



Fact Sheet on Penal Code § 1203.43, Effective January 1, 2016

This new law prevents unintended consequences of Deferred Entry of Judgment (“DEJ”) and helps keep California families together, by erasing a prior DEJ as a drug “conviction” for immigration purposes.

Why was P.C. § 1203.43 enacted?

Section 1000 et seq. of the Penal Code provides that if a defendant performs satisfactorily during the DEJ period, the charges are dismissed, the guilty plea is not a conviction “for any purpose,” and no denial of employment, certificate, or benefits may flow from the incident. Unfortunately, this is not true for noncitizen defendants. Federal immigration law employs its own definition of a “conviction.” See 8 USC §1101(a)(48)(A). Because the defendant pleaded guilty and some penalty or restraint was imposed, such as a court fine, even a successfully completed DEJ is a very damaging drug “conviction” for immigration purposes. All noncitizens, including long-time lawful permanent residents, become deportable, inadmissible, and subject to mandatory detention without bond, based on the disposition. Thousands of noncitizens already have been deported based on a successfully completed DEJ, and thousands more are at current risk of deportation.

How does P.C. § 1203.43 solve the problem of the prior DEJ?

Immigration law will give effect to an order that eliminates a conviction due to a *legal defect* in the proceedings, but it will not give effect to “rehabilitative relief” like P.C. § 1000.3 that dismisses charges because the defendant completed program requirements.¹ Section 1203.43(a) works for immigration purposes because the order is based on a legal defect in the proceedings: the fact that the DEJ statute provided “misinformation about the actual consequences of making a plea,” such that the plea shall be withdrawn as legally “invalid.” See the text of § 1203.43(a), below.

What is the procedure in criminal court?

The § 1203.43 application can be resolved on the papers, without a hearing. The criminal court judge “shall, upon request of the defendant” withdraw the guilty plea in any DEJ case in which the charges were dismissed after the satisfactory performance of DEJ requirements. Once the plea is withdrawn, the court will dismiss the charges again. There is no requirement to show individual prejudice or reliance. If court records showing the resolution of the DEJ case are no longer available, the applicant can qualify for relief by submitting a sworn declaration and a positive or inconclusive DOJ record. See text of § 1203.43(b), below. Pending the creation of a government form for § 1203.43 relief, see model motion and proposed order at http://www.ilrc.org/resources/New_California_Drug_Law_1203.43.

Is DEJ a good plea for noncitizen defendants now?

No. A noncitizen charged with a first, minor drug offense should make every effort to plead to a non-drug offense, because even the most minor drug conviction is very damaging to immigrants. DEJ provides an advantage because ultimately the “conviction” is erased, but the person may be vulnerable to deportation during the minimum 18-month wait to complete DEJ. If DEJ is the best option, see Penal Code § 1203.43 Practice Advisory for strategies to further protect the defendant.

For more information see [Practice Advisory²](#) or contact Kathy Brady at kbrady@ilrc.org

Text of Penal Code § 1203.43

AB 1352, Effective January 1, 2016

(a) (1) The Legislature finds and declares that the statement in Section 1000.4, that “successful completion of a deferred entry of judgment 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” constitutes misinformation about the actual consequences of making a plea in the case of some defendants, including all noncitizen defendants, because the disposition of the case may cause adverse consequences, including adverse immigration consequences.

(2) Accordingly, the Legislature finds and declares that based on this misinformation and the potential harm, the defendant’s prior plea is invalid.

(b) For the above-specified reason, in any case in which a defendant was granted deferred entry of judgment on or after January 1, 1997, has performed satisfactorily during the period in which deferred entry of judgment was granted, and for whom the criminal charge or charges were dismissed pursuant to Section 1000.3, the court shall, upon request of the defendant, permit the defendant to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty, and the court shall dismiss the complaint or information against the defendant. If court records showing the case resolution are no longer available, the defendant’s declaration, under penalty of perjury, that the charges were dismissed after he or she completed the requirements for deferred entry of judgment, shall be presumed to be true if the defendant has submitted a copy of his or her state summary criminal history information maintained by the Department of Justice that either shows that the defendant successfully completed the deferred entry of judgment program or that the record is incomplete in that it does not show a final disposition. For purposes of this section, a final disposition means that the state summary criminal history information shows either a dismissal after completion of the program or a sentence after termination of the program.

ENDNOTES

¹ See, e.g., *Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003); *Matter of Rodriguez-Ruiz*, 22 I&N Dec. 1378 (BIA 2000); *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006)

² For more information see Practice Advisory at http://www.ilrc.org/resources/New_California_Drug_Law_1203.43