
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 1390 **Hearing Date:** June 11, 2019
Author: Mark Stone
Version: March 19, 2019
Urgency: No **Fiscal:** No
Consultant: SC

Subject: *Deferred Entry of Judgment Pilot Program*

HISTORY

Source: Chief Probation Officers of California

Prior Legislation: SB 1106 (Hill) Ch. 1007, Stats. 2018
SB 1004 (Hill) Ch. 865, Stats. 2016

Support: California Attorneys for Criminal Justice; California State Association of Counties; Commonweal; Pacific Juvenile Defender Center; Ventura County Board of Supervisors

Opposition: None known

Assembly Floor Vote: 54 - 19

PURPOSE

The purpose of this bill is to expand eligibility for the youth deferred entry of judgment pilot program to defendants who are older than 21 years of age but under 25 years of age at the time of the offense with approval of the multidisciplinary team established by the county.

Existing law provides that the counties of Alameda, Butte, Napa, Nevada, Santa Clara and Ventura may establish a pilot program to operate a deferred entry of judgment pilot program until January 1, 2022 for certain eligible defendants. (Pen. Code, § 1000.7, subd. (a).)

Existing law provides that a defendant may participate in a deferred entry of judgment pilot program within the county's juvenile hall if that person is charged with committing a felony offense, except as specified, he or she pleads guilty to the charge or charges, and the probation department determines that the person meets all of the following requirements:

- 1) Is 18 years of age or older, but under 21 years of age on the date the offense was committed;
- 2) Is suitable for the program after evaluation using a risk assessment tool, as specified;
- 3) Shows the ability to benefit from services generally reserved for delinquents, including but not limited to, cognitive behavioral therapy, other mental health services, and age-appropriate educational, vocational, and supervision services, that are currently deployed under the jurisdiction of the juvenile court;
- 4) Meets the rules of the juvenile hall developed in accordance with the applicable regulations;

- 5) Does not have a prior or current conviction for committing certain specified offenses; and,
- 6) Is not required to register as a sex offender, as specified. (Pen. Code, § 1000.7, subd. (b).)

Existing law requires the probation department, in consultation with the superior court, district attorney, and sheriff of the county or the governmental body charged with operating the county jail, to develop an evaluation process using a risk assessment tool to determine eligibility for the program. (Pen. Code, § 1000.7, subd. (c).)

Existing law makes ineligible for the deferred entry of judgment pilot program a defendant who is required to register as a sex offender, as specified, or who has been convicted of one or more of the following offenses:

- 1) A “serious” felony, as that term is defined by law;
- 2) A “violent” felony, as that term is defined by law; or,
- 3) A serious or violent crime as that term is defined by juvenile law. (Pen. Code, § 1000.7, subd. (d).)

Existing law provides that the court must grant deferred entry of judgment if an eligible defendant consents to participate in the program, waives his or her right to a speedy trial or a speedy preliminary hearing, pleads guilty to the charge or charges, and waives time for the pronouncement of judgment. (Pen. Code, § 1000.7, subd. (e).)

Existing law provides that if the probation department determines that the defendant is not eligible for the deferred entry of judgment pilot program or the defendant does not consent to participate in the program, the proceedings shall continue as in any other case. (Pen. Code, § 1000.7, subd. (f)(1).)

Existing law states that if it appears to the probation department that the defendant is performing unsatisfactorily in the program as a result of the commission of a new crime or the violation of any of the rules of the juvenile hall or that the defendant is not benefiting from the services in the program, the probation department may make a motion for entry of judgment. After notice to the defendant, the court is required to hold a hearing to determine whether judgment should be entered. (Pen. Code, § 1000.7, subd. (f)(2).)

Existing law states that if the court finds that the defendant is performing unsatisfactorily in the program or that the defendant is not benefiting from the services in the program, the court is required to render a finding of guilt to the charge or charges pleaded, enter judgment, and schedule a sentencing hearing, and the probation department, in consultation with the county sheriff, is required to remove the defendant from the program and return him or her to custody in county jail. The mechanism of when and how the defendant is moved from custody in juvenile hall to custody in a county jail shall be determined by the local multidisciplinary team, as specified. (*Id.*)

Existing law provides that if the defendant has performed satisfactorily during the period in which deferred entry of judgment was granted, at the end of that period, the court is required to dismiss the criminal charge or charges. (Pen. Code, § 1000.7, subd. (f)(3).)

Existing law prohibits a defendant participating in this program from serving longer than one year in juvenile hall. (Pen. Code, § 1000.7, subd. (g).)

Existing law requires the probation department to develop a plan for reentry services, including, but not limited to, housing, employment, and education services, as a component of the program. (Pen. Code, § 1000.7, subd. (h).)

Existing law requires the probation department to submit data relating to the effectiveness of the program to the Division of Recidivism Reduction and Re-Entry, within the Department of Justice, including recidivism rates for program participants as compared to recidivism rates for similar populations in the adult system within the county. (Pen. Code, § 1000.7, subd. (i).)

Existing law prohibits a defendant participating in the program from coming into contact with minors within the juvenile hall for any purpose, including, but not limited to, housing, recreation, or education. (Pen. Code, § 1000.7, subd. (j).)

Existing law provides that prior to establishing a pilot program pursuant to this section, the county is required to apply to the Board of State and Community Corrections (BSCC) for approval of a county institution as a suitable place for confinement for the purpose of the pilot program. The BSCC is required to review and approve or deny the application of the county within 30 days of receiving notice of this proposed use. In its review, the BSCC is required to take into account the available programming, capacity, and safety of the institution as a place for the confinement and rehabilitation of individuals within the jurisdiction of the criminal court, and those within the jurisdiction of the juvenile court. (Pen. Code, § 1000.7, subd. (k).)

Existing law requires the BSCC to review a county's pilot program to ensure compliance with requirements of the federal law, relating to "sight and sound" separation between juveniles and adult inmates. (Pen. Code, § 1000.7, subd. (l).)

Existing law provides that the statutes related to this pilot program apply to a defendant who would otherwise serve time in custody in a county jail. Participation in this pilot program is prohibited as an alternative to a sentence involving community supervision. (Pen. Code, § 1000.7, subd. (m)(1).)

Existing law requires that each county establish a multidisciplinary team that shall meet periodically to review and discuss the implementation, practices, and impact of the program. The team shall include representatives from the following entities:

- 1) The probation department;
- 2) The district attorney's office;
- 3) The public defender's office;
- 4) The sheriff's department;
- 5) Courts located in the county;
- 6) The county board of supervisors;
- 7) The county health and human services department;
- 8) A youth advocacy group. (Pen. Code, § 1000.7, subd. (m)(2).)

Existing law requires a county that establishes a pilot program pursuant to this section to submit data regarding the pilot program to the BSCC. (Pen. Code, § 1000.7, subd. (n)(1).)

Existing law requires the BSCC to conduct an evaluation of the pilot program's impact and effectiveness. The evaluation is required to include, but not limited to, evaluating each pilot program's impact on sentencing and impact on opportunities for community supervision, monitoring the program's effect on minors in the juvenile facility, if any, and its effectiveness with respect to program participants, including outcome-related data for program participants compared to young adult offenders sentenced for comparable crimes. (Pen. Code, § 1000.7, subd. (n)(2).)

This bill expands eligibility for the youth deferred entry of judgment pilot program to defendants who are older than 21 years of age but under 25 years of age at the time of the offense with approval of the multidisciplinary team established by the county.

COMMENTS

1. Need for This Bill

According to the author of this bill:

AB 1390 makes a minor expansion to the existing Transitional Youth pilot program to include youth aged up to 25 years old. The existing program allows Alameda, Butte, Napa, Nevada, Santa Clara or Ventura counties to create a deferred entry of judgement program that allows youth aged between 18-21 years old voluntarily housed in a juvenile detention facility, rather than a county jail.

This program recognizes that although these youth are legally adults, science demonstrates that those between 18-25 years of age still undergoing significant brain development. AB 1390 expands the program to age 25, bringing the program more in line with the most recent brain development studies. This bill will ensure that transitional youth have the best opportunity to receive age appropriate intensive services.

2. Transitional Age Youth Pilot Program

SB 1004 (Hill) Chapter 865, Statutes of 2016, authorized five counties -- Alameda, Butte, Napa, Nevada, and Santa Clara -- to operate a three-year pilot program in which certain young adult offenders would serve their time in juvenile hall instead of jail. The bill recognized that although 18 to 21 year olds are legally adults, "young offenders...are still undergoing significant brain development and...may be better served by the juvenile justice system with corresponding age appropriate intensive services." (Sen. Com. on Public Safety, Analysis of Sen. Bill No. 1004 (2015-2016 Reg. Sess.) as amended on Mar. 28, 2016.)

The pilot program is a deferred entry of judgment program, meaning that participants have to plead guilty in order to be eligible for the program. If they succeed in the program then the criminal charges are dismissed. To be eligible, the defendant must be between the ages of 18 and 21, and must not have a prior or current conviction for a serious, violent, or sex offense. Participants must consent to participate in the program, be assessed and found suitable for the program, and show the ability to benefit from the services generally provided to juvenile hall youth. The probation department is required to develop a plan for reentry services, including, but not limited to, housing, employment, and education services, as a component of the program. Finally, a person participating in the program cannot serve more than one year in juvenile hall.

Last year, SB 1106 (Hill) extended the sunset date on the pilot program to January 1, 2022 and added the County of Ventura to the list of counties authorized to operate the pilot program. At the time, the program was criticized by the Center on Juvenile and Criminal Justice (CJ CJ). According to that organization, felony arrests of juveniles have fallen 73 percent since 1999, but the population in California’s juvenile halls has remained relatively flat. CJ CJ was concerned that placing young adults in juvenile halls is counter-productive if those young adults are better served by being out in the community. Proponents of the pilot program point out that it is voluntary, and potential participants can choose to opt out.

This bill would expand the program to allow defendants who are between the ages of 21 and 24 to be eligible for the program, provided that they obtain the approval of the multidisciplinary team in their jurisdiction.

3. Argument in Support

The Pacific Juvenile Defender Center writes in support:

Our organization opposed the original legislation establishing the pilot program for young adults to be housed in juvenile halls. (Stats. 2016, S.B. 1004 (Hill).) We did not like the fact that participation is conditioned on admitting guilt at the outset, and we believed counties should be focusing more on community programs than on custodial programs. We were also concerned about the impact on young youth in juvenile halls of having adults present. We still have those concerns, but in the intervening years, we have come to recognize that there is a dearth of local programs of any kind for relatively low-level young adults.

A.B. 1390 will raise the eligibility age for participation in the juvenile hall pilot program from 21 to 25 upon approval of the county multi-disciplinary team. Despite our general trepidations about the program, we support the age expansion. There is little for these young people in county jails. In juvenile halls, they will have much greater access to educational, rehabilitative, and re-entry services, and the multi-disciplinary team is required to oversee the effectiveness of the program. Also, we know from talking to the Chief Probation Officer in one of the pilot counties, that at least some youth are being released fairly quickly from custody to be supervised in the community.

We support this modest expansion of the pilot program because it is consistent with our belief that young people are not fully mature until their mid-twenties. It is the time in their lives when their brain circuitry is most “plastic,” and they need to be exposed to the kinds of learning and activities that will help them to develop to healthy adulthood. (Arain, et al., *Maturation of the Adolescent Brain*, 9 Journal of Neuropsychiatric Disorders and Treatment (2013), 449–461.) As Dr. Laurence Steinberg has put it: “[A]dolescence is probably the last real opportunity we have to put individuals on a healthy pathway and to expect our interventions to have substantial and enduring effects.” (Steinberg, *Age of Opportunity: Lessons from the New Science of Adolescence* (2014), at p. 17.)