

LEXSTAT CAL WEL & INST CODE § 790

DEERING'S CALIFORNIA CODES ANNOTATED  
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THROUGH 2007-2008 THIRD EXTRAORDINARY SESSION CH. 6 AND  
CH. 12 OF THE 2008 REGULAR SESSION APPROVED 4/29/08

WELFARE AND INSTITUTIONS CODE  
Division 2. Children  
Part 1. Delinquents and Wards of the Juvenile Court  
Chapter 2. Juvenile Court Law  
Article 20.5. Deferred Entry of Judgment

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*Cal Wel & Inst Code § 790 (2008)*

**§ 790. Application of article; Procedure**

(a) Notwithstanding Section 654 or 654.2, or any other provision of law, this article shall apply whenever a case is before the juvenile court for a determination of whether a minor is a person described in Section 602 because of the commission of a felony offense, if all of the following circumstances apply:

- (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 one of the offenses enumerated in subdivision (b) of Section 707.
- (3) The minor has not previously been committed to the custody of the Youth Authority.
- (4) The minor's record does not indicate that probation has ever been revoked without being completed.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 pursuant to *Section 1203.06 of the Penal Code*.

(b) The prosecuting attorney shall review his or her file to determine whether or not paragraphs (1) to (6), inclusive, of subdivision (a) apply. If the minor is found eligible for deferred entry of judgment, the prosecuting attorney shall file a declaration in writing with the court or state for the record the grounds upon which the determination is based, and shall make this information available to the minor and his or her attorney. Upon a finding that the minor is also suitable for deferred entry of judgment and would benefit from education, treatment, and rehabilitation efforts, the court may grant deferred entry of judgment. Under this procedure, the court may set the hearing for deferred entry of judgment at the initial appearance under Section 657. The court shall make findings on the record that a minor is appropriate for deferred entry of judgment pursuant to this article in any case where deferred entry of judgment is granted.

**HISTORY:**

Added by initiative measure effective March 8, 2000 (Prop 21 § 29). Amended Stats 2006 ch 675 § 1 (SB 1626), effective January 1, 2007.

**NOTES:****Editor's Notes**

For citation of act, findings and declarations, legislative intent, severability, and amendment by Legislature, see 2000 Note following *W & I C § 602*.

**Amendments:****2006 Amendment:**

(1) Substituted "Section 654 or" for "Sections 654," in subd (a); and (2) amended subd (b) by (a) deleting the former second and third sentences which read: "Upon the agreement of the prosecuting attorney, the public defender or the minor's private defense attorney, and the presiding judge of the juvenile court or a judge designated by the presiding judge to the application of this article, this procedure shall be completed as soon as possible after the initial filing of the petition. If the prosecuting attorney, the defense attorney, and the juvenile court judge do not agree, the ease shall proceed according to Article 17 (commencing with Section 675)."; (b) adding the third sentence; and (c) adding the fifth sentence.

**Collateral References:**

10 Witkin Summary (10th ed) Parent and Child §§ 728, 768, 891.

**Hierarchy Notes:**

Div. 2, Pt. 1, Ch. 2, Art. 20.5 Note

NOTES OF DECISIONS 1. Generally 1.5. Jurisdiction 2. Particular Actions

**1. Generally**

Nothing in the statutory language indicates an intent to require a juvenile court to grant deferred entry of judgment if the "circumstances" specified in *W & I C § 790* and *Cal. Rules of Court, Rule 1495* are found to exist. On the contrary, the statutes invariably use discretionary rather than compulsory terms when expressing both the guidelines and the procedures that govern a trial court's responsibility to grant deferred entry of judgment to a qualifying juvenile defendant; a juvenile court has discretion to grant deferred entry of judgment to an eligible minor. *In re Sergio R.* (2003, *Cal App 1st Dist*) 106 *Cal App 4th* 597, 131 *Cal Rptr 2d* 160, 2003 *Cal App LEXIS* 267.

Denial of a deferred entry of judgment is not an abuse of discretion merely because a minor has satisfied the

eligibility requirements of *W & I C § 790* and *Cal. Rules of Court, Rule 1495(a)*; instead, the juvenile court makes an independent determination after consideration of the "suitability" factors in *Cal. Rules of Court, Rule 1495(d)(3)* and *W & I C § 791* with the exercise of discretion based upon a standard of whether the minor will derive benefit from education, treatment, and rehabilitation, rather than a more restrictive commitment. *In re Sergio R.* (2003, *Cal App 1st Dist*) 106 *Cal App 4th* 597, 131 *Cal Rptr 2d* 160, 2003 *Cal App LEXIS* 267.

Trial court is only permitted to decline a deferred entry of judgment in a juvenile case where the juvenile will not benefit from education, treatment, or rehabilitation; therefore, a trial court erred by denying admission because it wanted to set an example for others involved in drug cases. *Martha C. v. Superior Court* (2003, *Cal App 4th Dist*) 108 *Cal App 4th* 556, 133 *Cal Rptr 2d* 544, 2003 *Cal App LEXIS* 666.

Statutes creating the procedure to defer entry of judgment are not a model of clarity, but their central purpose and effect is plain enough; they empower the court, under specified conditions, and upon a minor's admission of the allegations of the petition, to place the minor on probation without adjudging the minor to be a ward of the court. *In re Mario C.* (2004, *Cal App 6th Dist*) 124 *Cal App 4th* 1303, 21 *Cal Rptr 3d* 891, 2004 *Cal App LEXIS* 2140, review denied (2005) 2005 *Cal. LEXIS* 3176.

Superior court is not estopped from vacating an order placing a minor in a deferred entry of judgment program, pursuant to a plea bargain, where the placement order was made in excess of the court's jurisdiction. *In re V.B.* (2006, *Cal App 2d Dist*) 141 *Cal App 4th* 899, 46 *Cal Rptr 3d* 451, 2006 *Cal App LEXIS* 1148, modified (2006) 2006 *Cal. App. LEXIS* 1209.

### 1.5. Jurisdiction

Superior court was not estopped from vacating an order placing a minor in a deferred entry of judgment program, pursuant to a plea bargain, where the placement order was made in excess of the court's jurisdiction. *In re V.B.* (2006, *Cal App 2d Dist*) 141 *Cal App 4th* 899, 46 *Cal Rptr 3d* 451, 2006 *Cal App LEXIS* 1148, modified (2006) 2006 *Cal. App. LEXIS* 1209.

Juvenile court properly vacated an earlier order placing defendant juvenile in a deferred entry of judgment program pursuant to the Gang Violence and Juvenile Crime Prevention Act of 1998, *W & I C §§ 790-795*, where defendant, who pleaded guilty to grand theft under the terms of a plea bargain, was ineligible to participate in the program because he was under 14 at the time of the plea bargain. *In re V.B.* (2006, *Cal App 2d Dist*) 141 *Cal App 4th* 899, 46 *Cal Rptr 3d* 451, 2006 *Cal App LEXIS* 1148, modified (2006) 2006 *Cal. App. LEXIS* 1209.

### 2. Particular Actions

Following defendant juvenile's admission to the charges of possession of methamphetamine and burglary, the juvenile court did not abuse its discretion by refusing to grant the juvenile deferred entry of judgment although he satisfied the eligibility requirements of *W & I C § 790* and *Cal. Rules of Court, Rule 1495(a)*; where the juvenile court properly found that the juvenile was unsuitable under Rules 1495(b)(2) and 1495(d)(3) because the juvenile was an entrenched gang member with a history of drug abuse and an admitted addiction to methamphetamine, and because the juvenile participated with other gang members in a residential property and the theft of property that included a rifle. *In re Sergio R.* (2003, *Cal App 1st Dist*) 106 *Cal App 4th* 597, 131 *Cal Rptr 2d* 160, 2003 *Cal App LEXIS* 267.

Statutory language of *W & I C § 790* and *Cal. Rules of Court, Rule 1495* empowers but does not compel a juvenile court to grant deferred entry of judgment once eligibility under § 790(a) is established. *In re Sergio R.* (2003, *Cal App 1st Dist*) 106 *Cal App 4th* 597, 131 *Cal Rptr 2d* 160, 2003 *Cal App LEXIS* 267.

Failure to assess and rule on a juvenile offender's eligibility for deferred entry of judgment (DEJ) under *Cal. Welf. & Inst. Code § 790* et seq., and *Cal. R. Ct. 1495* was error; although the juvenile court has discretion to deny DEJ to a

minor who is eligible under *Cal. Welf. & Inst. Code* § 790(a), the duty to assess eligibility, furnish notice, and make a determination as provided in *Cal. Welf. & Inst. Code* § 791(b) is mandatory. *In re Luis B.* (2006, *Cal App 1st Dist*) 142 *Cal App 4th* 1117, 48 *Cal Rptr 3d* 581, 2006 *Cal App LEXIS* 1378.

Juvenile court properly vacated an earlier order placing defendant juvenile in a deferred entry of judgment program pursuant to the Gang Violence and Juvenile Crime Prevention Act of 1998, *Cal. Welf. & Inst. Code* §§ 790-795, where defendant, who pleaded guilty to grand theft under the terms of a plea bargain, was ineligible to participate in the program because he was under 14 at the time of the plea bargain. *In re V.B.* (2006, *Cal App 2d Dist*) 141 *Cal App 4th* 899, 46 *Cal Rptr 3d* 451, 2006 *Cal App LEXIS* 1148, modified (2006) 2006 *Cal. App. LEXIS* 1209.

Although the prosecutor determined that a minor was eligible for the deferred entry of judgment program (DEJ) under *W & I C* § 790, the juvenile court was not required under *Cal. Rules of Court, Rule 5.800* and *W & I C* § 791(b) to hold a hearing to determine the minor's suitability for the DEJ once it became clear that the minor was not admitting the theft allegations against him as contemplated by *W & I C* § 791(a), but rather was insisting on contesting them at a jurisdictional hearing. *In re Usef S.* (2008, *1st Dist*) 2008 *Cal App LEXIS* 246.