

Date of Hearing: June 27, 2023
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SB 46 (Roth) – As Amended May 18, 2023

As Proposed to be Amended in Committee

SUMMARY: Requires the county drug program administrator and representatives of the court, with input from the county probation department and substance use treatment providers, to design and implement an approval and renewal process for controlled substance education or treatment. Specifically, **this bill:**

- 1) Requires a person convicted of a controlled substance offense, for which they are granted probation, to complete successfully an approved controlled substance education or treatment program, as specified, as opposed to requiring that person to secure education and treatment from a local community agency.
- 2) Defines “complete successfully” as completing the prescribed course of controlled substance education or treatment as recommended by the treatment provider and ordered by the court.
- 3) Provides that “complete successfully” shall not require cessation of narcotic replacement therapy.
- 4) Removes from the definition of “successful completion of treatment” the requirement that “there is reasonable cause to believe that the defendant will not abuse controlled substances in the future.”
- 5) Requires the court, when referring a person to substance education or treatment program, to determine the defendant’s ability to pay and to develop a sliding fee schedule for the program based on the defendant’s ability to pay, which may relieve a person from paying for the program if they meet specified criteria.
- 6) Requires the county drug program administrator and representatives of the court, with input from the county probation department and substance use treatment providers, to design and implement an approval and renewal process for controlled substance education or treatment programs.
- 7) Requires the court or the probation department to refer defendants only to controlled substance education or treatment programs that follow specified standards.
- 8) Requires the controlled substance education and treatment program to be based on the best available current science and evidence and provide education resources on the pathology of addiction and existing treatment modalities.

- 9) Requires controlled substance education or treatment programs to include education about how the use of controlled substances affects the body and brain, factors that contribute to physical dependence, how to recognize and respond to the signs of drug overdose, and the dangers of using controlled substances unless under appropriate medical supervision.
- 10) Requires the education to be culturally and linguistically appropriate.
- 11) Provides that the education may include, without limitation, informing program participants about the physical and mental health risks associated with substance use disorders, the grave health risk to those who are exposed to controlled substances, and the extreme danger to human life when manufactured or distributed.
- 12) Requires the court to recommend in writing that a defendant convicted of a felony for a controlled substance offense, for which the defendant is sentenced to state prison, participate in a controlled substance education or treatment program while imprisoned.
- 13) Requires the court to recommend in writing that a defendant convicted of a felony for a controlled substance offense, for which the defendant is sentenced to county jail but for which the court has not ordered suspension of the execution of the term of imprisonment, participate in a controlled substance education or treatment program while imprisoned.
- 14) States that the goal of controlled substance education or treatment is to save lives and reduce the risks associated with drug use, including the manufacture and distribution of controlled substances, and to reduce the recidivism that occurs from the use of controlled substances.
- 15) Removes the requirement that, when a minor is granted probation for a controlled substance offense, the court order the juvenile's parents or guardian to participate in the education and treatment to the extent the court determines that participation will aid the education or treatment of the minor.
- 16) Removes the requirement that, when a minor is found by a juvenile court to have been in possession of any controlled substance, the juvenile court order the minor to receive education or treatment from a local community agency designated by the court, if the services is available and the minor is likely to benefit from the service.

EXISTING LAW:

- 1) Requires the trial court, whenever a person is granted probation after conviction for a violation of a controlled substance offense, to order as a condition of probation that the person secure education or treatment from a local community agency designated by the court, if the service is available and the person is likely to benefit from the service. (Health & Saf. Code, §11373, subd. (a).)
- 2) Requires the trial court, when the defendant granted probation is a minor, to order their parents or guardian to participate in the education or treatment to the extent the court determines that participation will aid the education or treatment of the minor. (Health & Saf. Code, §11373, subd. (a).)

- 3) Provides that the willful failure to complete a court ordered education or treatment program shall be a circumstance in aggravation for purposes of sentencing for any subsequent prosecution for specified controlled substance offenses. (Health & Saf. Code, §11373, subd. (b).)
- 4) Provides that the failure to complete an education or treatment program because of the person's inability to pay the costs of the program or because of the unavailability to the defendant of appropriate programs is not a willful failure to complete the program. (Health & Saf. Code, §11373, subd. (b).)
- 5) Provides that a person who possesses a controlled substance, as specified, without a written prescription from a licensed physician, dentist, podiatrist, or veterinarian shall be imprisoned in a county jail for not more than one year. (Health & Saf. Code, § 11350, subd. (a).)
- 6) Provides that a court may not deny a defendant probation because of their inability to pay the fine for specified controlled substance offenses. (Health & Saf. Code, § 11350, subd. (b).)
- 7) Provides that it is unlawful for a person other than the prescription holder to possess a controlled substances if both of the following apply:
 - a) The possession of the controlled substance is at the direction or with the express authorization of the prescription holder; and,
 - b) The sole intent of the possessor is to deliver the prescription to the prescription holder for its prescribed use or to discard the substance in a lawful manner. (Health & Saf. Code, § 11350, subd. (d)(1)-(2).)
- 8) Prohibits the use of a controlled substance by a person other than the prescription holder or permit the distribution or sale of a controlled substance that is otherwise inconsistent with the prescription. (Health & Saf. Code, § 11350, subd. (e).)
- 9) Provides that it is unlawful to visit or to be in any room or place where any controlled substances are being unlawfully smoked or used with knowledge that such activity is occurring. (Health & Saf. Code, § 11365, subd. (a).)
- 10) Provides that every person who opens or maintains any place for the purpose of unlawfully selling, giving away, or using any controlled substance shall be punished by imprisonment in the county jail for a period of not more than one year or the state prison. (Health & Saf. Code, § 11366.)
- 11) Provides that a person who possesses, uses, or controls a false compartment with the intent to store, conceal, smuggle, or transport a controlled substance within the false compartment shall be punished by imprisonment in a county jail for a term of imprisonment not to exceed one year. (Health & Saf. Code, § 11366.8, subd. (a).)
- 12) Provides that every person who forges or alters a prescription or who issues or utters an altered prescription, or who issues or utters a prescription bearing a forged or fictitious signature for any narcotic drug, shall be punished by imprisonment in the county jail for not less than six months nor more than one year, or in the state prison. (Health & Saf. Code, §

11368.)

- 13) Provides that a person who obtains or has possession of any narcotic drug secured by a forged, fictitious, or altered prescription shall be punished by imprisonment in county jail for not less than six months nor more than one year, or in the state prison. (Health & Saf. Code, § 11368.)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the author, “In 2021, more than 71,000 people died from synthetic opioid-related drug overdose in the United States according to provisional data from the Centers for Disease Control and Prevention (CDC). Recent data suggests that number continues to increase each year. Similarly, based on preliminary 2021 data from the California Department of Health, there were 6,843 opioid-related overdose deaths in California; 5,722 of which were related to fentanyl.

“Without better education and treatment programs, our communities will lack the tools they need if they are to positively impact individuals battling substance use disorders. Similarly, we need to educate those selling drugs as well, since often times these folks unknowingly distribute drugs containing fentanyl. Now more than ever, the state must adopt the policies necessary to support the rehabilitation of those suffering from this epidemic. If we as a state are serious about the commitment to correct and rehabilitate, specific and intentional education and treatment must be required to reduce recidivism and ensure long term success. The ambiguity in existing law creates barriers for probationers and divertees at a time when clarity and structure is most imperative. SB 46 is a crucial step forward if we are to meet those objectives and save more lives.”

- 2) **Drug Overdose Rates in California:** Following the nationwide trend, opioid related overdoses in California have risen dramatically over the last decade. In 2018, emergency room visits related to any opioid overdose totaled 8,832, and opioid related overdose deaths totaled 2,428. (CDPH, Injury and Violent Prevention (IVP) Branch, Overdose Prevention Initiative (OPI) <<https://www.cdph.ca.gov/Programs/CCDCPHP/DCDIC/SACB/Pages/PrescriptionDrugOverdoseProgram.aspx>> [last visited Mar. 7, 2022.]) (“OPI”).) Two years later, those numbers had roughly doubled, with 16,537 emergency room visits related to opioid overdoses and 5,502 deaths related to opioid overdose in 2020. (CDPH, California Overdose Surveillance Dashboard <<https://skylab.cdph.ca.gov/ODdash/>> [last visited Mar. 7, 2022].) A significant contributor to this increase is fentanyl, a synthetic opioid used to treat severe pain. Between 2012 and 2018, fentanyl overdose deaths increased by more than 800%—from 82 to 786. (OPI, *supra*.) In 2020, there were 3,946 deaths related to fentanyl overdoses. That number increased to 5,961 in 2021. (CDPH, California Overdose Surveillance Dashboard, *supra*.) Overdose rates related to other controlled substances have increased as well. (Ibid.)
- 3) **Probation for Drug Offenses:** Current law requires a trial court to order a person granted probation subsequent to a conviction for any controlled substance offense to secure education or treatment in a local community agency. (Health & Saf. Code, § 11373, subd. (a).) Under Proposition 36, any person convicted of a nonviolent drug possession offense must be

granted probation, unless otherwise precluded by law. (Pen. Code, § 1210.1, subd. (a).) A person convicted of drug trafficking may be granted probation if the trial court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, and that person is not otherwise precluded by law from receiving probation. (Pen. Code, § 1203, subd. (b)(3).)

- 4) **Changes to Existing Law:** This bill makes a number of changes to existing law. First, this bill requires the defendant to complete successfully, rather than to simply secure, an education or treatment program and would eliminate language regarding whether the defendant is likely to benefit from the service. This bill defines “complete successfully” to mean that a defendant who has had controlled substance education or treatment imposed as a condition of probation has completed the prescribed course of controlled substance education or treatment as recommended by the treatment provider and ordered by the court, and specifies that completion of education or treatment does not require cessation of narcotic replacement therapy.

This bill additionally requires a controlled substance education and treatment program to be based on the best available current science and evidence and provide educational resources on the pathology of addiction and existing treatment modalities. It requires the court to refer defendants only to education or treatment programs that include specified controlled substance education standards, including education about how drugs affect the body and brain, factors that contribute to physical dependence, how to recognize and respond to the signs of drug overdose, and the dangers of using controlled substances, unless under appropriate medical supervision, and requires such education to be culturally and linguistically appropriate.

This bill also amends the current definition of “successful completion of treatment” to remove the following language: “and, as a result, reasonable cause to believe that the defendant will not abuse controlled substances in the future.”

- 5) **Argument in Support:** According to the *California District Attorneys Association*, “The Nation, including California, is facing a major overdose epidemic, mostly driven by the dangerous opioid fentanyl. Indeed, fentanyl was the number one cause of death last year for people ages 18-45, outpacing suicides and COVID-19. While current law requires probationers and diverted individuals to complete education and treatment programs, the definition and scope of these programs are vague and undefined, leaving many probationers and diverted individuals without much help, education, or treatment options. SB 46 would provide probationers and diverted individuals with access to treatment programs adhering to specified standards and provide much-needed education about the extreme dangers of controlled substances, including fentanyl.”

6) **Related Legislation:**

- a) AB 697 (Davies), would establish the Drug Court Success Incentives Pilot Program, which would authorize the Counties of Sacramento, San Diego, and Solano to offer up to \$500 per month of supportive services to adult defendants who participate in the county’s drug court to encourage participation in, and successful completion of, drug court. AB 697 was held in the Assembly Appropriations Committee in the Suspense File.

- b) AB 890 (Joe Patterson), would require a court to order a defendant who is granted probation for specified drug offenses involving fentanyl and other specified opiates to complete a fentanyl and synthetic opiate education program. Requires the California Department of Public Health to approve, oversee, and develop statewide standards for the education program. AB 890 is pending hearing in the Senate Public Safety Committee.
- c) AB 1186 (Bonta), would remove the requirement that a minor ordered by the juvenile court to complete a sex offender treatment program must pay the reasonable costs of the program and provides that the minor or the minor's parent or guardian shall not be responsible for the cost of the program. AB 1186 is pending hearing in the Senate Public Safety Committee.
- d) AB 1360 (McCarty), would authorize the Counties of San Joaquin, Santa Clara, and Yolo to establish pilot programs to offer secured residential treatment for qualifying individuals suffering from substance use disorders (SUDs) who have been convicted of drug-motivated felony crimes. AB 1360 is pending hearing in the Senate Public Safety Committee.

7) Prior Legislation:

- a) SB 904 (Bates), of the 2021-2022 Legislative Session, was nearly identical to this bill. SB 904 was held in the Assembly Appropriations Committee in the Suspense File.
- b) AB 1750 (Davies), would have required probation departments to design and implement approval and renewal processes for controlled substance education or treatment programs, and would require those programs to include education about the dangers of controlled substances. AB 1750 was held in the Assembly Appropriations Committee in the Suspense File.
- c) AB 1928 (McCarty), would have authorized the Counties of San Joaquin, Santa Clara, and Yolo to establish pilot programs to offer secured residential treatment for qualifying individuals suffering from substance use disorders who have been convicted of drug-motivated felony crimes. AB 1928 was held in the Assembly Appropriations Committee in the Suspense File.
- d) AB 644 (Waldron), Chapter 59, Statutes of 2021, changed the existing requirement for the California MAT Re-Entry Incentive Program that a person participate in an institutional substance abuse program in order to be eligible for a reduction to the period of parole to a requirement that the person has been enrolled or participated in a post-release substance abuse program.
- e) AB 653 (Waldron), Chapter 745, Statutes of 2021, established the MAT Grant Program, in order for the Board of State and Community Corrections to award grants to counties for purposes relating to the treatment of substance use disorders and the provision of medication-assisted treatment.
- f) AB 1304 (Waldron), Chapter 325, Statutes of 2020, required a person to participate in a post-release substance abuse program rather than an institutional substance abuse program in order to be eligible for a 30-day reduction to the period of parole for every six

months of treatment that is not ordered by the court, up to a maximum 90-day reduction.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California District Attorneys Association
California Police Chiefs Association
California Reserve Peace Officers Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Inglewood Police Officers Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Pacific Juvenile Defender Center
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside County District Attorney
Riverside Police Officers Association
Riverside Sheriffs' Association
San Diego County District Attorney's Office
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

None submitted

Analysis Prepared by: Andrew Ironside / PUB. S. / (916) 319-3744