

Pretrial Diversion of Drug Crimes – California Penal Code Section 1000

Under California Penal Code 1000, eligible individuals are able to defer court proceedings and instead enroll in a drug treatment program. Permission to participate in a drug diversion program is based on the discretion of a judge. Prior participation in PC 1000 drug treatment does not disqualify the defendant from participation in the program.

Initially, the prosecuting attorney will review the defendant's case. If the defendant appears eligible for pretrial diversion, the prosecutor will advise the defendant and his or her attorney in writing. Under PC 1000 treatment typically lasts 12-18 months but could be as long as three years.

The defendant can plead "not guilty" (rather than guilty) and be referred to drug treatment. The defendant must give up the right to jury trial, but retains the right to a trial in front of a judge ("bench trial") if he/she fails to complete treatment.

Eligible offenses are, for the most part, misdemeanor offenses. Only serious drug convictions within the immediately preceding five-year period make the defendant ineligible.

Drug lawyers in Santa Rosa, Napa, San Rafael, Lakeport, Ukiah and Eureka should be consulted prior to making a decision in reference to a diversion program. Drug programs can vary from county to county including Sonoma, Napa, Marin, Lake, Mendocino and Humboldt counties.

The offenses that allow a defendant to participate in Penal Code 1000 pretrial diversions are:

Health & Safety Code 11350 – possession of controlled substances,
Health & Safety Code 11357 – unlawful possession of cannabis,
Health & Safety Code 11364 – possession of drug paraphernalia
Health & Safety Code 11365 – aiding or abetting the use of an unlawful controlled substance,
Health & Safety Code 11375 (b)(2) – unlawful possession of certain prescription sedatives
Health & Safety Code 11377 – possession of methamphetamines for personal use,
Health & Safety Code 11550 – being under the influence of a controlled substance,
Vehicle Code 23222 (b) – possessing an open container of Cannabis in a motor vehicle,
Health and Safety Code 11358 – unlawful cultivation of Cannabis for personal use,
Health and Safety Code 11368 – possessing or using a forged prescription to obtain drugs for personal use,
Penal Code 653f(d) – soliciting someone to commit a crime to facilitate the defendant's personal use of narcotics,
Penal Code 381 – possession of toxic substances for "huffing," and,
Penal Code 647 (f) – lewd conduct related to being under the influence of a controlled substance.

Some of the controlled substances that are covered by the above-referenced laws include:

Marijuana,
Ecstasy ("X"),
Ketamine ("Special K"),
Methamphetamines,
Cocaine,
Heroin,

Peyote,
Gamma-hydroxybutyric acid (“GHB”),
Hallucinogenic substances, such as phencyclidine (“PCP”), and
Prescription drugs such as codeine and hydrocodone (“Vicodin”)

In general, the issue for the court is not so much the nature of the substance as:

1. Whether the offense is one of possession for personal use; and,
2. Whether the defendant would benefit from drug treatment.

In order for a defendant to be eligible for pretrial diversion under Penal Code 1000 PC, all of the following must apply:

1. 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 other than the offenses listed in Penal Code 1000;
2. The offense charged did not involve a crime of violence or threatened violence;
3. There is no evidence of simultaneous violation relating to narcotics or restricted dangerous drugs other than a violation of the offenses listed in Penal Code 1000; and
4. The defendant has no prior felony conviction within five years prior to the alleged commission of the charged offense.

The court will hold a hearing to determine whether the defendant is eligible and consents to pretrial diversion.

But before making the determination, the court may – in its discretion – order the probation department to investigate the defendant’s case. The probation officer assigned may 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.

Statements made by the defendant to a probation officer or drug treatment worker during the probation department’s investigation are not admissible to prove the original charges.

If an investigation has been ordered, the probation department will advise the court which programs it feels the defendant would benefit from and which would accept the defendant. The court will then make the final determination about whether and what type of education, treatment, or rehabilitation would be appropriate.

The defendant will be given the opportunity to consent to participation. If the defendant elects to do so, the defendant must plead “not guilty” to the charge(s) and waive the rights to a speedy trial and preliminary hearing as well as a trial by jury. The court will then dismiss any bail bond or other deposit and the defendant will be permitted to participate in drug treatment.

As treatment progresses, progress reports may be filed by the probation department with the court. This will help the court determine the defendant’s continued eligibility under Penal Code 1000.

If the defendant does not want to participate in drug treatment – or if the court decides pretrial diversion is not appropriate – the proceedings in the original drug case will continue, with the defendant’s right to a speedy pretrial hearing, trial and trial by jury fully preserved.

The defendant may request to be referred to a program in any county, as long as that program is properly certified and deemed credible and effective.

Defendants participating in pretrial drug diversion under Penal Code 1000 may be required to undergo drug testing by urinalysis. The results may be used solely for the purpose of measuring compliance with the program, and failing a drug test cannot serve as the basis for new criminal charges. The only consequences is the possible termination of pretrial diversion.

All referrals for pretrial diversion granted by the court are made only to programs that have been certified by the particular county drug program administrator at defendant's cost 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.

The defendant's participation in PC 1000 pretrial diversion may be terminated, after a hearing by the judge, if:

1. The defendant fails to obtain drug treatment or to comply with any condition of the program;
2. The defendant is convicted of any felony; or,
3. The defendant is convicted of an offense that reflects a propensity for violence.

A motion to terminate the defendant's participation in pretrial diversion can be initiated by the prosecuting attorney, the judge, or the probation department.

The court will then hold a hearing to determine whether to terminate pretrial diversion. If the judge finds that the defendant is not performing satisfactorily in the assigned program or that the defendant has been convicted of a crime set forth above, the original case against the defendant will move forward.

Upon successful completion of Penal Code 1000 pretrial diversion, the arrest for applicable charge(s) will be deemed to have never occurred for most purposes. The defendant may then truthfully indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted pretrial diversion for the offense.

The Law Itself: California Penal Code Section 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) 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 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 offenses listed in this subdivision.
 - (4) 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 (4), inclusive, of subdivision (a) apply to the defendant. 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 pretrial diversion at the arraignment. If the defendant is found ineligible for 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 pretrial diversion is a postconviction appeal.
 - c) All referrals for 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) 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. This subdivision does not expand or restrict the provisions of Section 1000.4.
 - e) Any defendant who is participating in a program authorized in this section may be required not undergo analysis of his or her urine for the purpose of testing for the presence of any drug as part of the program. However, urinalysis results shall not be admissible as a basis for any new criminal prosecution of proceeding.

(Amended by Stats. 2017, Ch. 778, Sec. 1. (AB 208) Effective January 1, 2018.)