

AMENDED IN ASSEMBLY MAY 24, 2013

AMENDED IN ASSEMBLY APRIL 29, 2013

AMENDED IN ASSEMBLY APRIL 17, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 994

Introduced by Assembly Member Lowenthal

February 22, 2013

An act to amend Section 1001 of, to repeal Sections 1001.7, 1001.8, and 1001.9 of, and to repeal and add Sections 1001.1, 1001.2, 1001.3, 1001.4, 1001.6, ~~1001.7~~, and 1001.50 of, the Penal Code, relating to diversion programs.

LEGISLATIVE COUNSEL'S DIGEST

AB 994, as amended, Lowenthal. Misdemeanor diversion programs.

Under existing law, prosecution of an offense filed as a misdemeanor may be postponed, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, for the person charged to participate in a diversion program for the treatment of problem drinking or alcoholism. Existing law requires the district attorney of each county annually to review any diversion program. Existing law prohibits a program from continuing without the approval of the district attorney and prohibits a person from participating in a diversion program without the authorization of the district attorney.

This bill would require each county to establish and maintain a pretrial diversion program, to be administered by the ~~superior court~~ *district attorney* of that county, and would ~~remove the requirement for approval, both of the program and the participation by an individual, by~~ *authorize*

either the district attorney or the superior court to offer diversion to a defendant. The program would specify the administrative procedures and who would be eligible for the pretrial diversion program. By requiring diversion programs in additional counties, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. Section 1001 of the Penal Code is amended to
2 read:

3 1001. It is the intent of the Legislature that neither this chapter,
4 Chapter 2.5 (commencing with Section 1000) of this title, nor any
5 other provision of law be construed to preempt other current or
6 future pretrial or precomplaint diversion programs. It is also the
7 intent of the Legislature that current or future posttrial diversion
8 programs not be preempted, except as provided in Section 13201
9 or 13352.5 of the Vehicle Code.

10 SEC. 2. Section 1001.1 of the Penal Code is repealed.

11 SEC. 3. Section 1001.1 is added to the Penal Code, to read:

12 1001.1. (a) Each county shall establish a pretrial diversion
13 program, administered by the ~~superior court~~ *district attorney* of
14 the county, by which a defendant may be offered, at the discretion
15 of the ~~court~~ *district attorney or the superior court of the county*,
16 diversion in lieu of sentencing as provided in this chapter.

17 (b) As used in this chapter, “pretrial diversion” means the
18 procedure of postponing prosecution of an offense filed as a
19 misdemeanor, either temporarily or permanently, at any point in
20 the judicial process from the point at which the accused is charged
21 until adjudication.

22 SEC. 4. Section 1001.2 of the Penal Code is repealed.

23 SEC. 5. Section 1001.2 is added to the Penal Code, to read:

1 1001.2. (a) The pretrial diversion program established by this
2 chapter shall apply whenever a case is before a court upon an
3 accusatory pleading concerning the commission of a misdemeanor,
4 except a misdemeanor specified in subdivision (b).

5 (b) This program shall not apply to a diversion program for the
6 treatment of problem drinking or alcoholism utilized for persons
7 convicted of one or more offenses under Section 23152 or 23153
8 or former Section 23105 of the Vehicle Code, or to pretrial
9 diversion programs established pursuant to Chapter 2.5
10 (commencing with Section 1000).

11 (c) Diversion shall not be an option under this chapter whenever
12 the accusatory pleading charges the commission of a misdemeanor
13 for which any of the following apply:

14 (1) Incarceration would be mandatory upon conviction of the
15 defendant.

16 (2) Registration would be required upon conviction pursuant to
17 Section 290.

18 (3) The granting of probation is prohibited.

19 (4) The magistrate determines that the offense shall be
20 prosecuted as a misdemeanor pursuant to paragraph (5) of
21 subdivision (b) of Section 17.

22 SEC. 6. Section 1001.3 of the Penal Code is repealed.

23 SEC. 7. Section 1001.3 is added to the Penal Code, to read:

24 1001.3. (a) At the time of filing a criminal complaint, or before
25 the defendant's arraignment, the ~~prosecuting~~ *district* attorney shall
26 determine whether the defendant is eligible for the misdemeanor
27 diversion program. *If the district attorney determines that a*
28 *defendant is not eligible for the misdemeanor diversion program,*
29 *the court may independently determine whether the defendant is*
30 *eligible for the program. If the ~~prosecuting~~ district attorney or the*
31 *court determines that the defendant is eligible for the program, ~~he~~*
32 *or ~~she~~ the district attorney shall advise the defendant and his or*
33 *her attorney of that determination. This notification shall include*
34 *all of the following:*

35 (1) A full description of the procedures for diversion.

36 (2) A clear statement that in lieu of trial, the court may grant
37 diversion provided that the defendant waives time for arraignment
38 and plea.

1 (3) A clear statement that upon failure to perform a term or
2 condition under the program, or to comply with a court order, the
3 ~~prosecuting~~ *district* attorney or the court shall reinstate proceedings.

4 (b) The period during which diversion is granted shall be no
5 longer than 365 days.

6 (c) Every defendant who chooses to participate in the program
7 shall be required to complete each of the following:

8 (1) Enroll in and complete ~~an educational program~~ *counseling*
9 *or community service, or both*, as accepted by the ~~court~~ *district*
10 *attorney*.

11 (2) Make full restitution, *if applicable*.

12 (3) Comply with any court-ordered protective orders or
13 stay-away orders.

14 (d) At no time shall a defendant be required to make an
15 admission of guilt as a prerequisite for placement in a pretrial
16 diversion program under this chapter.

17 (e) At the end of the pretrial diversion program, the defendant
18 shall be ordered back to court for pretrial or, if in compliance,
19 dismissal.

20 (f) If, before the time of the dismissal hearing, the ~~prosecuting~~
21 *district* attorney files charges for the commission of a new criminal
22 offense during the diversion period, or if the defendant has failed
23 to complete the assigned ~~educational program~~ *counseling or*
24 *community service*, has willfully failed to make full restitution;
25 ~~has failed~~ *or* to pay all fees, or has failed to complete or comply
26 with any other term or condition of the diversion program, the
27 ~~prosecuting~~ *district* attorney or the court may reinstate proceedings
28 and set the matter for pretrial.

29 (g) The diversion program shall not be deemed to have been
30 successfully completed, nor can the defendant's charge or charges
31 be dismissed, until all terms and conditions of the program have
32 been met.

33 (h) After notice to the defendant, the court shall hold a hearing
34 to determine whether criminal proceedings should be reinstated.
35 If the defendant has performed satisfactorily during the period in
36 which diversion was granted, at the end of that period the criminal
37 charge or charges shall be dismissed.

38 (i) When a defendant's case is diverted, a bail bond or
39 undertaking, or a deposit held in lieu thereof, shall be ordered
40 exonerated by the court.

1 SEC. 8. Section 1001.4 of the Penal Code is repealed.

2 SEC. 9. Section 1001.4 is added to the Penal Code, to read:

3 1001.4. (a) ~~In a case in which the defendant may owe owes~~
4 ~~restitution shall be handled as follows:~~ *the district attorney shall*
5 *establish procedures for the collection and distribution of that*
6 *restitution to the victim or victims.*

7 (1) ~~If, at the time of the defendant's admission into the program,~~
8 ~~the defendant, the prosecuting attorney, and the victim agree as to~~
9 ~~the amount of restitution owed, the court shall order the defendant~~
10 ~~to pay that agreed upon amount of restitution.~~

11 (2) ~~If, at the time of the defendant's admission into the program,~~
12 ~~there is insufficient information, or the parties disagree, about the~~
13 ~~nature or amount of restitution owed, the prosecuting attorney will~~
14 ~~determine the amount of restitution owed to a victim or other~~
15 ~~injured or damaged party. If the defendant disagrees with the~~
16 ~~amount of restitution, he or she shall have a right to a hearing at~~
17 ~~which the court shall determine the amount of restitution owed.~~
18 ~~The defendant may waive the right to a restitution hearing and~~
19 ~~stipulate to the amount of restitution determined by the prosecuting~~
20 ~~attorney.~~

21 (b) ~~At the time that restitution is ordered, the defendant shall~~
22 ~~be ordered to complete, and shall complete, a "Financial Disclosure~~
23 ~~Statement" as described in paragraph (5) of subdivision (f) of~~
24 ~~Section 1202.4.~~

25 (c) ~~At the time that diversion is granted, the defendant shall be~~
26 ~~ordered to pay restitution in full prior to the scheduled pretrial~~
27 ~~date.~~

28 SEC. 10. Section 1001.6 of the Penal Code is repealed.

29 SEC. 11. Section 1001.6 is added to the Penal Code, to read:

30 1001.6. (a) ~~Before the defendant may be deemed to have~~
31 ~~successfully completed the diversion program, he or she shall pay~~
32 ~~in full the following costs and fees:~~

33 (1) ~~The costs of the required educational program, to be paid~~
34 ~~directly to the provider of the educational program.~~

35 (2) ~~The prosecuting attorney's administrative fee in an amount~~
36 ~~authorized by the board of supervisors.~~

37 (3) ~~Any fees required by the court pursuant to Section 1001.16.~~

38 (b) ~~The prosecuting attorney's administrative fee shall not be~~
39 ~~waived or discounted by the court, unless the court first determines~~
40 ~~that the person is unable to pay all or part of that fee.~~

1 ~~(e) The costs and fees listed in this section shall be paid in full~~
2 ~~prior to completion of the diversion program.~~

3 ~~SEC. 12. Section 1001.7 of the Penal Code is repealed.~~

4 ~~SEC. 13.~~

5 ~~SEC. 11.~~ Section 1001.7-1001.6 is added to the Penal Code,
6 to read:

7 ~~1001.7.~~

8 *1001.6.* (a) Any record filed with the Department of Justice
9 shall indicate the disposition in those cases diverted pursuant to
10 this chapter. Upon successful completion of a diversion program,
11 the arrest upon which the case was diverted shall be deemed to
12 have never occurred. The defendant may indicate in response to
13 any question concerning his or her prior criminal record that he or
14 she was not arrested or diverted for the offense, except as specified
15 in subdivision (b). A record pertaining to an arrest resulting in
16 successful completion of a diversion program shall not, without
17 the defendant’s consent, be used in any way that could result in
18 the denial of any employment, benefit, license, or certificate.

19 (b) The defendant shall be advised that, regardless of his or her
20 successful completion of the diversion program, the arrest upon
21 which the case was diverted may be disclosed by the Department
22 of Justice in response to any peace officer application request and
23 that, notwithstanding subdivision (a), this section does not relieve
24 him or her of the obligation to disclose the arrest in response to
25 any direct question contained in any questionnaire or application
26 for a position as a peace officer, as defined in Section 830.

27 ~~SEC. 12. Section 1001.7 of the Penal Code is repealed.~~

28 ~~1001.7. If the divertee has performed satisfactorily during the~~
29 ~~period of diversion, the criminal charges shall be dismissed at the~~
30 ~~end of the period of diversion.~~

31 ~~SEC. 14.~~

32 ~~SEC. 13.~~ Section 1001.8 of the Penal Code is repealed.

33 ~~SEC. 15.~~

34 ~~SEC. 14.~~ Section 1001.9 of the Penal Code is repealed.

35 ~~SEC. 16.~~

36 ~~SEC. 15.~~ Section 1001.50 of the Penal Code is repealed.

37 ~~SEC. 17.~~

38 ~~SEC. 16.~~ Section 1001.50 is added to the Penal Code, to read:

39 1001.50. (a) Each county shall establish a pretrial diversion
40 program, administered by the ~~superior court~~ *district attorney* of

1 the county, by which the defendant may be offered, at the discretion
2 of the ~~court~~ *district attorney or the superior court of the county*,
3 diversion in lieu of sentencing as provided in this chapter.

4 (b) As used in this chapter, “pretrial diversion” means the
5 procedure of postponing prosecution, either temporarily or
6 permanently, at any point in the judicial process from the point at
7 which the accused is charged until adjudication.

8 ~~SEC. 18.~~

9 *SEC. 17.* If the Commission on State Mandates determines that
10 this act contains costs mandated by the state, reimbursement to
11 local agencies and school districts for those costs shall be made
12 pursuant to Part 7 (commencing with Section 17500) of Division
13 4 of Title 2 of the Government Code.

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