



AB 1352: Deferred entry of judgment: withdrawal of plea

SUMMARY

This bill will, in certain circumstances, expunge the record of an individual who has completed deferred entry of judgment (DEJ) requirements

BACKGROUND

California has long had special rehabilitative statutes for persons charged with a minor drug offense, such as possession of paraphernalia or a small amount of a drug for personal use. On January 1, 1997 the state changed from having a pre-trial diversion statute to the current DEJ statute, which requires a guilty plea. Penal Code Section 1000.4(1) essentially states that the entire event never occurred if the person successfully completes DEJ requirements, allowing the accused to state, legally, that they had never been arrested or convicted of the crime for which they completed DEJ requirements.

With this understanding, thousands of immigrant defendants have agreed to plead guilty and successfully fulfilled all DEJ requirements. Unfortunately, under federal immigration law the guilty plea and the DEJ requirements created a damaging drug “conviction.” Even though California dismissed the charges under federal law the conviction remains for immigration purposes.

As a result, rather than having no consequences at all, the DEJ drug “conviction” has led to mandatory ICE detention, deportation, permanent banishment, and permanent separation from family, including U.S. citizen dependent parents, spouses, and children.

According to Penal Code Section 1000.4(a), an arrest resulting in 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.”

THIS BILL

This bill will allow a defendant who entered a plea of guilty or *nolocontendere* under deferred entry of judgment to withdraw their plea if the following conditions are met:

- The plea was entered on or after January 1, 1997
- DEJ was successfully completed
- The charges were dismissed
- The entry of judgment may result in the denial or loss to the defendant of any employment, benefit, license, or certificate, which includes causing a noncitizen defendant to potentially be deported.

The proposed expungement does not retroactively change DEJ’s effect under California law. Under Penal Code Section 1000.4, a person who successfully completes DEJ already has no conviction or arrest record. Withdrawing the guilty plea will provide no more and no less protection under California law than what already exists. Instead, this is a technical plea withdrawal specifically made to meet federal requirements.

SUPPORT

- ACLU (Co-sponsor)
- CHIRLA (Co-sponsor)
- Drug Policy Alliance (Co-sponsor)
- Immigrant Legal Resource Center (Co-sponsor)
- NCLR (Co-sponsor)

FOR MORE INFORMATION

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