


## MEMORANDUM

<b>DATE</b>	May 4, 2017
<b>TO</b>	Policy and Advocacy Committee
<b>FROM</b>	 Cherise Burns Central Services Manager
<b>SUBJECT</b>	Agenda Item #6(c)(6) – AB 208 (Eggman) Deferred Entry of Judgment: Pretrial Diversion

### **Background:**

This bill would make the deferred entry of judgment program a pretrial diversion program. Under the pretrial diversion program created by this bill, a qualifying defendant would enter a plea of not guilty, and proceedings would be suspended in order for the defendant to enter a drug treatment program for six (6) months to one year, or longer if requested by the defendant with good cause. The bill would also require the court, if the defendant does not perform satisfactorily in the program or is convicted of specified crimes, to terminate the program and reinstate the criminal proceedings. Finally, the bill would require the criminal charges to be dismissed if the defendant successfully completes the program.

Board staff is interested in how this bill would affect our licensing and enforcement programs if an applicant or licensee is undergoing a pretrial diversion program.

**Location:** Assembly Committee on Appropriations

**Status:** 4/05/2017 referred to Assembly Committee on Appropriations Suspense File

**Votes:** 3/14/207 Assembly Committee on Public Safety (5-2-0)

### **Action Requested:**

No action is required at this time. Staff will continue to watch AB 208 (Eggman) for potential impacts to the Board's licensing and enforcement programs.

Attachment A: AB 208 (Eggman) Text



**AB-208 Deferred entry of judgment: pretrial diversion.** (2017-2018)

**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, or 11365, paragraph (2) of subdivision (b) of Section 11375, Section 11377, or Section 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~~ *Within five years prior to the alleged commission of the charged offense, the defendant has not suffered a* conviction for any offense involving controlled substances ~~prior to the alleged commission of the charged offense.~~ *other than the offenses listed in this subdivision.*

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

(3) There is no evidence of a *contemporaneous* violation relating to narcotics or restricted dangerous drugs other than a violation of the ~~sections~~ *offenses* 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) (4) 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.~~ *Within five years prior to the alleged commission of the charged offense, the defendant has no prior conviction for a serious felony, as defined in subdivision (c) of Section 1192.7, or a violent felony, as defined in subdivision (c) of Section 667.5.*

~~(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)~~, (4), 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 charges.~~ If the defendant is found eligible, the prosecuting attorney shall file with the court a declaration in writing or 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~~ *pretrial diversion* at the arraignment. If the defendant is found ineligible for ~~deferred entry of judgment,~~ *pretrial diversion*, the prosecuting attorney shall file with the court a declaration in writing or 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~~ *pretrial diversion* is a postconviction appeal.

(c) All referrals for ~~deferred entry of judgment~~ *pretrial diversion* granted by the court pursuant to this chapter shall be made only to programs that have been certified by the county drug program administrator pursuant to

Chapter 1.5 (commencing with Section 1211) of Title 8, or to programs that provide services at no cost to the participant and have been deemed by the court and the county drug program administrator to be credible and effective. The defendant may request to be referred to a program in any county, as long as that program meets the criteria set forth in this subdivision.

(d) ~~Deferred entry of judgment for a~~ *Pretrial diversion for an alleged* violation of Section 11368 of the Health and Safety Code shall not prohibit any administrative agency from taking disciplinary action against a licensee or from denying a license. ~~Nothing in this subdivision shall be construed to~~ *This subdivision does not* expand or restrict the provisions of Section 1000.4.

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

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

**1000.1.** (a) If the prosecuting attorney determines that this chapter 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 all of the following:

(1) A full description of the procedures for ~~deferred entry of judgment~~ *pretrial diversion*.

(2) A general explanation of the roles and authorities of the probation department, 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~~ *pretrial diversion* with respect to any *crime offense* specified in subdivision (a) of Section 1000 that is charged, provided that the defendant pleads ~~guilty to each of these charges and waives time for the pronouncement of judgment~~ *not guilty to the charge or charges, waives the right to a speedy trial and to a speedy preliminary hearing, if applicable*, and that upon the defendant's successful completion of a program, as specified in subdivision (c) of Section 1000, the positive recommendation of the program authority and the motion of the *defendant*, prosecuting attorney, the court, or the probation department, but no sooner than ~~18 six~~ months and no later than ~~three years~~ *one year* from the date of the defendant's referral to the program, the court shall dismiss the charge or charges against the defendant.

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

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

(b) If the defendant consents and waives his or her right to a speedy trial ~~or~~ *and* a speedy preliminary hearing, *if applicable*, the court may refer the case to the probation department or the court may summarily grant ~~deferred entry of judgment if the defendant pleads guilty to the charge or charges and waives time for the pronouncement of judgment~~ *pretrial diversion*. When directed by the court, the probation department shall make an investigation and take into consideration the defendant's age, employment and service records, educational background, community and family ties, prior controlled substance use, treatment history, if any, demonstrable motivation, and other mitigating factors in determining whether the defendant is a person who would be benefited by education, treatment, or rehabilitation. The probation department shall also determine which programs the defendant would benefit from and which programs would accept the defendant. The probation department shall report its findings and recommendations to the court. The court shall make the final determination regarding education, treatment, or rehabilitation for the defendant. If the court determines that it is appropriate, the court shall grant ~~deferred entry of judgment~~ *pretrial diversion* if the defendant pleads *not* guilty to the charge or charges and waives ~~time for the pronouncement of judgment~~ *the right to a speedy trial and to a speedy preliminary hearing, if applicable*.

(c) (1) No statement, or any information procured therefrom, made by the defendant to any probation officer or drug treatment worker, that is made during the course of any investigation conducted by the probation

department or treatment program pursuant to subdivision (b), and prior to the reporting of the probation department's findings and recommendations to the court, shall be admissible in any action or proceeding brought subsequent to the investigation.

(2) No statement, or any information procured therefrom, with respect to the specific offense with which the defendant is charged, that is made to any probation officer or drug program worker subsequent to the granting of ~~deferred entry of judgment,~~ *pretrial diversion* shall be admissible in any action or ~~proceeding, including a sentencing hearing.~~ *proceeding.*

(d) A defendant's ~~plea of guilty~~ *participation in pretrial diversion* pursuant to this chapter shall not constitute a conviction ~~for any purpose unless a judgment of guilty is entered pursuant to Section 1000.3, or an admission of guilt for any purpose.~~

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

**1000.2. (a)** The court shall hold a hearing and, after consideration of any information relevant to its decision, shall determine if the defendant consents to further proceedings under this chapter and if the defendant should be granted ~~deferred entry of judgment. If the court does not deem the defendant a person who would be benefited by deferred entry of judgment, or if the defendant~~ *pretrial diversion. If the defendant* does not consent to ~~participate,~~ *participate in pretrial diversion,* the proceedings shall continue as in any other case.

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

(c) The period during which ~~deferred entry of judgment~~ *pretrial diversion* is granted shall be for no less than ~~18 six~~ months nor longer than ~~three years~~ *one year. However, the defendant may request, and the court shall grant, for good cause shown, an extension of time to complete a program specified in subdivision (c) of Section 1000.* Progress reports shall be filed by the probation department with the court as directed by the court.

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

**1000.3. (a)** If it appears to the prosecuting attorney, the court, or the probation department that the defendant is performing unsatisfactorily in the assigned program, ~~or~~ that the defendant is ~~not benefiting from education, treatment, or rehabilitation, or that the defendant is convicted of a misdemeanor~~ *convicted of an offense* that reflects the defendant's propensity for violence, or *that* the defendant is convicted of a felony, ~~or the defendant has engaged in criminal conduct rendering him or her unsuitable for deferred entry of judgment, the~~ *the* prosecuting attorney, the court on its own, or the probation department may make a motion for ~~entry of judgment.~~ *termination from pretrial diversion.*

(b) After notice to the defendant, the court shall hold a hearing to determine whether ~~judgment should be entered.~~ *pretrial diversion shall be terminated.*

(c) If the court finds that the defendant is not performing satisfactorily in the assigned program, or ~~that the defendant is not benefiting from education, treatment, or rehabilitation, or the~~ *the* court finds that the defendant has been convicted of a crime as indicated ~~above, or that the defendant has engaged in criminal conduct rendering him or her unsuitable for deferred entry of judgment,~~ *in subdivision (a),* the court shall ~~render a finding of guilt to the charge or charges pled, enter judgment, and schedule a sentencing hearing~~ *schedule the matter for further proceedings* as otherwise provided in this code.

(d) If the defendant has ~~performed satisfactorily during the period in which deferred entry of judgment was granted,~~ *completed pretrial diversion,* at the end of that period, the criminal charge or charges shall be dismissed.

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

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

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

(b) The defendant shall be advised that, regardless of his or her successful completion of the ~~deferred entry of judgment- pretrial diversion~~ program, the arrest upon which ~~the judgment pretrial diversion~~ was ~~deferred based~~ may 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 him or her 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.

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

**1000.5.** (a) (1) The presiding judge of the superior court, or a judge designated by the presiding judge, together with the district attorney and the public defender, may agree in writing to establish and conduct a preguilty plea drug court program pursuant to the provisions of this chapter, wherein criminal proceedings are suspended without a plea of guilty for designated defendants. The drug court program shall include a regimen of graduated sanctions and rewards, individual and group therapy, ~~urine analysis- urinalysis~~ testing commensurate with treatment needs, close court monitoring and supervision of progress, educational or vocational counseling as appropriate, and other requirements as agreed to by the presiding judge or his or her designee, the district attorney, and the public defender. If there is no agreement in writing for a preguilty plea program by the presiding judge or his or her designee, the district attorney, and the public defender, the program shall be operated as a ~~deferred entry of judgment- pretrial diversion~~ program as provided in this chapter.

(2) A person charged with a misdemeanor under paragraph (3) of subdivision (b) of Section 11357.5 or paragraph (3) of subdivision (b) of *Section* 11375.5 of the Health and Safety Code shall be eligible to participate in a preguilty plea drug court program established pursuant to this chapter, as set forth in Section 11375.7 of the Health and Safety Code.

(b) The provisions of Section 1000.3 and Section 1000.4 regarding satisfactory and unsatisfactory performance in a program shall apply to preguilty plea programs, except as provided in Section 11375.7 of the Health and Safety Code. If the court finds that (1) the defendant is not performing satisfactorily in the assigned program, (2) the defendant is not benefiting from education, treatment, or rehabilitation, (3) the defendant has been convicted of a crime specified in Section 1000.3, or (4) the defendant has engaged in criminal conduct rendering him or her unsuitable for the preguilty plea program, the court shall reinstate the criminal charge or charges. If the defendant has performed satisfactorily during the period of the preguilty plea program, at the end of that period, the criminal charge or charges shall be dismissed and the provisions of Section 1000.4 shall apply.

**SEC. 7.** Section 1000.6 of the Penal Code is amended 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) (a) The~~ *A person who is participating in a pretrial diversion program or a preguilty plea program pursuant to this chapter is authorized under the direction of a licensed health care practitioner, to use medications including, but not limited to, methadone, buprenorphine, or levoalphacetylmethadol (LAAM) to treat substance use disorders if the* participant allows release of his or her medical records to the court presiding over the participant's preguilty *plea* or ~~deferred entry pretrial diversion~~ program for the limited purpose of determining whether or not the participant is ~~duly enrolled in the licensed methadone or LAAM program- using such medications under the direction of a licensed health care practitioner~~ and is in compliance with ~~deferred entry the pretrial diversion~~ 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~~ *the use by a participant of medications to treat substance use disorders* shall not be the sole reason for exclusion from a ~~deferred entry pretrial diversion~~ or preguilty plea program. A ~~methadone or LAAM patient who~~ *patient who uses medications to treat substance use disorders and* participates in a preguilty ~~plea~~ or ~~deferred entry pretrial diversion~~ program shall comply with all court program rules.

(c) A person who is participating in a ~~deferred entry of judgment~~ *pretrial diversion* program or preguilty plea program pursuant to this chapter who ~~participates in a licensed methadone or LAAM program~~ *uses medications to treat substance use disorders* shall present to the court a declaration from ~~the director of the methadone or LAAM program, or the director's~~ *his or her health care practitioner, or his or her health care practitioner's* authorized representative, that the person is currently ~~enrolled and in good standing in the program.~~ *under their care.*

(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~~ *medication duly prescribed to that person by his or her physician or psychiatrist, or medications used to treat substance use disorders,* shall not be considered a violation of the terms of the ~~deferred entry of judgment~~ *pretrial diversion* 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~~ *does not affect any other law governing* diversion programs.

**SEC. 8.** *Section 1000.65 is added to the Penal Code, immediately following Section 1000.6, to read:*

**1000.65.** *This chapter does not affect a pretrial diversion program provided pursuant to Chapter 2.7 (commencing with Section 1001).*