

AMENDED IN SENATE SEPTEMBER 3, 2015

AMENDED IN ASSEMBLY JUNE 1, 2015

AMENDED IN ASSEMBLY APRIL 16, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1351**

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**Introduced by Assembly Member Eggman**  
(Coauthor: Senator Hall)

February 27, 2015

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An act to amend Sections 1000, 1000.1, 1000.2, 1000.3, 1000.4, 1000.5, and 1000.6 ~~of of~~, and to add Section 1000.7 to, the Penal Code, relating to deferred entry of judgment.

LEGISLATIVE COUNSEL'S DIGEST

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

Existing law allows individuals charged with specified crimes to qualify for deferred entry of judgment. A defendant qualifies if 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a violation that qualifies for the program, the defendant's record does not indicate that probation or parole has ever been revoked without being completed, and the defendant's record does not indicate that he or she has been granted diversion, deferred entry of judgment, or was convicted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, an eligible defendant may have entry of judgment deferred, 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 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.

This bill would ~~change~~ *make* the deferred entry of judgment program ~~into~~ a pretrial diversion program. ~~Under the pretrial diversion program created by this bill,~~ *The bill would provide that* a defendant ~~would qualify~~ *qualifies for the pretrial diversion program* if he or she has no prior conviction *within 5 years prior to the alleged commission of the charged offense* for any offense involving controlled substances other than the ~~offenses that qualify~~ *offense that qualifies him or her* 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 conviction for a serious or violent 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 enter a not guilty plea, and ~~would suspend the proceedings~~ *would be suspended* in order *for the defendant* to enter a drug treatment program for 6 months to one year, or longer if requested by the defendant with good cause. ~~If~~ *The bill would require the court,* if the defendant does not perform satisfactorily in the program or is convicted of specified crimes, ~~the court would~~ *to terminate the program and reinstate the criminal proceedings would be reinstated.* ~~If the defendant completes the program,~~ *proceedings. The bill would require the criminal charges would be dismissed.* *to be dismissed if the defendant completes the program.*

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:

1 1000. (a) This chapter shall apply whenever a case is before  
2 any court upon an accusatory pleading for a violation of Section  
3 11350, 11357, 11364, or 11365, paragraph (2) of subdivision (b)  
4 of Section 11375, Section 11377, or Section 11550 of the Health  
5 and Safety Code, or subdivision (b) of Section 23222 of the Vehicle  
6 Code, or Section 11358 of the Health and Safety Code if the  
7 marijuana planted, cultivated, harvested, dried, or processed is for  
8 personal use, or Section 11368 of the Health and Safety Code if  
9 the narcotic drug was secured by a fictitious prescription and is  
10 for the personal use of the defendant and was not sold or furnished  
11 to another, or subdivision (d) of Section 653f if the solicitation  
12 was for acts directed to personal use only, or Section 381 or  
13 subdivision (f) of Section 647 of the Penal Code, if for being under  
14 the influence of a controlled substance, or Section 4060 of the  
15 Business and Professions Code, and it appears to the prosecuting  
16 attorney that, except as provided in subdivision (b) of Section  
17 11357 of the Health and Safety Code, all of the following apply  
18 to the defendant:

19 (1) The defendant has no prior conviction *within five years prior*  
20 *to the alleged commission of the charged offense* for any offense  
21 involving controlled substances other than the offenses listed in  
22 this subdivision.

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

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

28 (4) The defendant has no prior conviction within five years prior  
29 to the alleged commission of the charged offense for a serious  
30 felony, as defined in subdivision (c) of Section 1192.7, or a violent  
31 felony, as defined in subdivision (c) of Section 667.5.

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

1 for pretrial diversion, the prosecuting attorney shall file with the  
2 court a declaration in writing or state for the record the grounds  
3 upon which the determination is based, and shall make this  
4 information available to the defendant and his or her attorney. The  
5 sole remedy of a defendant who is found ineligible for pretrial  
6 diversion is a postconviction appeal.

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

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

21 (e) Any defendant who is participating in a program referred to  
22 in this section may be required to undergo analysis of his or her  
23 urine for the purpose of testing for the presence of any drug as part  
24 of the program. However, urinalysis results shall not be admissible  
25 as a basis for any new criminal prosecution or proceeding.

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

27 1000.1. (a) If the prosecuting attorney determines that this  
28 chapter may be applicable to the defendant, he or she shall advise  
29 the defendant and his or her attorney in writing of that  
30 determination. This notification shall include all of the following:

- 31 (1) A full description of the procedures for pretrial diversion.
- 32 (2) A general explanation of the roles and authorities of the  
33 probation department, the prosecuting attorney, the program, and  
34 the court in the process.
- 35 (3) A clear statement that the court may grant pretrial diversion  
36 with respect to any crime specified in subdivision (a) of Section  
37 1000 that is charged, provided that the defendant pleads not guilty  
38 to the charge or charges, waives the right to a *speedy trial* and to  
39 a speedy preliminary hearing, if applicable, and that upon the  
40 defendant's successful completion of a program, as specified in

1 subdivision (c) of Section 1000, the positive recommendation of  
2 the program authority and the motion of the defendant, prosecuting  
3 attorney, the court, or the probation department, but no sooner than  
4 six months and no later than one year from the date of the  
5 defendant's referral to the program, the court shall dismiss the  
6 charge or charges against the defendant.

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

13 (5) An explanation of criminal record retention and disposition  
14 resulting from participation in the pretrial diversion program and  
15 the defendant's rights relative to answering questions about his or  
16 her arrest and pretrial diversion following successful completion  
17 of the program.

18 (b) If the defendant consents and waives his or her right to a  
19 speedy trial and a speedy preliminary hearing, if applicable, the  
20 court may refer the case to the probation department or the court  
21 may summarily grant pretrial diversion. When directed by the  
22 court, the probation department shall make an investigation and  
23 take into consideration the defendant's age, employment and  
24 service records, educational background, community and family  
25 ties, prior controlled substance use, treatment history, if any,  
26 demonstrable motivation, and other mitigating factors in  
27 determining whether the defendant is a person who would be  
28 benefited by education, treatment, or rehabilitation. The probation  
29 department shall also determine which programs the defendant  
30 would benefit from and which programs would accept the  
31 defendant. The probation department shall report its findings and  
32 recommendations to the court. The court shall make the final  
33 determination regarding education, treatment, or rehabilitation for  
34 the defendant. If the court determines that it is appropriate, the  
35 court shall grant pretrial diversion if the defendant pleads not guilty  
36 to the charge or charges and waives the right to a speedy trial and  
37 to a speedy preliminary hearing, if applicable.

38 (c) (1) No statement, or any information procured therefrom,  
39 made by the defendant to any probation officer or drug treatment  
40 worker, that is made during the course of any investigation

1 conducted by the probation department or treatment program  
2 pursuant to subdivision (b), and prior to the reporting of the  
3 probation department's findings and recommendations to the court,  
4 shall be admissible in any action or proceeding brought subsequent  
5 to the investigation.

6 (2) No statement, or any information procured therefrom, with  
7 respect to the specific offense with which the defendant is charged,  
8 that is made to any probation officer or drug program worker  
9 subsequent to the granting of pretrial diversion shall be admissible  
10 in any action or proceeding.

11 (d) A defendant's participation in pretrial diversion pursuant to  
12 this chapter shall not constitute a conviction or an admission of  
13 guilt for any purpose.

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

15 1000.2. (a) The court shall hold a hearing and, after  
16 consideration of any information relevant to its decision, shall  
17 determine if the defendant consents to further proceedings under  
18 this chapter and if the defendant should be granted pretrial  
19 diversion. If the defendant does not consent to participate in pretrial  
20 diversion the proceedings shall continue as in any other case.

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

25 (c) The period during which pretrial diversion is granted shall  
26 be for no less than six months nor longer than one year. However,  
27 the defendant may ~~request~~ *request*, and the court shall grant, for  
28 good cause shown, an extension of time to complete a program  
29 specified in subdivision (c) of Section 1000. Progress reports shall  
30 be filed by the probation department with the court as directed by  
31 the court.

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

33 1000.3. (a) If it appears to the prosecuting attorney, the court,  
34 or the probation department that the defendant is performing  
35 unsatisfactorily in the assigned program, or that the defendant is  
36 convicted of an offense that reflects the defendant's propensity for  
37 violence, or the defendant is convicted of a felony, the prosecuting  
38 attorney, the court on its own, or the probation department may  
39 make a motion for termination from pretrial diversion.

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

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

6 (a) the court shall schedule the matter for further proceedings as  
7 otherwise provided in this code.

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

10 (e) Prior to dismissing the charge or charges or terminating  
11 pretrial diversion, the court shall consider the defendant's ability  
12 to pay and whether the defendant has paid a diversion restitution  
13 fee pursuant to Section 1001.90, if ordered, and has met his or her  
14 financial obligation to the program, if any. As provided in Section  
15 1203.1b, the defendant shall reimburse the probation department  
16 for the reasonable cost of any program investigation or progress  
17 report filed with the court as directed pursuant to Sections 1000.1  
18 and 1000.2.

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

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

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

1 application for a position as a peace officer, as defined in Section  
2 830.

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

4 1000.5. (a) The presiding judge of the superior court, or a  
5 judge designated by the presiding judge, together with the district  
6 attorney and the public defender, may agree in writing to establish  
7 and conduct a preguilty plea drug court program pursuant to the  
8 provisions of this chapter, wherein criminal proceedings are  
9 suspended without a plea of guilty for designated defendants. The  
10 drug court program shall include a regimen of graduated sanctions  
11 and rewards, individual and group therapy, urinalysis testing  
12 commensurate with treatment needs, close court monitoring and  
13 supervision of progress, educational or vocational counseling as  
14 appropriate, and other requirements as agreed to by the presiding  
15 judge or his or her designee, the district attorney, and the public  
16 defender. If there is no agreement in writing for a preguilty plea  
17 program by the presiding judge or his or her designee, the district  
18 attorney, and the public defender, the program shall be operated  
19 as a pretrial diversion program as provided in this chapter.

20 (b) The provisions of Section 1000.3 and Section 1000.4  
21 regarding satisfactory and unsatisfactory performance in a program  
22 shall apply to preguilty plea programs. If the court finds that (1)  
23 the defendant is not performing satisfactorily in the assigned  
24 program, (2) the defendant is not benefiting from education,  
25 treatment, or rehabilitation, (3) the defendant has been convicted  
26 of a crime specified in Section 1000.3, or (4) the defendant has  
27 engaged in criminal conduct rendering him or her unsuitable for  
28 the preguilty plea program, the court shall reinstate the criminal  
29 charge or charges. If the defendant has performed satisfactorily  
30 during the period of the preguilty plea program, at the end of that  
31 period, the criminal charge or charges shall be dismissed and the  
32 provisions of Section 1000.4 shall apply.

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

34 1000.6. (a) Where a person is participating in a pretrial  
35 diversion program or a preguilty plea program pursuant to this  
36 chapter, the person shall be allowed, under the direction of a  
37 licensed health care practitioner, to use medications including, but  
38 not limited to, methadone, buprenorphine, or  
39 levoalpracetalmethadol (LAAM) to treat substance use disorders  
40 if the participant allows release of his or her medical records to

1 the court presiding over the participant’s preguilty plea or pretrial  
2 diversion program for the limited purpose of determining whether  
3 or not the participant is using such medications under the direction  
4 of a licensed health care practitioner and is in compliance with the  
5 pretrial diversion or preguilty plea program rules.

6 (b) If the conditions specified in subdivision (a) are met, using  
7 medications to treat substance use disorders shall not be the sole  
8 reason for exclusion from a pretrial diversion or preguilty plea  
9 program. A patient who uses medications to treat substance use  
10 disorders and participates in a preguilty plea or pretrial diversion  
11 program shall comply with all court program rules.

12 (c) A person who is participating in a pretrial diversion program  
13 or preguilty plea program pursuant to this chapter who uses  
14 medications to treat substance use disorders shall present to the  
15 court a declaration from ~~their~~ *his or her* health care practitioner,  
16 or ~~their~~ *his or her* health care practitioner’s authorized  
17 representative, that the person is currently under their care.

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

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

27 *SEC. 8. Section 1000.7 is added to the Penal Code, immediately*  
28 *following Section 1000.6, to read:*

29 *1000.7. This chapter does not affect a pretrial diversion*  
30 *program provided pursuant to Chapter 2.7 (commencing with*  
31 *Section 1001).*