Assembly Bill No. 750

Passed the Assembly September 9, 2009

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Chief Clerk of the Assembly

Passed the Senate September 4, 2009

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Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 2009, at _____ o'clock ____M.

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Private Secretary of the Governor

CHAPTER _____

An act to amend Section 851.90 of, to amend and renumber Section 1000.8 of, and to add Chapter 2.6 (commencing with Section 1000.8) to Title 6 of Part 2 of, the Penal Code, relating to drug diversion.

LEGISLATIVE COUNSEL'S DIGEST

AB 750, Bass. Deferred entry of judgment.

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 that they have no prior convictions for any offense involving controlled substances and have had no prior felony convictions within the 5 years prior, as specified. Existing law provides that if the prosecuting attorney determines that a defendant may qualify for a deferred entry of judgment, the prosecuting attorney must advise the defendant and his or her attorney in writing, as specified. Existing law provides that, upon successful completion of a deferred entry of judgment program, the arrest upon which the judgment was deferred shall be deemed to have never occurred and allows for the sealing of court and arrest records where the interests of justice would be served, as specified. Existing law similarly establishes a preguilty plea drug court program wherein criminal proceedings are suspended without a plea of guilty for designated defendants.

This bill would authorize a superior court, with the concurrence of the prosecuting attorney of the county, to create a deferred entry of judgment reentry program aimed at preventing recidivism among first-time nonviolent felony drug offenders. The bill would specify the characteristics of that program and the process for eligibility for the program.

The California Constitution requires that a statute, a court rule, or other authority adopted that limits the people's right of access to information, including the writings of public officials and agencies, shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings that any limitation on the public's right of access to the writings of public officials and

agencies made by its provisions is necessary to provide an incentive for program participants to complete the diversion program and to prevent recidivism among nonviolent offenders.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The San Francisco District Attorney's Office has developed an effective reentry program, Back On Track, that reduces recidivism among first-time, low-level, nonviolent felony drug offenders and costs less than traditional corrections approaches. The three-year recidivism rate for Back On Track participants is significantly lower than the 53 percent recidivism rate for the same population in state prison. As a result, the Back On Track program has been selected as a national model. This act is intended to facilitate the replication of this successful program.

(b) Successful reentry models combine strict accountability with effective mechanisms for offenders to become self-sufficient and crime free.

(c) Successful reentry models include public-private partnerships among law enforcement, government agencies, business and labor associations, private employers, and community-based organizations, formed to connect former offenders with living wage employment opportunities and to take advantage of incentives for hiring former offenders.

SEC. 2. Section 851.90 of the Penal Code is amended to read:

851.90. (a) (1) Whenever a person is diverted pursuant to a drug diversion program administered by a superior court pursuant to Section 1000.5 or is admitted to a deferred entry of judgment program pursuant to Section 1000 or 1000.8, the person successfully completes the program, and it appears to the judge presiding at the hearing where the diverted charges are dismissed that the interests of justice would be served by sealing the records of the arresting agency and related court files and records with respect to the diverted person, the judge may order those records and files to be sealed, including any record of arrest or detention, upon the written or oral motion of any party in the case, or upon the court's own motion, and with notice to all parties in the case.

(2) If the order is made, the clerk of the court shall thereafter not allow access to any records concerning the case, including the court file, index, register of actions, or other similar records.

(3) If the order is made, the court shall give a copy of the order to the defendant and inform the defendant that he or she may thereafter state that he or she was not arrested for the charge.

(4) The defendant may, except as specified in subdivisions (b), (c), and (d), indicate in response to any question concerning the defendant's prior criminal record that the defendant was not arrested or granted statutorily authorized drug diversion or deferred entry of judgment for the offense.

(5) Subject to subdivisions (b), (c), and (d), a record pertaining to an arrest resulting in the successful completion of a statutorily authorized drug diversion or deferred entry of judgment program shall not, without the defendant's permission, be used in any way that could result in the denial of any employment, benefit, or certificate.

(6) Sealing orders made pursuant to this subdivision shall not be forwarded to the Department of Justice to be included or notated in the department's manual or electronic fingerprint image or criminal history record systems. Any sealing order made pursuant to this subdivision and received by the Department of Justice need not be processed by the department.

(b) The defendant shall be advised that, regardless of the defendant's successful completion of a statutorily authorized drug diversion or deferred entry of judgment program, the arrest upon which the case was based shall be disclosed by the Department of Justice in response to any peace officer application request, and that, notwithstanding subdivision (a), this section does not relieve the defendant of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

(c) The defendant shall be advised that, regardless of the defendant's successful completion of a statutorily authorized drug diversion or deferred entry of judgment program, the arrest upon which the case was based shall be disclosed by the Department of Justice or the court in which the matter was heard in response to any subsequent inquiry by the district attorney, court, probation department, or counsel for the defendant concerning the defendant's

eligibility for any statutorily authorized drug diversion or deferred entry of judgment program in the future.

(d) A sealing order made pursuant to this section shall not apply to any record or document received or maintained by the Department of Justice; the court shall advise a defendant that, notwithstanding the issuance of a sealing order pursuant to this section, the Department of Justice shall continue to be able to maintain and disseminate any records or documents received or maintained by the department, as authorized by law.

SEC. 3. Section 1000.8 of the Penal Code is amended and renumbered to read:

1000.6. (a) Where a person is participating in a deferred entry of judgment program or a preguilty plea program pursuant to this chapter, the person may also participate in a licensed methadone or levoalphacetylmethadol (LAAM) program if the following conditions are met:

(1) The sheriff allows a methadone program to operate in the county jail.

(2) The participant allows release of his or her medical records to the court presiding over the participant's preguilty or deferred entry program for the limited purpose of determining whether or not the participant is duly enrolled in the licensed methadone or LAAM program and is in compliance with deferred entry or preguilty plea program rules.

(b) If the conditions specified in paragraphs (1) and (2) of subdivision (a) are met, participation in a methadone or LAAM treatment program shall not be the sole reason for exclusion from a deferred entry or preguilty plea program. A methadone or LAAM patient who participates in a preguilty or deferred entry program shall comply with all court program rules.

(c) A person who is participating in a deferred entry of judgment program or preguilty plea program pursuant to this chapter who participates in a licensed methadone or LAAM program shall present to the court a declaration from the director of the methadone or LAAM program, or the director's authorized representative, that the person is currently enrolled and in good standing in the program.

(d) Urinalysis results that only establish that a person described in this section has ingested or taken the methadone administered or prescribed by a licensed methadone or LAAM program shall

not be considered a violation of the terms of the deferred entry of judgment or preguilty plea program under this chapter.

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

SEC. 4. Chapter 2.6 (commencing with Section 1000.8) is added to Title 6 of Part 2 of the Penal Code, to read:

Chapter 2.6. Deferred Entry of Judgment Reentry Program

1000.8. A superior court, with the concurrence of the prosecuting attorney of the county, may create a "Back on Track" deferred entry of judgment reentry program aimed at preventing recidivism among first-time nonviolent felony drug offenders. No defendant who has been convicted of a violation of an offense enumerated in subdivision (c) of Section 290 or in Section 1192.7 shall be eligible for the program established in this chapter. When creating this program, the prosecuting attorney, together with the presiding judge and a representative of the criminal defense bar selected by the presiding judge of the superior court may agree to establish a "Back on Track" deferred entry of judgment program pursuant to the provisions of this chapter. The agreement shall specify which low-level nonviolent felony drug offenses under the Health and Safety Code will be eligible for the program and a process for selecting participants. The program shall have the following characteristics:

(a) A dedicated calendar.

(b) Leadership by a superior court judicial officer who is assigned by the presiding judge.

(c) Clearly defined eligibility criteria to enter the program and clearly defined criteria for completion of the program.

(d) Legal incentives for defendants to successfully complete the program, including dismissal or reduction of criminal charges upon successful completion of the program.

(e) Close supervision to hold participants accountable to program compliance, including the use of graduated sanctions and frequent, ongoing appearances before the court regarding participants' program progress and compliance with all program terms and conditions. The court may use available legal mechanisms,

including return to custody if necessary, for failure to comply with the supervised plan.

(f) Appropriate transitional programming for participants, based on available resources from county and community service providers and other agencies. The transitional programming may include, but is not limited to, any of the following:

(1) Vocational training, readiness, and placement.

(2) Educational training, including assistance with acquiring a G.E.D. or high school diploma and assistance with admission to college.

(3) Substance abuse treatment.

(4) Assistance with obtaining identification cards and driver's licenses.

(5) Parenting skills training and assistance in becoming compliant with child support obligations.

(g) The program may develop a local, public-private partnership between law enforcement, government agencies, private employers, and community-based organizations for the purpose of creating meaningful employment opportunities for participants and to take advantage of incentives for hiring program participants.

1000.9. The prosecuting attorney shall determine whether a defendant is eligible for participation in the deferred entry of judgment reentry program.

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

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

(2) A general explanation of the role and authority of the prosecuting attorney, the program, and the court in the process.

(3) A clear statement that in lieu of trial, the court may grant deferred entry of judgment with respect to the current crime or crimes charged if the defendant pleads guilty to each charge and waives time for the pronouncement of judgment, and that, upon the defendant's successful completion of the program and the motion of the prosecuting attorney, the court will dismiss the charge or charges against the defendant and the provisions of Sections 851.90 and 1203.4 will apply.

(4) A clear statement that failure to comply with any condition under the program may result in the prosecuting attorney or the court making a motion for entry of judgment, whereupon the court will render a finding of guilty to the charge or charges pled, enter judgment, and schedule a sentencing hearing as otherwise provided in this code.

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

(b) If the prosecuting attorney determines that the defendant is eligible for the program, the prosecuting attorney shall state for the record the grounds upon which the determination is based and shall make this information available to the defendant and his or her attorney. This procedure is intended to allow the court to set the hearing for deferred entry of judgment at the arraignment.

(c) If the prosecuting attorney determines that the defendant is ineligible for the program, the prosecuting attorney shall state for the record the grounds upon which the determination is based and shall make this information available to the defendant and his or her attorney. The sole remedy of a defendant who is found ineligible for deferred entry of judgment is a postconviction appeal. If the prosecuting attorney does not deem the defendant eligible, or the defendant does not consent to participate, the proceedings shall continue as in any other case.

(d) Upon a motion by the prosecuting attorney for an entry of judgment, before entering a judgment of guilty, the court may hold a hearing to determine whether the defendant has failed to comply with the program and should be terminated from the program.

1000.10. The following provisions apply to this chapter:

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

(b) Counties that opt to create a deferred entry of judgment reentry program pursuant to Section 1000.8 of the Penal Code shall not seek state reimbursement for costs associated with the implementation, development, or operation of that program.

(c) To the extent county resources beyond those of the superior court and the district attorney are needed to implement the program,

those agencies shall consult with the county board of supervisors and other impacted county agencies to assess resources before program implementation.

(d) Local law enforcement agencies and counties administering the programs may seek federal or private funding for the purpose of implementing the provisions of this chapter.

SEC. 5. The Legislature finds and declares that Sections 2 and 4 of this act impose a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

Preventing recidivism among nonviolent offenders improves public safety and reduces long-term corrections costs. Effective reentry programs achieve program compliance among offenders through a combination of swift sanctions and strict accountability, along with incentives such as the possibility of sealing case records upon successful program completion and providing mechanisms for offenders to become self-sufficient and crime-free.

Approved _____, 2009

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Governor