

**ASSEMBLY BILL**

**No. 1542**

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**Introduced by Assembly Member McCarty**

February 19, 2021

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An act to add and repeal Section 1203.44 of the Penal Code, relating to drug treatment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1542, as introduced, McCarty. County of Yolo: Secured Residential Treatment Program.

Existing law authorizes a court to grant pretrial diversion to a defendant in specified cases, including when the defendant is suffering from a mental disorder, specified controlled substances crimes, and when the defendant was, or currently is, a member of the United States military. Existing law imposes various fines, fees, penalties, and assessments on a defendant in a criminal proceeding, including the fine set by statute, restitution fines and fees, and assessments to support the state court system.

This bill would, until January 1, 2025, authorize the County of Yolo to offer a pilot program, known as the Secured Residential Treatment Program, for individuals suffering from substance use disorders (SUDs) who have been convicted of drug-motivated crimes as a result of their SUDs that victimize others, as specified. The bill would require the program to meet certain conditions relating to, among other things, a risk and needs assessment, a comprehensive curriculum, a determination by a judge of the length of treatment, data collection, and reporting to the Legislature.

The bill would authorize the court to divert an individual and sentence them to confinement in a secured residential treatment facility within

the pilot program, if the court determines that the crime was caused in whole or in part by that individual’s SUD. The bill would require the preparation of a report with input from interested parties, to assist the court in making its determination.

If the participant successfully completes the court-ordered drug treatment pursuant to the pilot program, the bill would require the court to expunge the conviction from the participant’s record and would authorize the court to expunge the conviction of any previous drug possession or drug use crimes on the participant’s record. If the participant fails to complete the court-ordered drug treatment, the bill would require the court to resentence the defendant according to law.

This bill would make legislative findings and declarations as to the necessity of a special statute for the County of Yolo.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) People suffering from substance use disorders (SUDs) often  
4 commit crimes that victimize others to support their SUDs.

5 (b) For many individuals suffering from SUDs, residential and  
6 professionally conducted evidence-based treatment programs are  
7 the only option for getting this population well.

8 (c) Existing laws in California, including provisions added by  
9 Proposition 47, as approved by the voters at the November 4, 2014,  
10 statewide general election, and Proposition 36, as approved by the  
11 voters at the November 7, 2000, statewide general election, have  
12 removed the possibility of felony charges for many of the most  
13 common drug offenses.

14 (d) Prior to the enactment of Proposition 47, given the choice  
15 between a possible felony conviction and a statutorily authorized  
16 drug treatment program, many individuals in this population opted  
17 for the drug treatment program and, as a result, many got well.

18 (e) With Propositions 47 and 36 in place, the number of  
19 individuals charged with drug possession offenses entering  
20 statutorily authorized treatment programs has dwindled. Since  
21 2014, drug court participation in California has decreased, with

1 the percentage of this population entering these programs  
2 decreasing by 86 percent in the County of Yolo.

3 (f) Our efforts in California in treating those with SUDs, many  
4 of whom are homeless, have been an abject failure. Although there  
5 have been efforts to treat this population, to date, there has been  
6 little-to-no success.

7 (g) For those with SUDs who commit crimes that victimize  
8 others (drug-motivated crimes), as an alternative to a jail or prison  
9 sentence, they could be diverted to a secure treatment center, where  
10 they would receive evidence-based treatment to get them well and  
11 give them the opportunity to become healthy, fulfilled, and  
12 contributing members of society.

13 SEC. 2. Section 1203.44 is added to the Penal Code, to read:

14 1203.44. (a) The County of Yolo may offer a pilot program,  
15 known as the Secured Residential Treatment Program, consistent  
16 with this section for individuals suffering from substance use  
17 disorders (SUDs) who have been convicted of drug-motivated  
18 crimes as a result of their SUDs that victimize others, pursuant to  
19 subdivision (b), if the program meets all of the following  
20 conditions:

21 (1) The county develops the program in consultation with drug  
22 treatment service providers and other relevant community partners.

23 (2) The staff of the health and human services agency of the  
24 county performs a risk and needs assessment, utilizing an  
25 assessment tool demonstrated to be appropriate for drug offenders,  
26 for each offender entering the program.

27 (3) The participant's treatment, in terms of length and intensity,  
28 within the program is solely based on the findings of the risk and  
29 needs assessment and the recommendations of treatment providers.

30 (4) The program includes components that are evidence-based  
31 or promising practices.

32 (5) The program has a comprehensive written curriculum that  
33 informs the operations of the program and outlines the treatment  
34 and intervention modalities.

35 (6) A judge determines the length of the treatment program after  
36 being informed by the risk and needs assessment and treatment  
37 providers. After leaving the secured treatment facility, the  
38 participant continues outpatient treatment for a period of time and  
39 may also be referred to a "step-down" residential treatment facility.

1 (7) Treatment provided to a participant during the program is  
2 reimbursable under the Medi-Cal program, to the extent that the  
3 participant is a Medi-Cal beneficiary and the treatment is already  
4 covered under the Medi-Cal program, and to the extent that  
5 reimbursement is not prohibited under federal law.

6 (8) The county collects all of the following data for participants  
7 in the program:

8 (A) The participant's demographic information, including age,  
9 gender, race, ethnicity, marital status, familial status, and  
10 employment status.

11 (B) The participant's criminal history.

12 (C) The participant's risk level, as determined by the risk and  
13 needs assessment.

14 (D) The treatment provided to the participant during the  
15 program, and if the participant completed that treatment.

16 (E) The participant's outcome at the time of program completion  
17 and six months after completion, including subsequent arrests and  
18 convictions.

19 (9) The county reports all of the following information annually  
20 to the Legislature, in compliance with Section 9795 of the  
21 Government Code:

22 (A) The risk and needs assessment tool used for the program.

23 (B) The curriculum used by each program.

24 (C) The number of participants with a program length other  
25 than one year and the alternative program lengths used.

26 (D) Individual data on the number of participants participating  
27 in the program.

28 (E) Individual data for the items described in paragraph (8).

29 (b) (1) Eligible drug-motivated crimes shall include any crime  
30 other than sex crimes as defined in subdivision (c) of Section 290,  
31 other than "serious" felonies as defined in subdivision (c) of  
32 Section 1192.7 or in Section 1192.8, and other than "violent"  
33 felonies as defined in subdivision (c) of Section 667.5.

34 (2) Notwithstanding paragraph (1), a "nonviolent drug  
35 possession offense" specified in subdivision (a) of Section 1210  
36 may not be diverted pursuant to this program.

37 (c) Subject to the County of Yolo opting to offer the pilot  
38 program described in this section, if a peace officer arrests a person  
39 for a drug-motivated crime and, at the time of the arrest, has  
40 probable cause to believe that the person suffers from a SUD that

1 is in whole or in part a cause for the crime committed, the peace  
2 officer shall state that belief in the probable cause declaration in  
3 support of the arrest.

4 (d) At the time of sentencing or pronouncement of judgment in  
5 which sentencing is imposed, if the court determines that the  
6 defendant's crime was caused in whole or in part by that  
7 individual's SUD, as an alternative to jail, the court may divert  
8 the individual and sentence them to confinement in a secured  
9 residential treatment facility within the pilot program.

10 (1) The amount of time in a secured residential treatment facility  
11 pursuant to the program, combined with any outpatient treatment  
12 pursuant to the program, shall not exceed the maximum allowable  
13 jail time for the drug-motivated crime, and the court shall not place  
14 the defendant on probation for the underlying offense.

15 (2) During the period in which an individual is participating in  
16 the pilot program, the individual shall be on informal supervision  
17 with the court, to be supervised by treatment providers under the  
18 health and human services agency of the county or a SUD treatment  
19 program contracted with the agency.

20 (e) To assist the court in making the determination pursuant to  
21 subdivision (d), a report shall be prepared with input from any of  
22 the interested parties, including the district attorney, the attorney  
23 for the participant, the probation department, the health and human  
24 services agency, and any contracted drug treatment program  
25 provider.

26 (f) If the court determines that the participant should be  
27 transferred out of the secure treatment phase of the program prior  
28 to the end of the original order, the court shall make that subsequent  
29 order. After transferring out of the secured residential treatment  
30 facility, the participant shall continue to be supervised in the  
31 program by the health and human services agency and probation  
32 department of the county for the duration of the sentence.

33 (g) If the participant successfully completes the court-ordered  
34 drug treatment pursuant to this program, the court shall expunge  
35 the conviction from the participant's record. The court shall also  
36 have discretion to expunge the conviction of any previous drug  
37 possession or drug use crimes on the participant's record, including  
38 those offenses listed in Sections 11350, 11364, 11377, and 11550  
39 of the Health and Safety Code.

1 (h) If the participant fails to successfully complete the  
2 court-ordered drug treatment pursuant to this program, the court  
3 shall resentence the defendant according to law.

4 (i) The court shall ensure that the rights of any victim pursuant  
5 to Section 28 of Article I of the California Constitution (Marsy’s  
6 Law) are honored before expunging the conviction.

7 (j) This section shall remain in effect only until January 1, 2025,  
8 and as of that date is repealed.

9 SEC. 3. The Legislature finds and declares that a special statute  
10 is necessary and that a general statute cannot be made applicable  
11 within the meaning of Section 16 of Article IV of the California  
12 Constitution because of the unique circumstances that the County  
13 of Yolo has experienced with regard to difficulties in treating  
14 individuals who have been convicted of drug-motivated crimes as  
15 a result of their substance use disorders.