

AMENDED IN ASSEMBLY MAY 28, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

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 amended, 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, *as specified*.

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

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

SECTION 1. Section 1000 of the Penal Code is amended to 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

1 prosecuting attorney, law enforcement, the public defender, and
2 the presiding judge of the criminal division of the superior court,
3 or a judge designated by the presiding judge, this procedure shall
4 be completed as soon as possible after the initial filing of the
5 charges. If the defendant is found eligible, the prosecuting attorney
6 shall file with the court a declaration in writing or state for the
7 record the grounds upon which the determination is based, and
8 shall make this information available to the defendant and his or
9 her attorney. This procedure is intended to allow the court to set
10 the hearing for deferred entry of judgment at the arraignment. If
11 the defendant is found ineligible for deferred entry of judgment,
12 the prosecuting attorney shall file with the court a declaration in
13 writing or state for the record the grounds upon which the
14 determination is based, and shall make this information available
15 to the defendant and his or her attorney. At the request of the
16 defendant, the court may review the prosecuting attorney's
17 determination of ineligibility and is authorized to make the final
18 determination *of eligibility based upon the criteria as specified in*
19 *this section*. The sole remedy of a defendant who is found ineligible
20 for deferred entry of judgment is a postconviction appeal.

21 (c) All referrals for deferred entry of judgment granted by the
22 court pursuant to this chapter shall be made only to programs that
23 have been certified by the county drug program administrator
24 pursuant to Chapter 1.5 (commencing with Section 1211) of Title
25 8, or to programs that provide services at no cost to the participant
26 and have been deemed by the court and the county drug program
27 administrator to be credible and effective. The defendant may
28 request to be referred to a program in any county, as long as that
29 program meets the criteria set forth in this subdivision.

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

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

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

2 1000.1. (a) If the prosecuting attorney or the court determines
3 that this chapter may ~~be applicable~~ *apply* to the defendant, the
4 prosecuting attorney shall advise the defendant and his or her
5 attorney in writing of that determination. This notification shall
6 include the following:

7 (1) A full description of the procedures for deferred entry of
8 judgment.

9 (2) A general explanation of the roles and authorities of the
10 probation department, the prosecuting attorney, the program, and
11 the court in the process.

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

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

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

36 (b) If the defendant consents and waives his or her right to a
37 speedy trial or a speedy preliminary hearing, the court may refer
38 the case to the probation department or the court may summarily
39 grant deferred entry of judgment if the defendant pleads guilty to
40 the charge or charges and waives time for the pronouncement of

1 judgment. When directed by the court, the probation department
2 shall make an investigation and take into consideration the
3 defendant's age, employment and service records, educational
4 background, community and family ties, prior controlled substance
5 use, treatment history, if any, demonstrable motivation, and other
6 mitigating factors in determining whether the defendant is a person
7 who would be benefited by education, treatment, or rehabilitation.
8 The probation department shall also determine which programs
9 the defendant would benefit from and which programs would
10 accept the defendant. The probation department shall report its
11 findings and recommendations to the court. The court shall make
12 the final determination regarding education, treatment, or
13 rehabilitation for the defendant. If the court determines that it is
14 appropriate, the court shall grant deferred entry of judgment if the
15 defendant pleads guilty to the charge or charges and waives time
16 for the pronouncement of judgment.

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

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

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