

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 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a violation that qualifies for the program, the defendant's record does not indicate that probation or parole has ever been revoked without being completed, and the defendant's record does not indicate that he or she has been granted diversion, deferred entry of judgment, or was convicted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 the deferred entry of judgment program into a pretrial diversion program. Under the pretrial diversion program created by this bill, a defendant 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 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 ~~not enter a guilty plea, but instead~~ *enter a not guilty plea, and* would suspend the proceedings in order to enter a drug treatment program for 6 months to ~~one year.~~ *year, or longer if requested by the defendant with good cause.* 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

1 Code, or Section 11358 of the Health and Safety Code if the  
2 marijuana planted, cultivated, harvested, dried, or processed is for  
3 personal use, or Section 11368 of the Health and Safety Code if  
4 the narcotic drug was secured by a fictitious prescription and is  
5 for the personal use of the defendant and was not sold or furnished  
6 to another, or subdivision (d) of Section 653f if the solicitation  
7 was for acts directed to personal use only, or Section 381 or  
8 subdivision (f) of Section 647 of the Penal Code, if for being under  
9 the influence of a controlled substance, or Section 4060 of the  
10 Business and Professions Code, and it appears to the prosecuting  
11 attorney that, except as provided in subdivision (b) of Section  
12 11357 of the Health and Safety Code, all of the following apply  
13 to the defendant:

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

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

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

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

26 (b) The prosecuting attorney shall review his or her file to  
27 determine whether or not paragraphs (1) to (4), inclusive, of  
28 subdivision (a) apply to the defendant. If the defendant is found  
29 eligible, the prosecuting attorney shall file with the court a  
30 declaration in writing or state for the record the grounds upon  
31 which the determination is based, and shall make this information  
32 available to the defendant and his or her attorney. This procedure  
33 is intended to allow the court to set the hearing for pretrial diversion  
34 of judgment at the arraignment. If the defendant is found ineligible  
35 for pretrial diversion, the prosecuting attorney shall file with the  
36 court a declaration in writing or state for the record the grounds  
37 upon which the determination is based, and shall make this  
38 information available to the defendant and his or her attorney. The  
39 sole remedy of a defendant who is found ineligible for pretrial  
40 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~~ *urinalysis* results shall  
19 not be 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 the court may grant pretrial diversion  
31 with respect to any crime specified in subdivision (a) of Section  
32 1000 that is charged, provided that the defendant *pleads not guilty*  
33 *to the charge or charges*, waives the right to a speedy preliminary  
34 hearing, if applicable, and that upon the defendant's successful  
35 completion of a program, as specified in subdivision (c) of Section  
36 1000, the positive recommendation of the program authority and  
37 the motion of the defendant, prosecuting attorney, the court, or the  
38 probation department, but no sooner than six months and no later  
39 than one year from the date of the defendant's referral to the

1 program, the court shall dismiss the charge or charges against the  
2 defendant.

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

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

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

34 (c) (1) No statement, or any information procured therefrom,  
35 made by the defendant to any probation officer or drug treatment  
36 worker, that is made during the course of any investigation  
37 conducted by the probation department or treatment program  
38 pursuant to subdivision (b), and prior to the reporting of the  
39 probation department's findings and recommendations to the court,

1 shall be admissible in any action or proceeding brought subsequent  
2 to the investigation.

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

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

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

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

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

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

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

29 1000.3. (a) If it appears to the prosecuting attorney, the court,  
30 or the probation department that the defendant is performing  
31 unsatisfactorily in the assigned program, or that the defendant is  
32 convicted of an offense that reflects the defendant’s propensity for  
33 violence, or the defendant is convicted of a felony, the prosecuting  
34 attorney, the court on its own, or the probation department may  
35 make a motion for termination from pretrial diversion.

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

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

1 (a) the court shall ~~reinstate the criminal charge or charges and~~  
2 schedule the matter for further proceedings as otherwise provided  
3 in this code.

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

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

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

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

29 (b) The defendant shall be advised that, regardless of his or her  
30 successful completion of the pretrial diversion program, the arrest  
31 upon which pretrial diversion was based may be disclosed by the  
32 Department of Justice in response to any peace officer application  
33 request and that, notwithstanding subdivision (a), this section does  
34 not relieve him or her of the obligation to disclose the arrest in  
35 response to any direct question contained in any questionnaire or  
36 application for a position as a peace officer, as defined in Section  
37 830.

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

39 1000.5. (a) The presiding judge of the superior court, or a  
40 judge designated by the presiding judge, together with the district

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

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

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

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

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

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

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

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