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SB-383 Juveniles: informal supervision: deferred entry of judgment. (2021-2022)

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Senate Bill No. 383

CHAPTER 603

An act to amend Sections 654.3, 790, and 791 of the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor October 06, 2021. Filed with Secretary of State October 06, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 383, Cortese. Juveniles: informal supervision: deferred entry of judgment.

Existing law subjects a person between 12 and 17 years of age, inclusive, who commits a crime, and a person under 12 years of age who commits specified crimes, to the jurisdiction of the juvenile court, which may adjudge that person to be a ward of the court. Existing law authorizes a probation officer, in certain circumstances, to delineate a specific program of supervision for a minor who is alleged to have committed a crime. Existing law makes a minor ineligible for that program of supervision for specified reasons, including if the minor is alleged to have sold or possessed for sale a controlled substance or is alleged to have committed an offense in which the restitution owed to the victim exceeds \$1,000, except in those unusual cases in where the interest of justice would best be served. The Gang Violence and Juvenile Crime Prevention Act of 1998, approved as Proposition 21 at the March 7, 2000, statewide primary election, also makes a minor ineligible for this program of supervision if the minor is alleged to have committed a felony offense when the minor was at least 14 years of age, except in unusual cases in which the court determines that the interest of justice would best be served by placement of the minor in the program of supervision. The Legislature may directly amend Proposition 21 by a statute passed in each house by a $\frac{2}{3}$ vote, or by a statute that becomes effective only when approved by the voters.

This bill would delete the prohibitions on including in that program of supervision minors alleged to have sold or possessed for sale a controlled substance, minors alleged to have committed certain offenses related to controlled substances while on school grounds, and minors alleged to have committed a felony offense when the minor was at least 14 years of age. By deleting the prohibition on including minors alleged to have committed a felony offense when the minor was at least 14 years of age, this bill would amend Proposition 21. The bill would also prohibit a minor's inability to pay restitution due to the minor's indigence from being grounds for finding a minor ineligible for that program of supervision or a finding that the minor has failed to comply with the terms of the program of supervision.

Under existing law, as added by Proposition 21, a minor may be eligible for deferred entry of judgment if certain conditions apply. If a minor is eligible for deferred entry of judgment, existing law requires the prosecutor to file a declaration with the court explaining the minor's eligibility. Existing law requires the prosecutor to make the information contained in the declaration available to the minor and their attorney and requires the written notification to the minor to include, among other things, a statement relating to the effect if the minor fails to comply with the terms of the program and judgment is entered. Existing law authorizes the court to order the probation department to investigate the minor, determine which programs would accept the minor, and report its findings and recommendations to the court. Existing law authorizes the court to grant deferred entry of

judgment if the court finds that the minor is suitable for deferred entry of judgment and would benefit from education, treatment, and rehabilitation efforts.

This bill would amend Proposition 21 by deleting the requirement that the prosecutor's written notification to the minor include that statement. The bill would also authorize a court, if a minor is eligible for deferred entry of judgment, but the minor resides in a different county and the case will be transferred to the minor's county of residence, to adjudicate the case without determining the minor's suitability for deferred entry of judgment. The bill would authorize the receiving court to order the probation department to make the investigation and file the report and recommendations described above; determine the minor's suitability for deferred entry of judgment; and modify the transferring court's finding accordingly.

By increasing the duties of county probation departments, this 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: yes

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

SECTION 1. Section 654.3 of the Welfare and Institutions Code is amended to read:

654.3. (a) A minor shall not be eligible for the program of supervision set forth in Section 654 or 654.2 in the following cases, except where the interests of justice would best be served and the court specifies on the record the reasons for its decision:

(1) A petition alleges that the minor has violated Section 245.5, 626.9, or 626.10 of the Penal Code.

(2) A petition alleges that the minor has violated Section 186.22 of the Penal Code.

(3) The minor has previously participated in a program of supervision pursuant to Section 654.

(4) The minor has previously been adjudged a ward of the court pursuant to Section 602.

(5) (A) A petition alleges that the minor has violated an offense in which the restitution owed to the victim exceeds one thousand dollars (\$1,000). However, a minor's inability to pay restitution due to the minor's indigence shall not be grounds for finding a minor ineligible for the program of supervision or a finding that the minor has failed to comply with the terms of the program of supervision.

(B) For purposes of this paragraph, the definition of "victim" in paragraph (1) of subdivision (a) of Section 730.6 and "restitution" in subdivision (h) of Section 730.6 shall apply.

(b) A minor shall not be eligible for the program of supervision set forth in Section 654 or 654.2 in the case of a petition alleging that the minor has violated an offense listed in subdivision (b) of Section 707, except in unusual cases where the court determines the interests of justice would be best served and the court specified on the record the reason for its decision.

SEC. 2. Section 790 of the Welfare and Institutions Code is amended to read:

790. (a) Notwithstanding Section 654 or 654.2, or any other provision of law, this article shall apply whenever a case is before the juvenile court for a determination of whether a minor is a person described in Section 602 because of the commission of a felony offense, if all of the following circumstances apply:

(1) The minor has not previously been declared to be a ward of the court for the commission of a felony offense.

(2) The offense charged is not one of the offenses enumerated in subdivision (b) of Section 707.

(3) The minor has not previously been committed to the custody of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities.

(4) The minor's record does not indicate that probation has ever been revoked without being completed.

(5) The minor is at least 14 years of age at the time of the hearing.

(6) The minor is eligible for probation pursuant to Section 1203.06 of the Penal Code.

(7) The offense charged is not rape, sodomy, oral copulation, or an act of sexual penetration specified in Section 289 of the Penal Code when the victim was prevented from resisting due to being rendered unconscious by any intoxicating, anesthetizing, or controlled substance, or when the victim was at the time incapable, because of mental disorder or developmental or physical disability, of giving consent, and that was known or reasonably should have been known to the minor at the time of the offense.

(b) The prosecuting attorney shall review their file to determine whether or not paragraphs (1) to (7), inclusive, of subdivision (a) apply. If the minor is found eligible for deferred entry of judgment, the prosecuting attorney shall file a declaration in writing with the court or state for the record the grounds upon which the determination is based, and shall make this information available to the minor and their attorney. Upon a finding that the minor is also suitable for deferred entry of judgment and would benefit from education, treatment, and rehabilitation efforts, the court may grant deferred entry of judgment. Under this procedure, the court may set the hearing for deferred entry of judgment at the initial appearance under Section 657. The court shall make findings on the record that a minor is appropriate for deferred entry of judgment pursuant to this article in any case where deferred entry of judgment is granted.

(c) (1) If a minor is eligible for deferred entry of judgment, but the minor resides in a different county and the case will be transferred, as described in Section 750, the court may adjudicate the case without determining the minor's suitability for deferred entry of judgment to enable the court in the minor's county of residence to make that determination.

(2) If a minor is eligible for deferred entry of judgment, but the court did not determine the minor's suitability for deferred entry of judgment pursuant to paragraph (1), upon transfer of the case to the minor's county of residence, the receiving court may, prior to determining the disposition of the case, determine the minor's suitability for deferred entry of judgment and modify the transferring court's finding accordingly.

SEC. 3. Section 791 of the Welfare and Institutions Code is amended to read:

791. (a) The prosecuting attorney's written notification to the minor shall also include all of the following:

(1) A full description of the procedures for deferred entry of judgment.

(2) A general explanation of the roles and authorities of the probation department, the prosecuting attorney, the program, and the court in that process.

(3) A clear statement that, in lieu of jurisdictional and disposition hearings, the court may grant a deferred entry of judgment with respect to any offense charged in the petition, provided that the minor admits each allegation contained in the petition and waives time for the pronouncement of judgment, and that upon the successful completion of the terms of probation, as defined in Section 794, the positive recommendation of the probation department, and the motion of the prosecuting attorney, but no sooner than 12 months and no later than 36 months from the date of the minor's referral to the program, the court shall dismiss the charge or charges against the minor.

(4) A clear statement that upon any failure of the minor to comply with the terms of probation, including the rules of any program the minor is directed to attend, or any circumstances specified in Section 793, the prosecuting attorney or the probation department, or the court on its own, may make a motion to the court for entry of judgment and the court shall render a finding that the minor is a ward of the court pursuant to Section 602 for the offenses specified in the original petition and shall schedule a dispositional hearing.

(5) An explanation of record retention and disposition resulting from participation in the deferred entry of judgment program and the minor's rights relative to answering questions about their arrest and deferred entry of judgment following successful completion of the program.

(b) If the minor consents and waives their right to a speedy jurisdictional hearing, the court may refer the case to the probation department or the court may summarily grant deferred entry of judgment if the minor admits the charges in the petition and waives time for the pronouncement of judgment. When directed by the court, the probation department shall make an investigation and take into consideration the defendant's age, maturity, educational background, family relationships, demonstrable motivation, treatment history, if any, and other mitigating and aggravating factors in determining whether the minor is a person who would be benefited by education, treatment, or rehabilitation. The probation department shall also determine which programs would accept the minor. The probation department shall report its findings and recommendations to the court. The court shall make the final determination regarding education, treatment, and rehabilitation of the minor.

(c) If a minor is eligible for deferred entry of judgment, but the court did not determine the minor's suitability for deferred entry of judgment pursuant to paragraph (1) of subdivision (c) of Section 790, when the case is transferred, the receiving court may, prior to determining the disposition of the case, order the probation department to make an investigation and report pursuant to subdivision (b) to determine the minor's suitability for deferred entry of judgment.

(d) A minor's admission of the charges contained in the petition pursuant to this chapter shall not constitute a finding that a petition has been sustained for any purpose, unless a judgment is entered pursuant to subdivision (b) of Section 793.

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.