

AMENDED IN ASSEMBLY APRIL 29, 2021

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CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 1542

Introduced by Assembly Member McCarty
(Coauthor: Assembly Member Aguiar-Curry)
(Coauthor: Senator Dodd)

February 19, 2021

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1542, as amended, 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 qualifying drug-motivated felony crimes, as specified. The bill would require the program to meet certain conditions relating to, among other things, ~~a risk and needs~~ *risk, needs,*

and psychological assessment, a comprehensive curriculum, a determination by a judge of the length of treatment, data collection, and reporting to the Department of Corrections and Rehabilitation, the State Department of Health Care Services, and the Legislature.

The bill would require the judge to offer the defendant voluntary participation in the pilot program, as an alternative to a jail or prison sentence otherwise imposed, if the defendant's crime was caused in whole or in part by the defendant's SUD, the crime was not a sex crime, serious or violent felony, or nonviolent drug possession, and the judge makes their determination based on the recommendations of the treatment ~~providers and~~ *providers*, on a finding by the health and human services agency of the county that the defendant's participation would be appropriate. ~~The bill would require the preparation of a report with input from interested parties, to assist the court in making its determination.~~ *appropriate, and on a specified report prepared with input from interested parties.*

The bill would set forth a procedure for the transfer of a participant out of the secured residential treatment program based on the recommendations of the treatment providers or program administrators or based on the participant's request, as specified.

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.

Existing law establishes the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services, including mental health and substance use disorder services, pursuant to a schedule of benefits. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions. Existing law, with certain exceptions based in part on the type and location of the service, provides for the suspension of Medi-Cal benefits to an inmate of a public institution.

This bill would, to the extent permitted under federal and state law, make treatment provided to a participant during the program reimbursable under the Medi-Cal program, if the participant is a Medi-Cal beneficiary and the treatment is a covered benefit under the Medi-Cal program. If treatment services are not reimbursable under the Medi-Cal program or through the participant's personal health

care coverage, the bill would authorize funds allocated to the state from the 2021 Multistate Opioid Settlement Agreement, subject to an appropriation by the Legislature, to be used to reimburse those treatment services to the extent consistent with the terms of the settlement agreement and the court's final judgment, as specified.

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) A significant percentage of people arrested and charged with
4 crimes in the County of Yolo suffer from substance use disorders
5 (SUDs).

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

9 (c) Our efforts in California in treating those who suffer from
10 SUDs, some of whom are homeless, have been unsuccessful.
11 Although there have been efforts to treat this population, to date,
12 there has been limited success.

13 (d) For those who suffer from SUDs and who commit
14 drug-motivated crimes, as an alternative to a jail or prison sentence,
15 they could consent to be diverted to a secured residential treatment
16 facility, where they would receive evidence-based treatment to get
17 them well and give them the opportunity to become healthy,
18 fulfilled, and contributing members of society. One goal of this
19 pilot program is to reduce recidivism.

20 (e) If the pilot program is established, eligible individuals who
21 could consent to this alternative to sentencing in jail or prison
22 would generally be individuals who suffer from an SUD that is
23 determined to be the driving force behind the crime, and whereby
24 the crime is not a simple drug possession offense, and the
25 individual, but for this voluntary program, would be sentenced to
26 jail or prison as a result of the crime.

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

1 1203.44. (a) The County of Yolo may offer a pilot program,
2 known as the Secured Residential Treatment Program, consistent
3 with this section for individuals suffering from substance use
4 disorders (SUDs) who have been convicted of drug-motivated
5 felony crimes that qualify pursuant to the criteria and conditions
6 described in subdivisions (b) and (c). If offered, the pilot program
7 shall align with the resolution adopted by the County of Yolo in
8 2015 in recognition of the national Stepping Up Initiative, with
9 the goal of ensuring that people with behavioral health conditions
10 receive treatment out of custody wherever possible. The County
11 of Yolo may offer the pilot program to eligible individuals if the
12 program meets all of the following conditions:

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

15 ~~(2) The staff of the Yolo County Health and Human Services~~
16 ~~Agency (HHSA) performs a risk and needs assessment, utilizing~~
17 ~~an assessment tool demonstrated to be appropriate for drug~~
18 ~~offenders, for each offender entering the program.~~

19 *(2) The Yolo County Health and Human Services Agency*
20 *(HHSA) ensures that a risk, needs, and psychological assessment,*
21 *utilizing the Multidimensional Assessment of the American Society*
22 *of Addiction Medicine (ASAM), as part of the ASAM Criteria, be*
23 *performed for each individual identified as a candidate for the*
24 *program.*

25 (3) The individual, as an alternative to a jail or prison sentence,
26 consents to participate in the program.

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

31 ~~(5) The program includes components that are evidence-based~~
32 ~~or promising practices:~~

33 *(5) The program adopts the Treatment Criteria of ASAM. The*
34 *program may take into consideration evolving best practices in*
35 *the SUD treatment community.*

36 (6) The program has a comprehensive written curriculum that
37 informs the operations of the program and outlines the treatment
38 and intervention modalities.

39 (7) A judge determines the length of the treatment program after
40 being informed by, and based on, the ~~risk and needs~~ *risk, needs,*

1 *and psychological* assessment and recommendations of treatment
2 providers. After leaving the secured residential treatment facility,
3 the participant continues outpatient treatment for a period of time
4 and may also be referred to a “step-down” residential treatment
5 facility, subject to the time limit described in paragraph (2) of
6 subdivision (c).

7 ~~(8) The program includes a continuum of care and intensive~~
8 ~~followup services for participants.~~

9 ~~(9) Treatment provided to a participant during the program is~~
10 ~~reimbursable under the Medi-Cal program, to the extent that the~~
11 ~~participant is a Medi-Cal beneficiary and the treatment is already~~
12 ~~covered under the Medi-Cal program, and to the extent that~~
13 ~~reimbursement is not prohibited under federal law.~~

14 ~~(10) An outcome measures report is completed by a local~~
15 ~~independent evaluator.~~

16 *(8) The program provides, for each participant successfully*
17 *leaving the program, a comprehensive continuum of care plan that*
18 *includes recommendations for outpatient care, counseling, housing*
19 *recommendations, and other vital components of successful*
20 *recovery.*

21 *(9) To the extent permitted under federal and state law,*
22 *treatment provided to a participant during the program is*
23 *reimbursable under the Medi-Cal program, if the participant is a*
24 *Medi-Cal beneficiary and the treatment is a covered benefit under*
25 *the Medi-Cal program. If treatment services provided to a*
26 *participant during the program are not reimbursable under the*
27 *Medi-Cal program or through the participant’s personal health*
28 *care coverage, funds allocated to the state from the 2021 Multistate*
29 *Opioid Settlement Agreement, subject to an appropriation by the*
30 *Legislature, may be used to reimburse those treatment services to*
31 *the extent consistent with the terms of the Settlement Agreement*
32 *and the Final Judgment (People v. McKinsey & Co. (Alameda*
33 *County Superior Court, No. RG21087649, Feb. 4, 2021)).*

34 ~~(10) An outcomes assessment is completed by an independent~~
35 ~~evaluator.~~

36 (11) The county collects and monitors all of the following data
37 for participants in the program:

38 (A) The participant’s demographic information, including age,
39 gender, race, ethnicity, marital status, familial status, and
40 employment status.

1 (B) The participant’s criminal history.

2 (C) The participant’s risk level, as determined by the ~~risk and~~
3 ~~needs risk, needs, and psychological~~ assessment.

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

6 (E) The participant’s outcome at the time of program
7 completion, six months after completion, and one year after
8 completion, including subsequent arrests and convictions.

9 (12) The county reports all of the following information annually
10 to the ~~Legislature, Department of Corrections and Rehabilitation~~
11 ~~and the State Department of Health Care Services and~~, in
12 compliance with Section 9795 of the Government ~~Code: Code~~, to
13 the Legislature, precluding any personally identifiable information
14 of participants:

15 (A) The ~~risk and needs risk, needs, and psychological~~
16 assessment tool used for the program.

17 (B) The curriculum used by each program.

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

20 (D) Individual data on the number of participants participating
21 in the program.

22 (E) Individual data for the items described in paragraph (11).

23 (F) A ~~one-, three-, and five-year~~ *one- and three-year* evaluation
24 of the number of subsequent arrests and convictions of the
25 participants.

26 (b) (1) Eligible drug-motivated crimes shall include any felony
27 crime other than the following:

28 (A) Sex crimes as defined in subdivision (c) of Section 290.

29 (B) “Serious” felonies as defined in subdivision (c) of Section
30 1192.7 or in Section 1192.8.

31 (C) “Violent” felonies as defined in subdivision (c) of Section
32 667.5.

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

36 (c) (1) At the time of sentencing or pronouncement of judgment
37 in which sentencing is imposed, the judge shall offer the defendant
38 voluntary participation in the pilot program, as an alternative to a
39 jail or prison sentence that the judge would otherwise impose,

1 consistent with the other provisions of this section and if all of the
2 following conditions are met:

3 (A) The defendant's crime was caused in whole or in part by
4 the defendant's SUD.

5 (B) The defendant's crime meets the criteria described in
6 subdivision (b).

7 (C) The judge makes their determination based on the
8 recommendations of the treatment providers who conducted the
9 ~~assessment~~ and *assessment*, on a finding by HHSa that the
10 defendant's participation in the program would be ~~appropriate~~.
11 *appropriate, and on the report described in subdivision (d).*

12 (2) The amount of time in the secured residential treatment
13 facility shall be based on the recommendations of the treatment
14 providers who conducted the assessment. The amount of time,
15 combined with any outpatient treatment or "step-down" residential
16 treatment pursuant to the program, shall not exceed the maximum
17 allowable jail or prison time for the drug-motivated crime, and the
18 court shall not place the defendant on probation for the underlying
19 offense.

20 (3) During the period in which an individual is participating in
21 the pilot program, the individual shall be on supervision with the
22 probation department.

23 (d) To assist the court in making the determination pursuant to
24 subdivision (c), a report shall be prepared with input from any of
25 the interested parties, including the district attorney, the attorney
26 for the participant, the probation department, HHSa, and any
27 contracted drug treatment program provider.

28 (e) *If, at any time during the individual's participation in the*
29 *program, it is determined by the treatment providers or program*
30 *administrators that continued participation in the program would*
31 *not be in the best interests of the individual, other participants, or*
32 *the program itself, the treatment providers or program*
33 *administrators may recommend to the court that the individual's*
34 *participation be terminated and that the individual be transferred*
35 *out of the secured residential treatment program.*

36 (e)

37 (f) If the court, based on the recommendations of the treatment
38 ~~providers~~, *providers or program administrators*, determines that
39 the participant should be transferred out of the secured residential
40 treatment phase of the program prior to the end of the original

1 order, the court shall make that subsequent order. After transferring
 2 out of the secured residential treatment facility, the participant
 3 shall continue to be supervised in the program by IHSA and the
 4 probation department for the duration of the sentence. order, and
 5 the participant shall complete the remainder of the original
 6 sentence imposed prior to their consent to enter the program.

7 (g) If, at any time during the individual's participation in the
 8 program, the individual determines that they no longer wish to
 9 participate in the program, the individual may make a request to
 10 the court for termination of their participation and be transferred
 11 out of the secured residential treatment program to complete the
 12 remainder of their originally imposed sentence.

13 (h) If, upon the recommendations of the treatment providers or
 14 program administrators, the court determines that the participant
 15 should be released from the secured residential treatment program
 16 prior to the end of the original order, the court shall make that
 17 subsequent order, and paragraph (8) of subdivision (a) shall apply.

18 ~~(f)~~

19 (i) If the participant successfully completes the court-ordered
 20 drug treatment pursuant to this program, the court shall expunge
 21 the conviction from the participant's record. The court shall also
 22 have discretion to expunge the conviction of any previous drug
 23 possession or drug use crimes on the participant's record, including
 24 those offenses listed in Sections 11350, 11364, 11377, and 11550
 25 of the Health and Safety Code.

26 ~~(g)~~

27 (j) The court shall ensure that the rights of any victim pursuant
 28 to Section 28 of Article I of the California Constitution (Marsy's
 29 Law) are honored before expunging the conviction.

30 ~~(h)~~

31 (k) This section shall remain in effect only until January 1, 2025,
 32 and as of that date is repealed.

33 SEC. 3. The Legislature finds and declares that a special statute
 34 is necessary and that a general statute cannot be made applicable
 35 within the meaning of Section 16 of Article IV of the California
 36 Constitution because of the unique circumstances that the County
 37 of Yolo has experienced with regard to difficulties in treating

- 1 individuals who have been convicted of drug-motivated crimes as
- 2 a result of their substance use disorders.

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