

ASSEMBLY BILL

No. 358

Introduced by Assembly Member Ammiano

February 23, 2009

An act to amend Sections 1000 and 1000.1 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 358, as introduced, Ammiano. Criminal procedure: narcotics and drug abuse cases.

Existing law provides that entry of judgment may be deferred with respect to defendants who are charged with certain enumerated crimes and meet certain criteria, including no prior convictions for any offense involving controlled substances and no prior felony convictions within the prior 5 years, as specified. Existing law requires the prosecuting attorney to review his or her file to determine whether those conditions apply to the defendant and, if the defendant is found ineligible for deferred entry of judgment, to file with a court a declaration stating the grounds upon which the determination is based.

This bill would authorize the court, at the defendant's request, to review the prosecuting attorney's determination of ineligibility and would further authorize the court to make the final determination.

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. Section 1000 of the Penal Code is amended to
2 read:

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

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

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

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

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

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

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

(b) The prosecuting attorney shall review his or her file to determine whether or not paragraphs (1) to (6), inclusive, of subdivision (a) apply to the defendant. Upon the agreement of the prosecuting attorney, law enforcement, the public defender, and the presiding judge of the criminal division of the superior court, or a judge designated by the presiding judge, this procedure shall be completed as soon as possible after the initial filing of the

1 charges. If the defendant is found eligible, the prosecuting attorney
2 shall file with the court a declaration in writing or state for the
3 record the grounds upon which the determination is based, and
4 shall make this information available to the defendant and his or
5 her attorney. This procedure is intended to allow the court to set
6 the hearing for deferred entry of judgment at the arraignment. If
7 the defendant is found ineligible for deferred entry of judgment,
8 the prosecuting attorney shall file with the court a declaration in
9 writing or state for the record the grounds upon which the
10 determination is based, and shall make this information available
11 to the defendant and his or her attorney. *At the request of the*
12 *defendant, the court may review the prosecuting attorney's*
13 *determination of ineligibility and is authorized to make the final*
14 *determination.* The sole remedy of a defendant who is found
15 ineligible for deferred entry of judgment is a postconviction appeal.

16 (c) All referrals for deferred entry of judgment granted by the
17 court pursuant to this chapter shall be made only to programs that
18 have been certified by the county drug program administrator
19 pursuant to Chapter 1.5 (commencing with Section 1211) of Title
20 8, or to programs that provide services at no cost to the participant
21 and have been deemed by the court and the county drug program
22 administrator to be credible and effective. The defendant may
23 request to be referred to a program in any county, as long as that
24 program meets the criteria set forth in this subdivision.

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

30 (e) Any defendant who is participating in a program referred to
31 in this section may be required to undergo analysis of his or her
32 urine for the purpose of testing for the presence of any drug as part
33 of the program. However, urine analysis results shall not be
34 admissible as a basis for any new criminal prosecution or
35 proceeding.

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

37 1000.1. (a) If the prosecuting attorney *or the court* determines
38 that this chapter may be applicable to the defendant, ~~he or she~~ *the*
39 *prosecuting attorney* shall advise the defendant and his or her

1 attorney in writing of that determination. This notification shall
2 include the following:

3 (1) A full description of the procedures for deferred entry of
4 judgment.

5 (2) A general explanation of the roles and authorities of the
6 probation department, the prosecuting attorney, the program, and
7 the court in the process.

8 (3) A clear statement that in lieu of trial, the court may grant
9 deferred entry of judgment with respect to any crime specified in
10 subdivision (a) of Section 1000 that is charged, provided that the
11 defendant pleads guilty to each such charge and waives time for
12 the pronouncement of judgment, and that upon the defendant's
13 successful completion of a program, as specified in subdivision
14 (c) of Section 1000, the positive recommendation of the program
15 authority and the motion of the prosecuting attorney, the court, or
16 the probation department, but no sooner than 18 months and no
17 later than three years from the date of the defendant's referral to
18 the program, the court shall dismiss the charge or charges against
19 the defendant.

20 (4) A clear statement that upon any failure of treatment or
21 condition under the program, or any circumstance specified in
22 Section 1000.3, the prosecuting attorney or the probation
23 department or the court on its own may make a motion to the court
24 for entry of judgment and the court shall render a finding of guilt
25 to the charge or charges pled, enter judgment, and schedule a
26 sentencing hearing as otherwise provided in this code.

27 (5) An explanation of criminal record retention and disposition
28 resulting from participation in the deferred entry of judgment
29 program and the defendant's rights relative to answering questions
30 about his or her arrest and deferred entry of judgment following
31 successful completion of the program.

32 (b) If the defendant consents and waives his or her right to a
33 speedy trial or a speedy preliminary hearing, the court may refer
34 the case to the probation department or the court may summarily
35 grant deferred entry of judgment if the defendant pleads guilty to
36 the charge or charges and waives time for the pronouncement of
37 judgment. When directed by the court, the probation department
38 shall make an investigation and take into consideration the
39 defendant's age, employment and service records, educational
40 background, community and family ties, prior controlled substance

1 use, treatment history, if any, demonstrable motivation, and other
2 mitigating factors in determining whether the defendant is a person
3 who would be benefited by education, treatment, or rehabilitation.
4 The probation department shall also determine which programs
5 the defendant would benefit from and which programs would
6 accept the defendant. The probation department shall report its
7 findings and recommendations to the court. The court shall make
8 the final determination regarding education, treatment, or
9 rehabilitation for the defendant. If the court determines that it is
10 appropriate, the court shall grant deferred entry of judgment if the
11 defendant pleads guilty to the charge or charges and waives time
12 for the pronouncement of judgment.

13 (c) No statement, or any information procured therefrom, made
14 by the defendant to any probation officer or drug treatment worker,
15 that is made during the course of any investigation conducted by
16 the probation department or treatment program pursuant to
17 subdivision (b), and prior to the reporting of the probation
18 department's findings and recommendations to the court, shall be
19 admissible in any action or proceeding brought subsequent to the
20 investigation.

21 No statement, or any information procured therefrom, with
22 respect to the specific offense with which the defendant is charged,
23 that is made to any probation officer or drug program worker
24 subsequent to the granting of deferred entry of judgment, shall be
25 admissible in any action or proceeding, including a sentencing
26 hearing.

27 (d) A defendant's plea of guilty pursuant to this chapter shall
28 not constitute a conviction for any purpose unless a judgment of
29 guilty is entered pursuant to Section 1000.3.