

RESOLUTION 03-03-2011

DIGEST

Criminal Law: Deferred Judgment for Misdemeanor Possession of Benzodiazepines.

Amends Penal Code section 1000 to make simple possession of the listed benzodiazepines under Health and Safety Code section 11375, subdivision (b)(2), eligible for deferred entry of judgment and dismissal upon completion of treatment and probation.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code section 1000 to make simple possession of the listed benzodiazepines under Health and Safety Code section 11375, subdivision (b)(2) eligible for deferred entry of judgment and dismissal upon completion of treatment and probation. This resolution should be approved in principle because it would allow individuals who are convicted of a misdemeanor possession of prescription drugs to be eligible for delayed entry of judgment.

Under current law, individuals convicted of a misdemeanor/infraction possession of Xanax (Aprazolam) or other benzodiazepines are not permitted to participate in a drug diversion program. However, individuals convicted of more serious felonies, such as possession of heroin, cocaine, and methamphetamine under Health and Safety Code sections 11350 and 11377, are eligible for treatment programs and the dismissal of the charges upon completion of the program. This amendment would resolve any inconsistency, unfairness, and due process concerns by extending the benefits of drug rehabilitation and diversion programs to the lesser drug possession violations of prescription drugs. Approving this resolution would also relieve court congestion by extending deferred entry of judgment to the more de minimus drug offenses.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 1000 to read as follows:

- 1 § 1000
- 2 (a) This chapter shall apply whenever a case is before any court upon an accusatory
- 3 pleading for a violation of Section 11350, 11357, 11364, 11365, 11375 (b)(2), 11377, or 11550
- 4 of the Health and Safety Code, or subdivision (b) of Section 23222 of the Vehicle Code, or
- 5 Section 11358 of the Health and Safety Code if the marijuana planted, cultivated, harvested,
- 6 dried, or processed is for personal use, or Section 11368 of the Health and Safety Code if the
- 7 narcotic drug was secured by a fictitious prescription and is for the personal use of the defendant
- 8 and was not sold or furnished to another, or subdivision (d) of Section 653f if the solicitation was

9 for acts directed to personal use only, or Section 381 or subdivision (f) of Section 647 of the
10 Penal Code, if for being under the influence of a controlled substance, or Section 4060 of the
11 Business and Professions Code, and it appears to the prosecuting attorney that, except as
12 provided in subdivision (b) of Section 11357 of the Health and Safety Code, all of the following
13 apply to the defendant:

14 (1) The defendant has no conviction for any offense involving controlled substances prior
15 to the alleged commission of the charged offense.

16 (2) The offense charged did not involve a crime of violence or threatened violence.

17 (3) There is no evidence of a violation relating to narcotics or restricted dangerous drugs
18 other than a violation of the sections listed in this subdivision.

19 (4) The defendant's record does not indicate that probation or parole has ever been
20 revoked without thereafter being completed.

21 (5) The defendant's record does not indicate that he or she has successfully completed or
22 been terminated from diversion or deferred entry of judgment pursuant to this chapter within five
23 years prior to the alleged commission of the charged offense.

24 (6) The defendant has no prior felony conviction within five years prior to the alleged
25 commission of the charged offense.

26 (b) The prosecuting attorney shall review his or her file to determine whether or not
27 paragraphs (1) to (6), inclusive, of subdivision (a) apply to the defendant. Upon the agreement of
28 the prosecuting attorney, law enforcement, the public defender, and the presiding judge of the
29 criminal division of the superior court, or a judge designated by the presiding judge, this
30 procedure shall be completed as soon as possible after the initial filing of the charges. If the
31 defendant is found eligible, the prosecuting attorney shall file with the court a declaration in
32 writing or state for the record the grounds upon which the determination is based, and shall make
33 this information available to the defendant and his or her attorney. This procedure is intended to
34 allow the court to set the hearing for deferred entry of judgment at the arraignment. If the
35 defendant is found ineligible for deferred entry of judgment, the prosecuting attorney shall file
36 with the court a declaration in writing or state for the record the grounds upon which the
37 determination is based, and shall make this information available to the defendant and his or her
38 attorney. The sole remedy of a defendant who is found ineligible for deferred entry of judgment
39 is a postconviction appeal.

40 (c) All referrals for deferred entry of judgment granted by the court pursuant to this
41 chapter shall be made only to programs that have been certified by the county drug program
42 administrator pursuant to Chapter 1.5 (commencing with Section 1211) of Title 8, or to programs
43 that provide services at no cost to the participant and have been deemed by the court and the
44 county drug program administrator to be credible and effective. The defendant may request to be
45 referred to a program in any county, as long as that program meets the criteria set forth in this
46 subdivision.

47 (d) Deferred entry of judgment for a violation of Section 11368 of the Health and Safety
48 Code shall not prohibit any administrative agency from taking disciplinary action against a
49 licensee or from denying a license. Nothing in this subdivision shall be construed to expand or
50 restrict the provisions of Section 1000.4.

51 (e) Any defendant who is participating in a program referred to in this section may be
52 required to undergo analysis of his or her urine for the purpose of testing for the presence of any

53 drug as part of the program. However, urine analysis results shall not be admissible as a basis for
54 any new criminal prosecution or proceeding.

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

PROPONENT: Monterey County Bar Association

STATEMENT OF REASONS

Existing Law: Current law does not extend a deferred entry of judgment and dismissal through drug treatment pursuant to Penal Code section 1000 for a simple misdemeanor/infraction possession of Xanax (Aprazolam) or other benzodiazepines like - Chlordiazepoxide, Clonazepam, Clorazepate, Diazepam, Flurazepam, Lorazepam, Mebutamate, Oxazepam, Prazepam, Temazepam, Halazepam, Alprazolam, Propoxyphene, Diethylpropion, Phentermine, Pemoline, Fenfluramine, Triazolam.

This Resolution: Penal Code section 1000 would be amended to include simple possession of the listed benzodiazepines under Health and Safety Code section 11375, subdivision (b)(2), to receive deferred entry of judgment and dismissal upon completion of treatment and probation.

The Problem: It defies common sense that one may be diverted for the more for the serious felony possession substances of heroin, cocaine, and methamphetamine under Health and Safety Code sections 11350 and 11377, but not the misdemeanor/infraction possession of Xanax (Aprazolam) or other benzodiazepines. This amendment would resolve any due process concerns by extending the benefits of court directed drug rehabilitation across the full spectrum of personal drug abuse – from simple possession of prescription drugs to more serious street drugs like cocaine, heroin, and methamphetamine. It would also relieve court congestion by extending deferred entry of judgment to these more de minimus drug offenses.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

AUTHOR AND/OR PERMANENT CONTACT: Donald E. Landis, Jr., Assistant Public Defender, County of Monterey, 111 W. Alisal, Salinas, CA 93901, 831-784-5690 voice, 831-755-5873 fax, email - landisde@co.monterey.ca.us.

RESPONSIBLE FLOOR DELEGATE: Donald E. Landis, Jr.