
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: SB 904 **Hearing Date:** April 5, 2022
Author: Bates
Version: March 23, 2022
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Controlled substances: treatment*

HISTORY

Source: Riverside County District Attorney's Office
San Diego County District Attorney's Office

Prior Legislation: None

Support: California District Attorneys Association; Crime Victims United; Orange County District Attorney's Office

Opposition: ACLU California Action; California Attorneys for Criminal Justice; California Public Defenders Association; County Behavioral Health Directors Association; Drug Policy Alliance; Pacific Juvenile Defender Center

PURPOSE

The purpose of this bill is to: 1) require a person convicted of a drug offense and who is granted probation to successfully complete a controlled substance education or treatment program; 2) outline standards for these programs, such as the inclusion of information on the dangers of controlled substances; and 3) require education and treatment for drug diversion to include information on the dangers of controlled substances.

Existing law requires, whenever any person who is otherwise eligible for probation is granted probation by the trial court after conviction for a violation of any controlled substance offense, the trial court, as a condition of probation, to order that person to 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).)

Existing law requires the trial court, if the defendant is a minor, to also order his or her 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).)

Existing law requires the juvenile court, if a minor is found to have been in possession of any controlled substance, in addition to any other order it may make, to order the minor to receive 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. Requires the court to also order the minor's 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).)

Existing law requires the county drug program administrator in each county, in consultation with representatives of the court and the county probation department, to establish minimum requirements, criteria, and fees for the successful completion of drug diversion programs. Requires these minimum requirements to include, but not be limited to an initial assessment of each divertee, a minimum of 20 hours of education or counseling or a combination of both for each divertee, an exit conference reflecting the divertee's progress of their participation in the program, and fee exemptions for persons who cannot afford to pay. (Pen. Code, § 1211, subd. (a).)

This bill requires, when a person who is otherwise eligible for probation is granted probation by the trial court after conviction for a violation of any controlled substance offense, the trial court, as a condition of probation, to order that person to complete successfully an approved controlled substance education or treatment program, as specified, or if none is available, from a local community agency designated by the court. Removes language in existing law regarding the likelihood the person will benefit from the service.

This bill requires the juvenile court to order a minor who has been found by the court to have been in possession of any controlled substance to complete successfully an approved controlled substance education or treatment program as specified, or if none is available, from a local community agency designated by the court. Removes language in existing law regarding the likelihood the minor will benefit from the service.

This bill requires the court to refer defendants only to education or treatment programs that include specified controlled substance education standards which may include, but are not limited to, lectures, classes, group discussions, and counseling. Requires the county drug program administrator and representatives of the court and county probation department, with input from substance use treatment providers, to design and implement an approval and renewal process for controlled substance education or treatment programs.

This bill provides that the goal of a controlled substance education or treatment program is to stop controlled substance abuse, including the manufacture and distribution of controlled substances, to reduce the recidivism that occurs from the use of controlled substances, and, ultimately, to save lives. Requires a controlled substance education or treatment program to include education about the dangers of using controlled substances, unless under appropriate medical supervision. Provides that such education may include, but is not limited to, 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.

This bill requires a court, upon conviction of any felony in which the defendant is sentenced to state prison for a violation of any controlled substance offense, in addition to any other terms of imprisonment, fine, and conditions, to recommend in writing that the defendant participate in a controlled substance education or treatment program that complies with the standards outlined above.

This bill requires that the 20 hours of education or counseling that a divertee receive include education about the dangers of controlled substances unless under appropriate medical

supervision. Provides that this education may include, but is not limited to, 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 controlled substances are manufactured and distributed.

COMMENTS

1. Need for This Bill

According to the author:

California is facing a major overdose epidemic. According to the National Center for Drug Abuse Statistics, California experienced an annual rate increase of 10.37% in overdose deaths over the last three years. For the year 2020, the California Department of Public Health reported 5,502 deaths related to opioid overdoses, 3,946 deaths related to fentanyl overdoses, and 16,537 emergency department (ED) visits related to opioid overdoses.

More needs to be done to ensure proper treatment and education for individuals battling substance abuse disorders. While current law requires probationers and divertees to complete education and treatment programs, the definition and scope of these programs are vague and undefined. This ambiguity leaves many probationers and divertees without much help or education or treatment options, as the lack of clarity in law allows for programs that may be unhelpful and unrelated to substance abuse. Additionally, the law does not currently require the courts to recommend similar substance abuse education programs to inmates who are incarcerated for related substance abuse offenses.

Section 11373 of the Health and Safety Code currently states that, whenever any person who is granted probation by the trial court after conviction for a violation of any controlled substance offense, the trial court shall, as a condition of probation, order that person to 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. However, this section is vague on what these education programs must specifically entail. This bill would further define the standards of substance abuse educational programs for probationers.

Section 1211 of the Penal Code currently requires a minimum of 20 hours of either effective education or counseling or any combination of both for each divertee in a drug diversion program. However, as seen in Section 11373 of the Health and Safety code, Section 1211 gives no further explanation for what must be specifically included in this program. This bill would apply the same educational standards for divertees as it would for probationers.

Additionally, upon conviction of any felony in which an individual is sentenced to state prison for a violation of any controlled substance offense, this bill would require a court to recommend in writing that the defendant participate in a controlled substance education or treatment program while imprisoned. The substance of this program would align with the standards outlined for probationers and divertees.

2. Probation and Diversion for Drug Offenses

Probation

Under current law, when the court grants probation to a person convicted of any drug offense, it must order the defendant to secure education or treatment from a local community agency designated by the court, if the service is available and the defendant is likely to benefit from the service. If the defendant is a minor, the court must also order the minor's 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. If a minor is found to have been in possession of a controlled substance, the court must order the minor to receive 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. The minor's parents or guardian are also required to participate in the education or treatment to the extent the court determines that participation will aid the education or treatment of the minor. Finally, current law provides that the willful failure to complete a court ordered education or treatment program is an aggravating circumstance for purposes of sentencing for any subsequent prosecution for a violation of specified drug offenses involving a minor. Existing law specifies that the failure to complete an education or treatment program due to an inability to pay the costs of the program or the unavailability of appropriate programs does not constitute a willful failure to complete the program.

This bill would make a number of changes to existing law. First, this bill would require the defendant to *complete successfully* rather than *secure* an education or treatment program and would eliminate language regarding whether the defendant is likely to benefit from the service. Similarly, this bill would require a juvenile court to order a minor who has been found to have been in possession of any controlled substance to *complete successfully* a drug education or treatment program rather than *receive* education or treatment and would eliminate language regarding whether the minor is likely to benefit from the service. This bill would also require the court to refer defendants only to education or treatment programs that include specified controlled substance education standards, including education about the dangers of using controlled substances unless under appropriate medical supervision as well as the physical and mental health risks associated with substance use disorders.

Diversion

Existing law provides that the county drug program administrator in each county, in consultation with representatives of the court and the county probation department, is required to establish minimum requirements, criteria, and fees for the successful completion of drug diversion programs. Specifically, the minimum requirements must include, but are not limited to an initial assessment of each divertee, a minimum of 20 hours of education or counseling or a combination of both for each divertee, an exit conference reflecting the divertee's progress of their participation in the program, and fee exemptions for persons who cannot afford to pay. Current law additionally requires the county drug program administrator to implement a certification procedure for drug diversion programs, and requires the county drug program administrator to recommend programs for approval by the county board of supervisors. A program may only be approved if it meets the standards established by the administrator, which must include, but is not limited to, all of the following: guidelines and criteria for education and treatment services, including standards of services which may include lectures, classes, group discussions, and individual counseling; established and approved supervision, either on a regular or irregular basis, of the person for the purpose of evaluating the person's progress; and a schedule of fees to be charged for services rendered to each person under a county drug program plan, as specified.

This bill would require that the 20 hours of education or counseling that a divertee receives include education about the dangers of controlled substances unless under appropriate medical supervision, and may include 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 controlled substances are manufactured and distributed.

3. Argument in Support

The San Diego County District Attorney's Office, one of the bill's sponsors, writes:

[Senate Bill 904] is needed to clarify current statute to ensure our criminal justice system helps to educate and treat those offenders who are suffering from opioid addiction. In 2019, there were 151 fentanyl-related overdose deaths in San Diego County. According to the San Diego County Medical Examiner's Office, there were 461 fentanyl-related overdose deaths in our county in 2020, triple the number from the year before. We believe this past year the total count will be more than 700 overdose deaths. Addicts suffering from opioid addiction don't realize they are actually ingesting a fatal dose.

Our office is attacking this problem on several fronts. We are working with the San Diego Sheriff's Department, and the San Diego County Police Chiefs and Sheriffs Association to spread awareness about accidental fentanyl deaths. We are using social media as a tool to educate youth and parents that counterfeit pills can be especially deadly. Our office also partnered with the San Diego Health and Human Services Agency to create the San Diego Opioid Project. It is designed to educate and change behavior and ultimately reduce opioid overdose deaths in the County.

However, the Penal Code section of our criminal justice system is silent on the ongoing fentanyl epidemic and has yet to implement innovation solutions to ensure addicts get education and treatment instead of repeatedly cycling through the system until they are found dead from an overdose.

4. Argument in Opposition

According to the County Behavioral Health Directors Association:

Although we understand the intent of the author is to improve the existing requirements for education or treatment for those convicted of a controlled substance offense, this bill imposes additional standards on this education and treatment that are not based on clinical standards nor that have an evidence-base to support the adoption of these proposed standards. Without the evidence demonstrating that these new standards for education and treatment will meet the intended goal to stop controlled substance abuse, CBHDA members are concerned that these standards may stigmatize or have a harmful impact on those suffering from substance use disorders.