

Senate Bill No. 1227

CHAPTER 658

An act to add Chapter 2.9C (commencing with Section 1001.80) to Title 6 of Part 2 of the Penal Code, relating to diversion.

[Approved by Governor September 27, 2014. Filed with
Secretary of State September 27, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1227, Hancock. Diversion: members of the military.

Under existing law, prosecution of an offense filed as a misdemeanor may be postponed, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, for the person charged to participate in a diversion program for the treatment of problem drinking or alcoholism. Additionally, prosecution may be postponed in other instances, including first-time, nonviolent felony drug offenses and for defendants with cognitive developmental disabilities.

This bill would authorize the court, with the consent of the defendant and a waiver of the defendant's speedy trial right, to postpone prosecution, either temporarily or permanently, of a misdemeanor and place the defendant in a pretrial diversion program, if the defendant was, or currently is, a member of the United States military and if he or she may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her military service. The bill would authorize the defendant to be referred to services for treatment and would require the responsible agencies to report to the court and the prosecution not less than every 6 months. By increasing the duties of local county mental health authorities and local prosecutors, 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 these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Chapter 2.9C (commencing with Section 1001.80) is added to Title 6 of Part 2 of the Penal Code, to read:

CHAPTER 2.9C. MILITARY DIVERSION PROGRAM

1001.80. (a) This chapter shall apply whenever a case is before a court on an accusatory pleading alleging the commission of a misdemeanor offense, and both of the following apply to the defendant:

(1) The defendant was, or currently is, a member of the United States military.

(2) The defendant may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her military service. The court may request, using existing resources, an assessment to aid in the determination that this paragraph applies to a defendant.

(b) If the court determines that a defendant charged with an applicable offense under this chapter is a person described in subdivision (a), the court, with the consent of the defendant and a waiver of the defendant's speedy trial right, may place the defendant in a pretrial diversion program, as defined in subdivision (k).

(c) If it appears to the court that the defendant is performing unsatisfactorily in the assigned program, or that the defendant is not benefiting from the treatment and services provided under the diversion program, after notice to the defendant, the court shall hold a hearing to determine whether the criminal proceedings should be reinstated. If the court finds that the defendant is not performing satisfactorily in the assigned program, or that the defendant is not benefiting from diversion, the court may end the diversion and order resumption of the criminal proceedings. If the defendant has performed satisfactorily during the period of diversion, at the end of the period of diversion, the criminal charges shall be dismissed.

(d) If a referral is made to the county mental health authority as part of the pretrial diversion program, the county shall be obligated to provide mental health treatment services only to the extent that resources are available for that purpose, as described in paragraph (5) of subdivision (b) of Section 5600.3 of the Welfare and Institutions Code. If mental health treatment services are ordered by the court, the county mental health agency shall coordinate appropriate referral of the defendant to the county veterans service officer, as described in paragraph (5) of subdivision (b) of Section 5600.3 of the Welfare and Institutions Code. The county mental health agency shall not be responsible for providing services outside its traditional scope of services. An order shall be made referring a defendant to a county mental health agency only if that agency has agreed to accept responsibility for all of the following:

(1) The treatment of the defendant.

(2) The coordination of appropriate referral to a county veterans service officer.

(3) The filing of reports pursuant to subdivision (h).

(e) When determining the requirements of a pretrial diversion program pursuant to this chapter, the court shall assess whether the defendant should be ordered to participate in a federal or community-based treatment service

program with a demonstrated history of specializing in the treatment of mental health problems, including substance abuse, post-traumatic stress disorder, traumatic brain injury, military sexual trauma, and other related mental health problems.

(f) The court, in making an order pursuant to this section to commit a defendant to an established treatment program, shall give preference to a treatment program that has a history of successfully treating veterans who suffer from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of military service, including, but not limited to, programs operated by the United States Department of Defense or the United States Department of Veterans Affairs.

(g) The court and the assigned treatment program may collaborate with the Department of Veterans Affairs and the United States Department of Veterans Affairs to maximize benefits and services provided to the veteran.

(h) The period during which criminal proceedings against the defendant may be diverted shall be no longer than two years. The responsible agency or agencies shall file reports on the defendants progress in the diversion program with the court and with the prosecutor not less than every six months.

(i) A record filed with the Department of Justice shall indicate the disposition in those cases diverted pursuant to this chapter. Upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The defendant may indicate in response to a question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as specified in subdivision (j). A record pertaining to an arrest resulting in successful completion of a diversion 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.

(j) The defendant shall be advised that, regardless of his or her successful completion of diversion, the arrest upon which the diversion was based may be disclosed by the Department of Justice in response to a peace officer application request and that, notwithstanding subdivision (i), this section does not relieve him or her of the obligation to disclose the arrest in response to a direct question contained in a questionnaire or application for a position as a peace officer, as defined in Section 830.

(k) (1) As used in this chapter, "pretrial diversion" means the procedure of postponing prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication.

(2) A pretrial diversion program shall utilize existing resources available to current or former members of the United States military to address and treat those suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of military service.

SEC. 2. 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.

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