

RESOLUTION 02-11-2013

DIGEST

Statewide Application of Misdemeanor Diversion

Amends Penal Code section 1001.2 to require the district attorney of each county to establish and implement a program for the diversion of misdemeanor offenses.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

Identical to Resolutions 03-04-2004, 03-17-2007, 02-19-2008, 01-03-2010, 03-08-2011 and 12-04-2012, all of which were approved in principle.

Reasons:

This resolution amends Penal Code section 1001.2 to require the district attorney of each county to establish and implement a program for the diversion of misdemeanor offenses. This resolution should be disapproved because even though it would require that a district attorney establish and implement a diversion program, it would still allow a district attorney to terminate the misdemeanor program at their discretion.

Misdemeanors are, by definition, minor crimes. In those counties with the program, prosecutors currently have complete discretion whether or not to allow diversion in a particular case. Some prosecutors are philosophically opposed to any kind of diversion. Misdemeanants in those counties are robbed of the opportunity to mend their ways before a conviction. Enactment of a state-wide program would give misdemeanants in each county an equal chance to succeed. A current bill in the state legislature, AB 994 (Lowenthal), would amend Penal Code section 1001.2 to require the district attorney in each county to establish and maintain a pretrial diversion program that would authorize either the district attorney or the superior court to offer diversion to the defendant. Section 1001.3 would specify that, before or at arraignment, the district attorney would advise the court whether the defendant was eligible for diversion. This is a significant change from current law that allows the "prosecuting attorney" to make that determination. This could mandate new divisions of responsibility in cities such as San Diego where misdemeanor prosecutions are done by the City Attorney.

AB 994 (Lowenthal) would be a considerable improvement over the changes suggested in this resolution since it would require the district attorney to offer diversion programs in all the counties in California and not allow for termination of the program at the district attorney's discretion.

AB 994 (Lowenthal) is currently pending in the Senate Appropriations Committee.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 1001.2 to read as follows:

1 §1001.2 1

2 (a) This chapter shall not apply to any pretrial diversion or post trial programs for the
3 treatment of problem drinking or alcoholism utilized for persons convicted of one or more
4 offenses under Section 23152 or 23153 or former Section 23102 of the Vehicle Code or to
5 pretrial diversion programs established pursuant to Chapter 2.5 (commencing with Section 1000)
6 of this title nor shall this chapter be deemed to authorize any pretrial diversion or post trial
7 programs for persons alleged to have committed violation of Section 23152 or 23153 of the
8 Vehicle Code.

9 (b) The district attorney for each county shall establish and implement a program for
10 diversion of misdemeanor offenses. The district attorney of each county shall review annually
11 any diversion program established pursuant to this chapter, and no program shall continue
12 without the approval of the district attorney. No person shall be diverted under a program unless
13 it has been approved by the district attorney. Nothing in this subdivision shall authorize the
14 prosecutor to determine whether a particular defendant shall be diverted.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: The Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: Under existing law, local prosecutors must approve programs for misdemeanor diversion. Some counties have no misdemeanor diversion programs whatsoever. For example, a first offense of shoplifting ban in San Francisco will result in diversion. Such an offense if committed on the other side of the street in San Mateo County results in conviction with possible penalties of fine and imprisonment.

The Solution: This resolution makes misdemeanor diversion available statewide. This is simply a matter of equal protection of the laws. Some counties have no misdemeanor diversion programs whatsoever. For example, a first offense of shoplifting ban in San Francisco will result in diversion. Such an offense, if committed on the other side of the street in San Mateo County results in conviction with possible penalties of fine and imprisonment. This inconsistency is contrary to the concept of equal protection of the laws.

This resolution was presented in different form and approved several times in the past. It has been re-cast to correct some defects in earlier drafts.

This resolution allows latitude for prosecutorial discretion to fashion programs which are specific to such community. An alternative approach would be to enact uniform legislation for diversion in every county.

This resolution is intended to begin to replace punishment with repair in certain law level cases.

IMPACT STATEMENT

This resolution will not impact any other law, statute, or rule.

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