

## DIVERSION

If you have been charged with a crime of possessing an illegal substance you may be eligible for Diversion and have other defenses available to you.

The District Attorney may file the matter as a felony or misdemeanor.

A. If you arrested for possession of methamphetamine as a felony there are several options available to you. They are as follows:

1. A first time offense is usually 90 days in the county jail, a live in program for 90 days or an out right dismissal.
  - a. You should contact a live-in drug facility to see if they will accompany you to court and have your plea to the drug charge in exchange for placement in their facility.
  - b. If are charges are felony possession , you may have your sentencing done in the Superior Court.
2. You are also entitled to diversion which is now referred to as Deferred Entry of Judgment. (See below)
  - a. You should note, a referral to diversion means that you shall be convicted. If you fall off diversion, the District Attorney no longer has to try your case. You simply go to state prison or County Jail.

B. You may have defenses to a drug offense. More particularly they are momentary possession or you did not have dominion and control of the illegal substance. Below are Jury Instructions on the law of momentary possession:

Defendant has presented evidence that [his] [her] possession of the drugs was only momentary. Such momentary possession is not unlawful unless the prosecution has proven beyond a reasonable doubt at least one of the following:

1. The possession was based on the defendant's ownership or right to exercise control over the firearm.
2. The firearm was possessed for a purpose other than disposal, abandonment or concealment in a place where the defendant had no right of control over it.
3. The possession was exercised for the defendant's own purposes to allow the defendant a further right of individual or joint control of the drugs.

If you have a reasonable doubt as to whether at least one of the above have been proven by the prosecution, you must give the defendant the benefit of that doubt and find [him] [her] not guilty.

C. You may also have a motion to suppress the evidence against her if the stop was not lawful or without probable cause.

D. There could be other defenses, factual & legal available to you

E. Drug cases are filed as misdemeanors or felonies, if they proceed to file the action against you, it could be a misdemeanor or a felony. Since this is a misdemeanor you are out on your own recognizance. (O.R.) The bail may be lowered or raised. If the matter is a felony, they will set a preliminary hearing setting date and the date of preliminary hearing. After the preliminary hearing, if she is held to answer, she will again be arraigned in Superior Court. In Superior Court she will have an arraignment, pre-trial and trial. For an action to be tried to sentencing, in the Los Angeles County Superior Court, it is usually 120 days. If the parties waive time, it could be years!

F. There may be no offer of settlement if the co-defendant does not accept a plea or the offer is a "package deal" with the co-defendant. The alternative would be for the D.A. to accept a "factual basis" from the person being charged which will implicate the co-defendant at the time of trial. There are so many scenarios in a plea negotiation that I cannot give you all of the alternatives at this time without knowing more information about each individual case. Therefore, you should consult my office before going into court. 909-623-2629.

EXPLANATION OF DEFERRED ENTRY OF JUDGEMENT  
PENAL CODE SECTIONS 1000-1000.4  
(DIVERSION)

The District Attorney is the prosecuting attorney for felony drug crimes and for some misdemeanor drug offenses. Through his deputies, the District Attorney determines whether to file charges against a defendant.

(A) Review the case file to determine whether the defendant may be eligible for deferred entry of judgement (diversion);

If any of the following apply, I understand that I am not eligible for diversion:

(1) I have a conviction of an offense involving controlled substances prior to the alleged commission of the charged offense;

(2) The offense charged involved a crime of violence or threatened violence;

(3) There is evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation of the section listed in PC1000;

(4) My record indicates that probation or parole has been revoked without thereafter being completed;

(5) My record indicated that I have not successfully completed or have been terminated from diversion or deferred entry of judgement pursuant to Chapter 2.5 (commencing with section 1000

of Title 6 of Part 2 of the Penal Code) within five years prior to the alleged commission of the charged offense;

(6)I have prior felony conviction(s) within five years prior to the alleged commission of the charged offense;

(B)The District Attorney (or his/her Deputy) will advise the defendant and his or her attorney in writing of the ground upon which the determination is based;

(C)The District Attorney (or his/her Deputy) will file with the court a declaration in writing (if defendant is eligible) or file a declaration in writing or state for the record (if defendant is ineligible) the ground upon which the determination is based;

(D)the District Attorney (or his/her Deputy) will request the court to enter judgement in the matter if defendant performs unsatisfactorily in the drug program, is convicted of any felony or a misdemeanor which reflects a propensity for violence, or engages in criminal conduct rendering him/her suitable for deferred entry of judgement.

#### Role of the Court

Instead of proceeding to trial in certain drug charges, the court may hold a hearing to determine whether deferred entry of judgement is appropriate. Entry of judgement may be deferred for a minimum of 18 months to a maximum of three years. If the defendant waives time for a preliminary hearing (or speedy trial), the court may refer the defendant to the probation department for its investigation and recommendations or the court may summarily grant deferred entry of judgement if the defendant pleads guilty to the charge(s) and waives time for the pronouncement of judgement. After receiving the report of the probation department, the court makes the final determination regarding education, treatment, or rehabilitation for the defendant. If the court determines that it is appropriate, and if the defendant consents to participate, the court grants deferred entry of judgement if the defendant pleads guilty to the charge(s) and waives time for the pronouncement of judgement.

If deferred entry of judgement is granted, the court orders that any bail bond or undertaking or deposit on file on behalf of the defendant be exonerated.

Upon defendant's successful completion of an approved drug program (no sooner than 18 months, and no later than three years) and upon the positive recommendation of the program authority and the motion of the prosecuting attorney, the court, or the probation department, the court dismisses the charge(s) . Before dismissing the charge(s), the court considers the defendant's ability to pay and whether the defendant has paid a diversion restitution fee, if ordered, and an administration fee to the probation department, if ordered, and has met his/her financial obligation to the program, if any.

If the defendant performs unsatisfactorily in or is not benefitting from the program, or is convicted of any felony or misdemeanor indicating a propensity for violence, or engages in any other criminal conduct rendering him/her unsuitable for deferred entry of judgement, the court may upon motion of the prosecutor, or the probation department, or on its own motion - after

notice to the defendant- hold a hearing, render a finding of guilt to the charge(s), enter judgement, and schedule a sentencing hearing.

If the court determines that the defendant would not benefit from deferred entry of judgement, the proceedings will continue as in any other case.

#### Role of the Probation Department

After receiving the referral from the court, the probation department, through its deputy probation officers, reviews the defendant's background and history of drug use, determines which approved drug program(s), if any, would benefit the defendant, and reports its findings and recommendations to the court.

No statement made by the defendant to any probation officer or drug treatment worker during the course of the probation department's investigation before the reporting of its findings and recommendations to the court is admissible in any action or proceeding begun after the investigation.

No statement by the defendant or information about the charged offense which is obtained as a result of any statement by the defendant to any probation officer or drug program worker after the granting of deferred entry of judgement is admissible in any action or proceeding, including a sentencing hearing.

If the court grants deferred entry of judgement and orders the defendant to participate in a drug program, the probation department monitors the defendant's progress in the program and provides the court with progress reports, as directed by the court.

If the defendant performs unsatisfactorily in the program or is convicted of a felony or a misdemeanor indicating a propensity for violence, or engages in any criminal conduct rendering him/her unsuitable for deferred entry of judgement, the probation department may request the court to hold a hearing and to render a finding of guilt to the charge(s), enter judgement, and schedule a sentencing hearing.

#### Role of the program

Each approved drug program is intended to benefit the defendant through education, treatment, and rehabilitation. Each program has its own general rules and regulations, and may also have specific rules for a particular defendant. The defendant should obtain information about his/her program's rules and regulations from the program administrator. The defendant may wish to discuss the information with his/her probation officer.

#### Criminal record retention and disposition resulting from participation in deferred entry of judgement

Upon successful completion of the deferred entry of judgement program, the arrest upon which the judgement was deferred is considered to have never occurred. The defendant may respond to any question concerning his/her prior criminal record that he/she was not arrested or granted deferred entry of judgement to the offense, except that the arrest may be disclosed by the Department of Justice in response to any peace officer application request, and he/she must

disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer as defined in P.C. 830.

If due to unsatisfactory conduct or performance in the program, defendant's plea of guilty is entered pursuant to P.C. 1000.3, it shall constitute a conviction.

Contact **Southern California** criminal defense attorney [Antonio J. Bestard today](#) 24-Hour / 1-909-623-2629