursuant to subdivision (b), and prior to the reporting of the
36 probation department's findings and recommendations to the court,
37 shall be admissible in any action or proceeding brought subsequent
38 to the investigation.

39 (2) No statement, or any information procured therefrom, with
40 respect to the specific offense with which the defendant is charged,

1 that is made to any probation officer or drug program worker
2 subsequent to the granting of pretrial diversion shall be admissible
3 in any action or proceeding.

4 (d) A defendant’s participation in pretrial diversion pursuant to
5 this chapter shall not constitute a conviction or an admission of
6 guilt for any purpose.

7 SEC. 3. Section 1000.2 of the Penal Code is amended to read:

8 1000.2. (a) The court shall hold a hearing and, after
9 consideration of any information relevant to its decision, shall
10 determine if the defendant consents to further proceedings under
11 this chapter and if the defendant should be granted pretrial
12 diversion. If the defendant does not consent to participate in pretrial
13 diversion the proceedings shall continue as in any other case.

14 (b) At the time that pretrial diversion is granted, any bail bond
15 or undertaking, or deposit in lieu thereof, on file by or on behalf
16 of the defendant shall be exonerated, and the court shall enter an
17 order so directing.

18 (c) The period during which pretrial diversion is granted shall
19 be for no less than six months nor longer than one year. Progress
20 reports shall be filed by the probation department with the court
21 as directed by the court.

22 SEC. 4. Section 1000.3 of the Penal Code is amended to read:

23 1000.3. (a) If it appears to the prosecuting attorney, the court,
24 or the probation department that the defendant is performing
25 unsatisfactorily in the assigned program, or that the defendant is
26 convicted of an offense that reflects the defendant’s propensity for
27 violence, or the defendant is convicted of a felony, the prosecuting
28 attorney, the court on its own, or the probation department may
29 make a motion for termination from pretrial diversion.

30 (b) After notice to the defendant, the court shall hold a hearing
31 to determine whether pretrial diversion shall be terminated.

32 (c) If the court finds that the defendant is not performing
33 satisfactorily in the assigned program, or the court finds that the
34 defendant has been convicted of a crime as indicated in subdivision

35 ~~(b)~~ (a) the court shall reinstate the criminal charge or charges and
36 schedule the matter for further proceedings as otherwise provided
37 in this code.

38 (d) If the defendant has completed pretrial diversion, at the end
39 of that period, the criminal charge or charges shall be dismissed.

1 (e) Prior to dismissing the charge or charges or terminating
2 pretrial diversion, the court shall consider the defendant's ability
3 to pay and whether the defendant has paid a diversion restitution
4 fee pursuant to Section 1001.90, if ordered, and has met his or her
5 financial obligation to the program, if any. As provided in Section
6 1203.1b, the defendant shall reimburse the probation department
7 for the reasonable cost of any program investigation or progress
8 report filed with the court as directed pursuant to Sections 1000.1
9 and 1000.2.

10 SEC. 5. Section 1000.4 of the Penal Code is amended to read:

11 1000.4. (a) Any record filed with the Department of Justice
12 shall indicate the disposition in those cases referred to pretrial
13 diversion pursuant to this chapter. Upon successful completion of
14 a pretrial diversion program, the arrest upon which the defendant
15 was diverted shall be deemed to have never occurred. The
16 defendant may indicate in response to any question concerning his
17 or her prior criminal record that he or she was not arrested or
18 granted pretrial diversion for the offense, except as specified in
19 subdivision (b). A record pertaining to an arrest resulting in
20 successful completion of a pretrial diversion program shall not,
21 without the defendant's consent, be used in any way that could
22 result in the denial of any employment, benefit, license, or
23 certificate.

24 (b) The defendant shall be advised that, regardless of his or her
25 successful completion of the pretrial diversion program, the arrest
26 upon which pretrial diversion was based may be disclosed by the
27 Department of Justice in response to any peace officer application
28 request and that, notwithstanding subdivision (a), this section does
29 not relieve him or her of the obligation to disclose the arrest in
30 response to any direct question contained in any questionnaire or
31 application for a position as a peace officer, as defined in Section
32 830.

33 SEC. 6. Section 1000.5 of the Penal Code is amended to read:

34 1000.5. (a) The presiding judge of the superior court, or a
35 judge designated by the presiding judge, together with the district
36 attorney and the public defender, may agree in writing to establish
37 and conduct a preguilty plea drug court program pursuant to the
38 provisions of this chapter, wherein criminal proceedings are
39 suspended without a plea of guilty for designated defendants. The
40 drug court program shall include a regimen of graduated sanctions

1 and rewards, individual and group therapy, urine analysis testing
2 commensurate with treatment needs, close court monitoring and
3 supervision of progress, educational or vocational counseling as
4 appropriate, and other requirements as agreed to by the presiding
5 judge or his or her designee, the district attorney, and the public
6 defender. If there is no agreement in writing for a preguilty plea
7 program by the presiding judge or his or her designee, the district
8 attorney, and the public defender, the program shall be operated
9 as a pretrial diversion program as provided in this chapter.

10 (b) The provisions of Section 1000.3 and Section 1000.4
11 regarding satisfactory and unsatisfactory performance in a program
12 shall apply to preguilty plea programs. If the court finds that (1)
13 the defendant is not performing satisfactorily in the assigned
14 program, (2) the defendant is not benefiting from education,
15 treatment, or rehabilitation, (3) the defendant has been convicted
16 of a crime specified in Section 1000.3, or (4) the defendant has
17 engaged in criminal conduct rendering him or her unsuitable for
18 the preguilty plea program, the court shall reinstate the criminal
19 charge or charges. If the defendant has performed satisfactorily
20 during the period of the preguilty plea program, at the end of that
21 period, the criminal charge or charges shall be dismissed and the
22 provisions of Section 1000.4 shall apply.

23 SEC. 7. Section 1000.6 of the Penal Code is amended to read:

24 1000.6. (a) Where a person is participating in a pretrial
25 diversion program or a preguilty plea program pursuant to this
26 chapter, the person shall be allowed, under the direction of a
27 licensed health care practitioner, to use medications including, but
28 not limited to, methadone, buprenorphine, or
29 levoalphacetylmethadol (LAAM) to treat substance use disorders
30 if the participant allows release of his or her medical records to
31 the court presiding over the participant's preguilty plea or pretrial
32 diversion program for the limited purpose of determining whether
33 or not the participant is using such medications under the direction
34 of a licensed health care practitioner and is in compliance with the
35 pretrial diversion or preguilty plea program rules.

36 (b) If the conditions specified in subdivision (a) are met, using
37 medications to treat substance use disorders shall not be the sole
38 reason for exclusion from a pretrial diversion or preguilty plea
39 program. A patient who uses medications to treat substance use

1 disorders and participates in a preguilty plea or pretrial diversion
2 program shall comply with all court program rules.

3 (c) A person who is participating in a pretrial diversion program
4 or preguilty plea program pursuant to this chapter who uses
5 medications to treat substance use disorders shall present to the
6 court a declaration from their health care practitioner, or their
7 health care practitioner's authorized representative, that the person
8 is currently under their care.

9 (d) Urinalysis results that only establish that a person described
10 in this section has ingested medication duly prescribed to that
11 person by his or her physician or psychiatrist, or medications used
12 to treat substance use disorders, shall not be considered a violation
13 of the terms of the pretrial diversion or preguilty plea program
14 under this chapter.

15 (e) Except as provided in subdivisions (a) to (d), inclusive, this
16 section shall not be interpreted to amend any provisions governing
17 diversion programs.