

**RESOLUTION 06-02-2018**

**DIGEST**

Withdrawal of Plea: Prosecution May Consent to Extended Time

Amends Penal Code section 1018 to allow the prosecution to extend the time period permitted for withdrawing a plea.

**STATEMENT OF REASONS**

The Problem: Under current law, a defendant only has six months to withdraw a plea, even upon a showing of good cause. This creates problems in cases where, for example, the prosecution wants to offer the defendant a chance to withdraw his plea, but only after the defendant is on probation for a year, or where evidence relating to the defendant’s innocence only comes to light after the expiration of the six month deadline.

The Solution: This resolution would extend the period during which a defendant is permitted to withdraw his plea upon a showing of good cause past the current six month deadline, but only with the consent of the prosecution.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 1018 to read as follows:

1 §1018  
2 Unless otherwise provided by law, every plea shall be entered or withdrawn by the  
3 defendant himself or herself in open court. No plea of guilty of a felony for which the maximum  
4 punishment is death, or life imprisonment without the possibility of parole, shall be received  
5 from a defendant who does not appear with counsel, nor shall that plea be received without the  
6 consent of the defendant s counsel. No plea of guilty of a felony for which the maximum  
7 punishment is not death or life imprisonment without the possibility of parole shall be accepted  
8 from any defendant who does not appear with counsel unless the court shall first fully inform  
9 him or her of the right to counsel and unless the court shall find that the defendant understands  
10 the right to counsel and freely waives it, and then only if the defendant has expressly stated in  
11 open court, to the court, that he or she does not wish to be represented by counsel. On application  
12 of the defendant at any time before judgment or within six months after an order granting  
13 probation is made if entry of judgment is suspended, or at any time thereafter with the consent of  
14 the prosecution, the court may, and in case of a defendant who appeared without counsel at the  
15 time of the plea the court shall, for a good cause shown, permit the plea of guilty to be  
16 withdrawn and a plea of not guilty substituted. Upon indictment or information against a  
17 corporation a plea of guilty may be put in by counsel. This section shall be liberally construed to  
18 effect these objects and to promote justice.

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

**PROPONENT:** Los Angeles County Bar Association

**IMPACT STATEMENT**

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

**CURRENT OR PRIOR RELATED LEGISLATION**

None known.

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**RESOLUTIONS COMMITTEE RECOMMENDATION**

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution would amend Penal Code section 1018 to allow the prosecution to extend the time period permitted for withdrawing a plea. This resolution should be approved in principle because it will allow greater flexibility for deals between the prosecution and defense.

Currently, Penal Code section 1018 permits a defendant to withdraw a guilty plea “at any time before judgment or within six months after an order granting probation is made if entry of judgment is suspended.” However, there are reasonably foreseeable circumstances in which the defendant may wish to ask the court for leave to withdraw a guilty plea after the expiration of the six month deadline. For example, the defendant’s innocence may only come to light after this deadline has expired.

The resolution provides criminal defendants with increased opportunities to make a motion to withdraw a plea beyond the six month deadline with the consent of the prosecution. Moreover, the fact that the withdrawal of the plea would require the consent of the prosecution provides some assurance that it would not be abused.