



AB 208: Deferred entry of judgment: pretrial diversion

SUMMARY

This bill would provide pre-plea diversion, instead of post-plea deferred entry of judgment, for minor drug offenses.

BACKGROUND

California law provides for deferred entry of judgment for minor nonviolent drug offenses, most involving possession or use of drugs. A defendant is required to plead guilty, waive his or her right to a speedy trial, and complete a drug treatment program. If the program is completed, the criminal case is dismissed. Defendants are often led to believe that once the case is dismissed they will not be denied any benefit and the arrest will be deemed never to have occurred.

However, this dismissal does not protect a defendant from federal consequences, including deportation for non-citizen residents. Even for US citizens that complete the terms of court-ordered diversion, convictions can carry long-term negative consequences, including loss of federal housing and educational benefits.

Convictions for minor drug offenses result in much harsher consequences for non-U.S. citizens, including deportation and separation from family, loved ones and employment. According to the Transactional Records Access Clearinghouse at Syracuse University, since 2008, over 250,000 people have been deported from the U.S. for nonviolent drug offenses. A nonviolent drug offense was the cause of deportation for more than one in every ten people deported in 2013 for any reason.

Noncitizen defendants charged with minor drug offenses, including misdemeanors, are often incorrectly advised or believe that pleading guilty with a deferred entry of judgment will not count as a conviction for any purpose. However, under federal immigration laws, post-plea deferred entry of judgment programs, as

provided currently under PC 1000 *et. seq.*, are still considered a conviction for immigration purposes, even if the defendant successfully completed the program, the case dismissed, and the conviction no longer exists under state law. Deferred entry of judgments convictions are used against non-U.S. citizens to deport them, prevent them from gaining lawful status, and from being eligible for pardons against deportation. These unjust consequences are equally true for longtime lawful permanent residents (green card holders), and beneficiaries of the Deferred Action for Childhood Arrivals program, as for undocumented persons.

THIS BILL

This bill will amend Penal Code 1000 *et seq.* to allow for pre-trial diversion, instead of requiring the defendant to plead guilty first and then seek deferred entry of judgment for nonviolent misdemeanor drug offenses. For any person who fails to adhere to conditions of a pre-trial diversion program, the court could reinstate the charges and schedule proceedings pursuant to existing law.

SUPPORT

- ACLU (co-sponsor)
- California Immigrant Policy Center (co-sponsor)
- CHIRLA (co-sponsor)
- Drug Policy Alliance (co-sponsor)
- Immigrant Legal Resource Center (co-sponsor)
- MALDEF (co-sponsor)
- Alameda County Public Defender`
- California Access Coalition
- California Attorneys for Criminal Justice
- Californians for Safety and Justice
- California Council of Community Behavioral Health Agencies
- California Latino Legislative Caucus
- Ella Baker Center for Human Rights

- Human Impact Partners
- National Association of Social Workers
- Students for Sensible Drug Policy

FOR MORE INFORMATION

Gustavo Medina

916.319.2013

gustavo.medina@asm.ca.gov