

AMENDED IN SENATE JULY 7, 2021  
AMENDED IN ASSEMBLY APRIL 29, 2021  
AMENDED IN ASSEMBLY MARCH 30, 2021  
CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1542**

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

February 19, 2021

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*An act to amend Section 4019 of, and 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, 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, on a finding by the health and human services agency of the county that the defendant's participation would be appropriate, and on a specified report prepared with input from interested parties. *Under the bill, the defendant would be eligible to receive credits for participation in the program, as specified.*

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

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

23 (4) The participant's treatment, in terms of length and intensity,  
24 within the program is based on the findings of the risk, needs, and  
25 psychological assessment and the recommendations of treatment  
26 providers.

27 (5) The program adopts the Treatment Criteria of ASAM. The  
28 program may take into consideration evolving best practices in  
29 the SUD treatment community.

30 (6) The program has a comprehensive written curriculum that  
31 informs the operations of the program and outlines the treatment  
32 and intervention modalities.

33 (7) A judge determines the length of the treatment program after  
34 being informed by, and based on, the risk, needs, and psychological  
35 assessment and recommendations of treatment providers. After  
36 leaving the secured residential treatment facility, the participant  
37 continues outpatient treatment for a period of time and may also  
38 be referred to a "step-down" residential treatment facility, subject  
39 to the time limit described in paragraph (2) of subdivision (c).

1 (8) The program provides, for each participant successfully  
2 leaving the program, a comprehensive continuum of care plan that  
3 includes recommendations for outpatient care, counseling, housing  
4 recommendations, and other vital components of successful  
5 recovery.

6 (9) To the extent permitted under federal and state law, treatment  
7 provided to a participant during the program is reimbursable under  
8 the Medi-Cal program, if the participant is a Medi-Cal beneficiary  
9 and the treatment is a covered benefit under the Medi-Cal program.  
10 If treatment services provided to a participant during the program  
11 are not reimbursable under the Medi-Cal program or through the  
12 participant's personal health care coverage, funds allocated to the  
13 state from the 2021 Multistate Opioid Settlement Agreement,  
14 subject to an appropriation by the Legislature, may be used to  
15 reimburse those treatment services to the extent consistent with  
16 the terms of the Settlement Agreement and the Final Judgment  
17 (People v. McKinsey & Co. (Alameda County Superior Court,  
18 No. RG21087649, Feb. 4, 2021)).

19 (10) An outcomes assessment is completed by an independent  
20 evaluator.

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

23 (A) The participant's demographic information, including age,  
24 gender, race, ethnicity, marital status, familial status, and  
25 employment status.

26 (B) The participant's criminal history.

27 (C) The participant's risk level, as determined by the risk, needs,  
28 and psychological assessment.

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

31 (E) The participant's outcome at the time of program  
32 completion, six months after completion, and one year after  
33 completion, including subsequent arrests and convictions.

34 (12) The county reports all of the following information annually  
35 to the Department of Corrections and Rehabilitation and the State  
36 Department of Health Care Services and, in compliance with  
37 Section 9795 of the Government Code, to the Legislature,  
38 ~~precluding~~ *excluding* any personally identifiable information of  
39 participants:

- 1 (A) The risk, needs, and psychological assessment tool used for  
2 the program.
- 3 (B) The curriculum used by each program.
- 4 (C) The number of participants with a program length other  
5 than one year and the alternative program lengths used.
- 6 (D) Individual data on the number of participants participating  
7 in the program.
- 8 (E) Individual data for the items described in paragraph (11).
- 9 (F) A one- and three-year evaluation of the number of  
10 subsequent arrests and convictions of the participants.
- 11 (b) (1) Eligible drug-motivated crimes shall include any felony  
12 crime other than the following:
- 13 (A) Sex crimes as defined in subdivision (c) of Section 290.
- 14 (B) “Serious” felonies as defined in subdivision (c) of Section  
15 1192.7 or in Section 1192.8.
- 16 (C) “Violent” felonies as defined in subdivision (c) of Section  
17 667.5.
- 18 (2) Notwithstanding paragraph (1), a “nonviolent drug  
19 possession offense” specified in subdivision (a) of Section 1210  
20 may not be diverted pursuant to this program.
- 21 (c) (1) At the time of sentencing or pronouncement of judgment  
22 in which sentencing is imposed, the judge shall offer the defendant  
23 voluntary participation in the pilot program, as an alternative to a  
24 jail or prison sentence that the judge would otherwise impose,  
25 consistent with the other provisions of this section and if all of the  
26 following conditions are met:
- 27 (A) The defendant’s crime was caused in whole or in part by  
28 the defendant’s SUD.
- 29 (B) The defendant’s crime meets the criteria described in  
30 subdivision (b).
- 31 (C) The judge makes their determination based on the  
32 recommendations of the treatment providers who conducted the  
33 assessment, on a finding by HHSa that the defendant’s  
34 participation in the program would be appropriate, and on the  
35 report described in subdivision (d).
- 36 (2) The amount of time in the secured residential treatment  
37 facility shall be ~~based on~~ *determined by* the recommendations of  
38 the treatment providers who conducted the assessment. The amount  
39 of time, combined with any outpatient treatment or “step-down”  
40 residential treatment pursuant to the program, shall not exceed the

1 ~~maximum allowable jail or prison time for the drug-motivated~~  
2 ~~crime, and the term of imprisonment to which the defendant would~~  
3 ~~otherwise be sentenced, not including any additional term of~~  
4 ~~imprisonment for enhancements, for the drug-motivated crime.~~  
5 *The court shall not place the defendant on probation for the*  
6 *underlying offense. The defendant shall be eligible to receive*  
7 *credits pursuant to Section 4019.*

8 (3) During the period in which an individual is participating in  
9 the pilot program, the individual shall be on supervision with the  
10 probation department.

11 (d) To assist the court in making the determination *as to whether*  
12 *to offer the defendant placement in the secured residential*  
13 *treatment program* pursuant to subdivision (c), a report shall be  
14 prepared with input from any of the interested parties, including  
15 the district attorney, the attorney for the participant, the probation  
16 department, HHSA, and any contracted drug treatment program  
17 provider.

18 (e) If, at any time during the individual's participation in the  
19 program, it is determined by the treatment providers or program  
20 administrators that continued participation in the program would  
21 not be in the best interests of the individual, other participants, or  
22 the program itself, the treatment providers or program  
23 administrators may recommend to the court that the individual's  
24 participation be terminated and that the individual be transferred  
25 out of the secured residential treatment program.

26 (f) If the court, based on the recommendations of the treatment  
27 providers or program administrators, determines that the participant  
28 should be transferred out of the secured residential treatment phase  
29 of the program prior to the end of the original order, the court shall  
30 make that subsequent order, and the participant shall complete the  
31 remainder of the original sentence imposed prior to their consent  
32 to enter the program.

33 (g) If, at any time during the individual's participation in the  
34 program, the individual determines that they no longer wish to  
35 participate in the program, the individual may make a request to  
36 the court for termination of their participation and be transferred  
37 out of the secured residential treatment program to complete the  
38 remainder of their originally imposed ~~sentence~~. *sentence after*  
39 *accounting for any credits to which the individual is entitled*  
40 *pursuant to Section 4019.*

1 (h) ~~If, upon the recommendations of the treatment providers or~~  
2 ~~program administrators, the court determines that the participant~~  
3 ~~should be released from the secured residential treatment program~~  
4 ~~prior to the end of the original order, *If the treatment providers*~~  
5 ~~*make a recommendation to the court that the participant should*~~  
6 ~~*be released prior to the end of the original order based on the*~~  
7 ~~*treatment providers' assessment that the participant no longer*~~  
8 ~~*needs to be in the secured residential treatment program, the court*~~  
9 ~~shall make that subsequent order, and paragraph (8) of subdivision~~  
10 (a) shall apply.

11 (i) If the participant successfully completes the court-ordered  
12 drug treatment pursuant to this program, the court shall expunge  
13 the conviction from the participant's record. The court shall also  
14 have discretion to expunge the conviction of any previous drug  
15 possession or drug use crimes on the participant's record, including  
16 those offenses listed in Sections 11350, 11364, 11377, and 11550  
17 of the Health and Safety Code. *A participant's successful*  
18 *completion of treatment shall be determined by the treatment*  
19 *providers and does not require the participant to complete the*  
20 *duration of the treatment originally ordered by the court.*

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

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

26 *SEC. 3. Section 4019 of the Penal Code, as amended by Section*  
27 *3 of Chapter 44 of the Statutes of 2019, is amended to read:*

28 4019. (a) This section applies in all of the following cases:

29 (1) When a prisoner is confined in or committed to a county  
30 jail, industrial farm, or road camp or a city jail, industrial farm, or  
31 road camp, including all days of custody from the date of arrest  
32 to the date when the sentence commences, under a judgment of  
33 imprisonment or of a fine and imprisonment until the fine is paid  
34 in a criminal action or proceeding.

35 (2) When a prisoner is confined in or committed to a county  
36 jail, industrial farm, or road camp or a city jail, industrial farm, or  
37 road camp as a condition of probation after suspension of  
38 imposition of a sentence or suspension of execution of sentence  
39 in a criminal action or proceeding.

1 (3) When a prisoner is confined in or committed to a county  
2 jail, industrial farm, or road camp or a city jail, industrial farm, or  
3 road camp for a definite period of time for contempt pursuant to  
4 a proceeding other than a criminal action or proceeding.

5 (4) When a prisoner is confined in a county jail, industrial farm,  
6 or road camp or a city jail, industrial farm, or road camp following  
7 arrest and prior to the imposition of sentence for a felony  
8 conviction.

9 (5) When a prisoner is confined in a county jail, industrial farm,  
10 or road camp or a city jail, industrial farm, or road camp as part  
11 of custodial sanction imposed following a violation of postrelease  
12 community supervision or parole.

13 (6) When a prisoner is confined in a county jail, industrial farm,  
14 or road camp or a city jail, industrial farm, or road camp as a result  
15 of a sentence imposed pursuant to subdivision (h) of Section 1170.

16 (7) When a prisoner participates in a program pursuant to  
17 Section 1203.016 or Section 4024.2. Except for prisoners who  
18 have already been deemed eligible to receive credits for  
19 participation in a program pursuant to Section 1203.016 prior to  
20 January 1, 2015, this paragraph shall apply prospectively.

21 (8) *When a prisoner participates in a treatment program*  
22 *pursuant to Section 1203.44.*

23 ~~(8)~~

24 (9) When a prisoner is confined in or committed to a county jail  
25 treatment facility, as defined in Section 1369.1, in proceedings  
26 pursuant to Chapter 6 (commencing with Section 1367) of Title  
27 10 of Part 2.

28 (b) Subject to subdivision (d), for each four-day period in which  
29 a prisoner is confined in or committed to a facility as specified in  
30 this section, one day shall be deducted from the prisoner's period  
31 of confinement unless it appears by the record that the prisoner  
32 has refused to satisfactorily perform labor as assigned by the  
33 sheriff, chief of police, or superintendent of an industrial farm or  
34 road camp.

35 (c) For each four-day period in which a prisoner is confined in  
36 or committed to a facility as specified in this section, one day shall  
37 be deducted from the prisoner's period of confinement unless it  
38 appears by the record that the prisoner has not satisfactorily  
39 complied with the reasonable rules and regulations established by

1 the sheriff, chief of police, or superintendent of an industrial farm  
2 or road camp.

3 (d) This section does not require the sheriff, chief of police, or  
4 superintendent of an industrial farm or road camp to assign labor  
5 to a prisoner if it appears from the record that the prisoner has  
6 refused to satisfactorily perform labor as assigned or that the  
7 prisoner has not satisfactorily complied with the reasonable rules  
8 and regulations of the sheriff, chief of police, or superintendent of  
9 an industrial farm or road camp.

10 (e) A deduction shall not be made under this section unless the  
11 person is committed for a period of four days or longer.

12 (f) It is the intent of the Legislature that if all days are earned  
13 under this section, a term of four days will be deemed to have been  
14 served for every two days spent in actual custody.

15 (g) The changes in this section as enacted by the act that added  
16 this subdivision shall apply to prisoners who are confined to a  
17 county jail, city jail, industrial farm, or road camp for a crime  
18 committed on or after the effective date of that act.

19 (h) The changes to this section enacted by the act that added  
20 this subdivision shall apply prospectively and shall apply to  
21 prisoners who are confined to a county jail, city jail, industrial  
22 farm, or road camp for a crime committed on or after October 1,  
23 2011. Any days earned by a prisoner prior to October 1, 2011,  
24 shall be calculated at the rate required by the prior law.

25 (i) (1) This section shall not apply, and no credits may be  
26 earned, for periods of flash incarceration imposed pursuant to  
27 Section 3000.08 or 3454.

28 (2) Credits earned pursuant to this section for a period of flash  
29 incarceration pursuant to Section 1203.35 shall, if the person's  
30 probation or mandatory supervision is revoked, count towards the  
31 term to be served.

32 (j) This section shall remain in effect only until January 1, 2023,  
33 and as of that date is repealed, unless a later enacted statute, that  
34 is enacted before January 1, 2023, deletes or extends that date.

35 *SEC. 4. Section 4019 of the Penal Code, as amended by Section*  
36 *4 of Chapter 44 of the Statutes of 2019, is amended to read:*

37 4019. (a) This section applies in all of the following cases:

38 (1) When a prisoner is confined in or committed to a county  
39 jail, industrial farm, or road camp or a city jail, industrial farm, or  
40 road camp, including all days of custody from the date of arrest

1 to the date when the sentence commences, under a judgment of  
2 imprisonment or of a fine and imprisonment until the fine is paid  
3 in a criminal action or proceeding.

4 (2) When a prisoner is confined in or committed to a county  
5 jail, industrial farm, or road camp or a city jail, industrial farm, or  
6 road camp as a condition of probation after suspension of  
7 imposition of a sentence or suspension of execution of sentence  
8 in a criminal action or proceeding.

9 (3) When a prisoner is confined in or committed to a county  
10 jail, industrial farm, or road camp or a city jail, industrial farm, or  
11 road camp for a definite period of time for contempt pursuant to  
12 a proceeding other than a criminal action or proceeding.

13 (4) When a prisoner is confined in a county jail, industrial farm,  
14 or road camp or a city jail, industrial farm, or road camp following  
15 arrest and prior to the imposition of sentence for a felony  
16 conviction.

17 (5) When a prisoner is confined in a county jail, industrial farm,  
18 or road camp or a city jail, industrial farm, or road camp as part  
19 of custodial sanction imposed following a violation of postrelease  
20 community supervision or parole.

21 (6) When a prisoner is confined in a county jail, industrial farm,  
22 or road camp or a city jail, industrial farm, or road camp as a result  
23 of a sentence imposed pursuant to subdivision (h) of Section 1170.

24 (7) When a prisoner participates in a program pursuant to  
25 Section 1203.016 or Section 4024.2. Except for prisoners who  
26 have already been deemed eligible to receive credits for  
27 participation in a program pursuant to Section 1203.016 prior to  
28 January 1, 2015, this paragraph shall apply prospectively.

29 (8) *When a prisoner participates in a treatment program*  
30 *pursuant to Section 1203.44.*

31 ~~(8)~~

32 (9) When a prisoner is confined in or committed to a county jail  
33 treatment facility, as defined in Section 1369.1, in proceedings  
34 pursuant to Chapter 6 (commencing with Section 1367) of Title  
35 10 of Part 2.

36 (b) Subject to subdivision (d), for each four-day period in which  
37 a prisoner is confined in or committed to a facility as specified in  
38 this section, one day shall be deducted from the prisoner's period  
39 of confinement unless it appears by the record that the prisoner  
40 has refused to satisfactorily perform labor as assigned by the

1 sheriff, chief of police, or superintendent of an industrial farm or  
2 road camp.

3 (c) For each four-day period in which a prisoner is confined in  
4 or committed to a facility as specified in this section, one day shall  
5 be deducted from the prisoner’s period of confinement unless it  
6 appears by the record that the prisoner has not satisfactorily  
7 complied with the reasonable rules and regulations established by  
8 the sheriff, chief of police, or superintendent of an industrial farm  
9 or road camp.

10 (d) This section does not require the sheriff, chief of police, or  
11 superintendent of an industrial farm or road camp to assign labor  
12 to a prisoner if it appears from the record that the prisoner has  
13 refused to satisfactorily perform labor as assigned or that the  
14 prisoner has not satisfactorily complied with the reasonable rules  
15 and regulations of the sheriff, chief of police, or superintendent of  
16 an industrial farm or road camp.

17 (e) A deduction shall not be made under this section unless the  
18 person is committed for a period of four days or longer.

19 (f) It is the intent of the Legislature that if all days are earned  
20 under this section, a term of four days will be deemed to have been  
21 served for every two days spent in actual custody.

22 (g) The changes in this section as enacted by the act that added  
23 this subdivision shall apply to prisoners who are confined to a  
24 county jail, city jail, industrial farm, or road camp for a crime  
25 committed on or after the effective date of that act.

26 (h) The changes to this section enacted by the act that added  
27 this subdivision shall apply prospectively and shall apply to  
28 prisoners who are confined to a county jail, city jail, industrial  
29 farm, or road camp for a crime committed on or after October 1,  
30 2011. Any days earned by a prisoner prior to October 1, 2011,  
31 shall be calculated at the rate required by the prior law.

32 (i) This section shall not apply, and no credits may be earned,  
33 for periods of flash incarceration imposed pursuant to Section  
34 3000.08 or 3454.

35 (j) This section shall become operative on January 1, 2023.

36 ~~SEC. 3.~~

37 *SEC. 5.* The Legislature finds and declares that a special statute  
38 is necessary and that a general statute cannot be made applicable  
39 within the meaning of Section 16 of Article IV of the California  
40 Constitution because of the unique circumstances that the County

1 of Yolo has experienced with regard to difficulties in treating  
2 individuals who have been convicted of drug-motivated crimes as  
3 a result of their substance use disorders.

O