

AMENDED IN SENATE JUNE 25, 2013

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, 1001.35, 1001.4, 1001.6, and 1001.50 of, *and to add Section 1001.56 to*, 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~~ *misdemeanor* diversion program, to be administered by the district

attorney of that county, and would authorize either the district attorney or the superior court to offer diversion to a defendant, *as specified*. The program would specify the administrative procedures and who would be eligible for the ~~pretrial~~ *misdemeanor* 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~~ *misdemeanor*
 13 diversion program, administered by the district attorney of the
 14 county, by which a defendant may be offered, at the discretion of
 15 the ~~district attorney or the superior court of the county,~~ *attorney,*
 16 diversion in lieu of sentencing as provided in this chapter. *The*
 17 *superior court of the county may also offer the defendant postplea*
 18 *diversion, pursuant to Section 1001.35, in lieu of sentencing as*
 19 *provided in this chapter.*

20 (b) As used in this chapter, ~~“pretrial”~~ *the following definitions*
 21 *shall apply:*

1 (1) “*Misdemeanor diversion*” means the procedure of
2 postponing prosecution of an offense filed as a misdemeanor, either
3 temporarily or permanently, at any point in the judicial process
4 from the point at which the accused is charged until adjudication.

5 (2) “*Prefile diversion*” is *diversion that is offered prior to filing*
6 *of the accusatory pleading.*

7 (3) “*Preplea diversion*” is *diversion that is offered after the*
8 *accusatory pleading is filed but prior to the entry of a plea.*

9 (4) “*Postplea diversion*” is *diversion that is offered after the*
10 *defendant has entered a plea of guilty.*

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 Section 1001.2 of the Penal Code is repealed.

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

13 1001.2. (a) ~~The pretrial misdemeanor diversion program~~
14 ~~established by this chapter shall apply~~ *may be offered to a*
15 *defendant whenever a district attorney is prepared to file an*
16 *accusatory pleading concerning the commission of a misdemeanor*
17 *or when a case is before a court upon an accusatory pleading*
18 *concerning the commission of a misdemeanor, except a*
19 *misdemeanor specified in subdivision (b).*

20 (b) This program shall not apply to a diversion program for the
21 treatment of problem drinking or alcoholism utilized for persons
22 convicted of one or more offenses under Section 23152 or 23153
23 or former Section 23105 of the Vehicle Code, or to pretrial
24 diversion programs established pursuant to Chapter 2.5
25 (commencing with Section 1000).

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

29 (1) Incarceration would be mandatory upon conviction of the
30 defendant.

31 (2) Registration would be required upon conviction pursuant to
32 Section 290.

33 (3) The granting of probation is prohibited.

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

37 (5) *The victim is a person identified in Section 6211 of the*
38 *Family Code or the victim is a minor.*

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

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

1 1001.3. (a) ~~At the time of filing a criminal complaint, or before~~
2 ~~the defendant's arraignment, the~~ *The* district attorney ~~shall~~ *may*
3 determine whether the defendant is eligible for the misdemeanor
4 diversion program. If the district attorney determines that a
5 defendant is not eligible for the misdemeanor diversion program,
6 *and if the defendant has entered a guilty plea,* the court may
7 independently determine whether the defendant is eligible for ~~the~~
8 ~~program.~~ *postplea diversion, pursuant to Section 1001.35.* If the
9 district attorney or the court determines that the defendant is
10 eligible for *diversion under* the program, the district attorney shall
11 advise the ~~defendant~~ *defendant,* and ~~his or her~~ *the defendant's*
12 *attorney for preplea diversion and postplea diversion,* of ~~that~~ *the*
13 determination. This notification shall include all of the following:
14 (1) A full description of the procedures for diversion.
15 (2) ~~A~~ *In the case of preplea diversion, a* clear statement ~~that~~
16 *that,* in lieu of trial, ~~the court may grant~~ diversion ~~provided that~~
17 *may be granted if* the defendant waives time for arraignment and
18 plea.
19 (3) A clear statement that ~~upon~~ failure to perform a term or
20 condition ~~under~~ of the program, or to comply with a court order,
21 *will result in* the district attorney ~~or the court shall~~ *reinstate*
22 ~~proceedings reinstating criminal proceedings against the defendant~~
23 *as if diversion had not occurred.*
24 ~~(b) The period during which diversion is granted shall be no~~
25 ~~longer than 365 days.~~
26 (e)
27 (b) Every defendant who chooses to participate in the program
28 shall be required to complete each of the following:
29 (1) Enroll in and complete ~~counseling or community service,~~
30 ~~or both~~ *at least one of the following,* as accepted by the district
31 ~~attorney.~~ *attorney or the court where the court determines the*
32 *defendant is eligible pursuant to subdivision (a) of Section 1001.3:*
33 (A) *Counseling.*
34 (B) *Community service.*
35 (C) *An educational program.*
36 (2) Make full restitution, if applicable.
37 (3) Comply with any court-ordered protective orders or
38 stay-away orders.
39 ~~(d) At no time shall a~~

1 (c) A defendant who is participating in prefile or preplea
2 diversion shall not be required to make an admission of guilt as a
3 prerequisite for placement in a pretrial diversion program under
4 this chapter diversion.

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

8 (f) If, before the time of the dismissal hearing, the district
9 attorney files charges for the commission of a new criminal offense
10 during the diversion period, or if the defendant has failed to
11 complete the assigned counseling or community service, has
12 willfully failed to make full restitution or to pay all fees, or has
13 failed to complete or comply with any other term or condition of
14 the diversion program, the district attorney or the court may
15 reinstate proceedings and set the matter for pretrial.

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

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

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

28 SEC. 8. Section 1001.35 is added to the Penal Code, to read:

29 1001.35. (a) If the court determines that the defendant is
30 eligible for the misdemeanor diversion program pursuant to this
31 chapter, the court may only offer postplea diversion.

32 (b) The court shall not offer postplea diversion if the defendant
33 has previously diverted under the provisions of this chapter or
34 Chapter 2.9 (commencing with Section 1001.50) of Title 6 of Part
35 2.

36 ~~SEC. 8.~~

37 SEC. 9. Section 1001.4 of the Penal Code is repealed.

38 ~~SEC. 9.~~

39 SEC. 10. Section 1001.4 is added to the Penal Code, to read:

1 1001.4. In a case in which the defendant owes restitution, the
2 district attorney shall establish procedures for the collection and
3 distribution of that restitution to the victim or victims.

4 ~~SEC. 10.~~

5 *SEC. 11.* Section 1001.6 of the Penal Code is repealed.

6 ~~SEC. 11.~~

7 *SEC. 12.* Section 1001.6 is added to the Penal Code, to read:

8 1001.6. (a) ~~Any~~A 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.~~

28 *SEC. 13.* Section 1001.7 of the Penal Code is repealed.

29 ~~SEC. 13.~~

30 *SEC. 14.* Section 1001.8 of the Penal Code is repealed.

31 ~~SEC. 14.~~

32 *SEC. 15.* Section 1001.9 of the Penal Code is repealed.

33 ~~SEC. 15.~~

34 *SEC. 16.* Section 1001.50 of the Penal Code is repealed.

35 ~~SEC. 16.~~

36 *SEC. 17.* Section 1001.50 is added to the Penal Code, to read:

37 1001.50. (a) Each county shall establish a ~~pretrial~~ *misdemeanor*
38 diversion program, administered by the district attorney of the
39 county, by which the defendant may be offered, at the discretion
40 of the ~~district attorney or the superior court of the county,~~ *attorney,*

1 diversion in lieu of sentencing as provided in this chapter. *The*
2 *superior court of the county may also offer the defendant postplea*
3 *diversion, pursuant to Section 1001.56, in lieu of sentencing as*
4 *provided in this chapter.*

5 (b) As used in this chapter, ~~“pretrial diversion”~~ *the following*
6 *procedures shall apply:*

7 (1) *“Misdemeanor diversion”* means the procedure of
8 postponing prosecution, either temporarily or permanently, at any
9 point in the judicial process from the point at which the accused
10 is charged until adjudication.

11 (2) *“Prefile diversion”* is diversion that is offered prior to filing
12 *of the complaint.*

13 (3) *“Preplea diversion”* is diversion that is offered after the
14 *complaint is filed, but prior to the entry of a plea.*

15 (4) *“Postplea diversion”* is diversion that is offered after the
16 *defendant has entered a plea of guilty.*

17 *SEC. 18. Section 1001.56 is added to the Penal Code, to read:*

18 *1001.56. (a) If the court determines that the defendant is*
19 *eligible for the misdemeanor diversion program pursuant to this*
20 *chapter, the court may only offer postplea diversion.*

21 *(b) The court shall not offer postplea diversion if the defendant*
22 *has previously diverted under the provisions of this chapter or*
23 *Chapter 2.7 (commencing with Section 1001) of Title 6 of Part 2.*

24 ~~SEC. 17.~~

25 *SEC. 19. If the Commission on State Mandates determines that*
26 *this act contains costs mandated by the state, reimbursement to*
27 *local agencies and school districts for those costs shall be made*
28 *pursuant to Part 7 (commencing with Section 17500) of Division*
29 *4 of Title 2 of the Government Code.*