
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: SB 383 **Hearing Date:** April 13, 2021
Author: Cortese
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Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Juveniles: informal supervision: deferred entry of judgment*

HISTORY

Source: California Judges Association

Prior Legislation: Proposition 21, as approved by the voters on March 7, 2000

Support: ACLU of California; California Attorneys for Criminal Justice; California Public Defenders Association; Chief Probation Officers of California; Ella Baker Center for Human Rights; Initiate Justice; National Association of Social Workers, California Chapter; Pacific Juvenile Defender Center; Prosecutors Alliance of California

Opposition: None known

PURPOSE

The purposes of this bill are: 1) to 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; 2) to authorize the receiving court to make a determination regarding the minor's suitability for deferred entry of judgment if the transferring court did not do so, and to modify the transferring court's finding accordingly; and 3) to remove the exclusion of minors alleged to have sold or possessed for sale a controlled substance and minors alleged to have committed a felony offense when the minor was at least 14 years of age from eligibility for informal supervision.

Existing law provides, generally, that a minor who is between 12 years of age and 17 years of age, inclusive, when the minor violates any law defining a crime, is subject to the jurisdiction of the juvenile court and to adjudication as a ward. (Welf. & Inst. Code, § 602, subd. (a).)

Existing law provides that in any case in which a probation officer, after investigation of an application for a petition or any other investigation the probation officer is authorized to make, concludes that a minor is within the jurisdiction of the juvenile court, or would come within the jurisdiction of the court if a petition were filed, the probation officer may, in lieu of filing a petition to declare a minor a ward of the court or requesting that a petition be filed by the prosecuting attorney to declare a minor a ward of the court and with consent of the minor and the minor's parent or guardian, refer the minor to services provided by a health agency, community-

based organization, local educational agency, an appropriate non-law-enforcement agency, or the probation department. Provides that if the services are provided by the probation department, the probation officer may delineate specific programs of supervision for the minor, not to exceed six months, and attempt thereby to adjust the situation that brings the minor within the jurisdiction of the court. (Welf. & Inst. Code, § 654, subd. (a).)

Existing law provides that if a petition has been filed by the prosecuting attorney to declare a minor a ward of the court under Section 602, the court may, without adjudging the minor a ward of the court and with the consent of the minor and the minor's parents or guardian, continue any hearing on a petition for six months and order the minor to participate in a program of informal supervision. (Welf. & Inst. Code, § 654.2, subd. (a).)

Existing law explicitly excludes from eligibility for informal supervision, a minor in the following cases, except in an unusual case where the interests of justice would best be served and the court specifies on the record the reasons for its decision:

- A minor alleged to have committed a violent or serious felony listed in Section 707 (b).
- A minor alleged to have sold or possessed for sale a controlled substance, as defined.
- A minor alleged to have been in possession of specified controlled substances while at a public or private school, to have committed an assault with a deadly weapon other than a firearm or by any means likely to produce great bodily injury on a school employee, to have possessed a firearm in a school zone, or to have brought or possessed one of several types of weapons upon the grounds of or within a public or private school.
- A minor alleged to have participated in street gang.
- The minor has previously participated in a program of informal supervision.
- The minor has previously been adjudged a ward of the court pursuant to Section 602.
- A minor alleged to have committed an offense in which the restitution owed to the victim exceeds \$1,000.
- The minor is alleged to have committed a felony offense when the minor was at least 14 years of age. Provides that except in unusual cases where the court determines the interest of justice would best be served by ordering a program of informal supervision, the court is required to proceed under the juvenile adjudication statutes or deferred entry of judgment statute. (Welf. & Inst. Code, § 654.3.)

This bill removes the exclusion of minors alleged to have sold or possessed for sale a controlled substance and minors alleged to have committed a felony offense when the minor was at least 14 years of age from eligibility for informal supervision.

This bill amends the provision related to restitution to prohibit a minor's inability to pay restitution due to the minor's indigence from being used as grounds for finding a minor ineligible for informal supervision or finding that the minor has failed to comply with the terms of informal supervision.

Existing law provides that whenever a petition is filed in the juvenile court of a county other than the residence of the person named in the petition, or whenever, subsequent to the filing of a petition in the juvenile court of the county where such minor resides, the residence of the person who would be legally entitled to the custody of such minor were it not for the existence of a court order, is changed to another county, the entire case may be transferred to the juvenile court of the county wherein such person then resides at any time after the court has made a finding of the facts upon which it has exercised its jurisdiction over such minor. Requires the juvenile court

of the county wherein such person then resides to take jurisdiction of the case upon the receipt and filing with it of such finding of the facts and an order transferring the case. (Welf. & Inst. Code, § 750.)

Existing law provides that a minor must meet the following requirements to be eligible for deferred entry of judgment:

- The minor has not previously been declared to be a ward of the court for the commission of a felony offense.
- The offense charged is not a serious or violent felony listed in Section 707 (b).
- The minor has not previously been committed to the custody of the Division of Juvenile Justice.
- The minor's record does not indicate that probation has ever been revoked without being completed.
- The minor is at least 14 years of age at the time of the hearing.
- The minor is eligible for probation under Penal Code section 1203.06.
- The offense charged is not one of several specified sex offenses. (Welf. & Inst. Code, § 790, subd. (a).)

Existing law requires the prosecuting attorney to review the file to determine whether or not the minor is eligible for deferred entry of judgment. Requires, in the case of a minor found to be eligible for deferred entry of judgment, the prosecuting attorney to file a declaration in writing with the court or state for the record the grounds upon which the determination is based. Requires the prosecuting attorney to make the minor's eligibility available to the minor and the minor's attorney. (Welf. & Inst. Code, § 790, subd. (b).)

Existing law provides that upon a finding that the minor is suitable for deferred entry of judgment and would benefit from education, treatment, and rehabilitation efforts, the court may grant deferred entry of judgment. Provides that the court may set the hearing for deferred entry of judgment at the initial appearance. Requires the court to make findings on the record that a minor is appropriate for deferred entry of judgment in any case where deferred entry of judgment is granted. (Welf. & Inst. Code, § 790, subd. (b).)

This bill provides that 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, 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. Provides that 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, 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.

Existing law requires the prosecuting attorney's written notification to the minor to include all of the following:

- A full description of the procedures for deferred entry of judgment.
- A general explanation of the roles and authorities of the probation department, the prosecuting attorney, the program, and the court in that process.

- 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, 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 is required to dismiss the charge or charges against the minor.
- 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, as specified, 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 is then required to render a finding that the minor is a ward of the court for the offenses specified in the original petition and is required to schedule a dispositional hearing.
- 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 the minor's arrest and deferred entry of judgment following successful completion of the program.
- A statement that if the minor fails to comply with the terms of the program and judgment is entered, the offense may serve as a basis for a finding of unfitness if the minor commits two subsequent felony offenses. (Welf. & Inst. Code, § 791, subd. (a).)

This bill removes the provision pertaining to usage of the minor's failure to comply with the terms of probation as the basis for a finding of unfitness in future proceedings.

Existing law provides that if the minor consents and waives his or her 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. Requires, when directed by the court, the probation department to 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. Requires the probation department to determine which programs would accept the minor and requires the probation department to report its findings and recommendations to the court. Requires the court to make the final determination regarding education, treatment, and rehabilitation of the minor. (Welf. & Inst. Code, § 791, subd. (b).)

Existing law provides that a minor's admission of the charges contained in the petition shall not constitute a finding that a petition has been sustained for any purpose, unless a judgment is entered. (Welf. & Inst. Code, § 791, subd. (c).)

This bill provides that 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, 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 to determine the minor's suitability for deferred entry of judgment.

COMMENTS

1. Need for This Bill

According to the author:

At this time, if a youth is over 14 and charged with any felony a judge cannot consider Informal Supervision (I.S.), except in unusual cases where the court determines the interest of justice would be served by Informal Supervision. This means that if the charge is a first-time non-violent felony offense the judge must articulate facts that make the case eligible for I.S. This prevents the judge from offering a youth who made a first-time mistake to have the case handled informally, even if all parties were to agree. This bill enables a judge to offer I.S. in cases that involve a first-time offender arrested for or charged with a non-violent felony.

Currently when a youth commits a crime in another county and is later transferred into their county of residence, the county of residence is restricted from offering a deferred entry of judgment and any diversion services. Procedurally, the court in the county where the crime was committed must sustain a petition before transferring the youth and this petition cannot be un-sustained. Courts in one county may be unaware of the services offered in the youth's county of residence. This procedural restriction prevents the court in the county of residence from evaluating and offering these services, as if the youth had committed the crime in-county.

To address this disparity, this bill provides that once the youth is accepted as "transferred in" by the county of residence, the court can consider eligibility for a deferred entry of judgment. If the court determines that the deferred entry of judgment is suitable, the youth's adjudication can be modified. Additionally, this bill allows a deferred entry of judgment suitability report to be written by the county's juvenile probation department for any non-violent felony transferred into the county. This prevents nonviolent youth, who take responsibility for a first offense, from unnecessarily entering the criminal justice system because of a procedural barrier.

2. Deferred Entry of Judgment

Under existing law, certain juvenile offenders are eligible for deferred entry of judgment (DEJ). (Welf. & Inst. Code, § 790.) With DEJ, a minor must admit each allegation in the petition, and the judgment is deferred while the minor is placed on probation for one to three years. (Welf. & Inst. Code, § 791.) While on probation, certain terms and conditions related to the minor's treatment and rehabilitation are imposed. Upon the successful completion of the terms of probation, the charge or charges against the minor are dismissed, the arrest upon which the judgment was deferred is deemed never to have occurred, and any records in the possession of the juvenile court are required to be sealed, except as specified. (Welf. & Inst. Code, § 793, subd. (c).) If it appears to the prosecuting attorney, the court, or the probation department that the minor is not performing satisfactorily in the assigned program or is not complying with the terms of the probation, or that the minor is not benefiting from education, treatment, or rehabilitation, the deferred entry of judgment is lifted and the court will schedule a dispositional hearing. (Welf. & Inst. Code, § 793, subd. (a).)

In order to be eligible for DEJ, a minor must meet the following requirements: (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 a serious or violent felony listed in Welfare and Institutions Code section 707 (b); (3) the minor has not previously been committed to the custody of the Division of Juvenile Justice; (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 under Penal Code section 1203.06; and (7) the offense charged is not one of several specified sex offenses. (Welf. & Inst. Code, § 790, subd. (a).) The prosecuting attorney is required to make a determination regarding a minor's eligibility for DEJ, and if the minor is eligible, the prosecuting attorney must notify the court, the minor, and the minor's attorney. (Welf. & Inst. Code, § 790, subd. (b).) The juvenile court must then decide if the minor is suitable for DEJ. A minor is suitable for DEJ if the judge finds that the minor would benefit from court-ordered education, rehabilitation, and treatment efforts. (*Id.*)

The bill's author contends that existing law does not adequately deal with the transferring of cases between counties with respect to DEJ. Specifically, the author points to the scenario where a minor is alleged to have committed a crime outside of the minor's county of residence and the minor's case is later transferred to the minor's county of residence. The author asserts that the transferring court must sustain a petition before transferring the case, and the court in the county of residence is restricted from granting DEJ. This bill seeks to resolve this issue by amending existing law to do the following:

- If a minor is eligible for DEJ, but the minor resides in a different county and the case will be transferred, the court may adjudicate the case without determining the minor's suitability for DEJ to enable the court in the minor's county of residence to make that determination.
- If a minor is eligible for DEJ, but the transferring court did not determine the minor's suitability for DEJ, 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 DEJ and modify the transferring court's finding accordingly.

This bill additionally provides that if a minor is eligible for DEJ, but the court did not determine the minor's suitability for DEJ, 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 to determine the minor's suitability for DEJ.

3. Other Provisions of This Bill

In addition to changes related to DEJ, this bill amends Welfare and Institutions Code section 654.3 which governs eligibility for informal supervision. Specifically, this bill removes the exclusion of minors alleged to have sold or possessed for sale a controlled substance and minors alleged to have committed a felony offense when the minor was at least 14 years of age from eligibility for informal supervision. This bill also amends the provision related to restitution to prohibit a minor's inability to pay restitution due to the minor's indigence from being used as grounds for finding a minor ineligible for informal supervision or finding that the minor has failed to comply with the terms of informal supervision.