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AB-1352 Deferred entry of judgment: withdrawal of plea. (2015-2016)

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Assembly Bill No. 1352

CHAPTER 646

An act to add Section 1203.43 to the Penal Code, relating to deferred entry of judgment.

[Approved by Governor October 08, 2015. Filed with Secretary of State October 08, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1352, Eggman. Deferred entry of judgment: withdrawal of plea.

Existing law allows judgment to be deferred with respect to a defendant who is charged with certain crimes involving possession of controlled substances and who meets certain criteria, including that he or she has no prior convictions for any offense involving controlled substances and has had no felony convictions within the 5 years prior, as specified. Existing law prohibits the record pertaining to an arrest resulting in successful completion of a deferred entry of judgment program from being used in any way that could result in the denial of any employment, benefit, license, or certificate.

This bill would require a court to allow a defendant who was granted deferred entry of judgment on or after January 1, 1997, who has performed satisfactorily during the period in which deferred entry of judgment was granted, and for whom the criminal charge or charges were dismissed, as specified, to withdraw his or her plea and enter a plea of not guilty, and would require the court to dismiss the complaint or information against the defendant. If court records showing the case resolution are no longer available, the bill would require that the defendant's declaration, under penalty of perjury, that the charges were dismissed after he or she completed the requirements, be presumed to be true if the defendant submits a copy of his or her state summary criminal history information that either shows that the defendant successfully completed the deferred entry of judgment program or that the record does not show a final disposition. By expanding the application of the crime of perjury, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1203.43 is added to the Penal Code, to read:

1203.43. (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.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.