
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: AB 1542 **Hearing Date:** June 29, 2021
Author: McCarty
Version: April 29, 2021
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *County of Yolo: Secured Residential Treatment Program*

HISTORY

Source: Yolo County District Attorney's Office

Prior Legislation: AB 2877 (McCarty), 2020, died in Assem. Public Safety Comm.
SB 1004 (Hill), Ch. 865, Stats. 2016

Support: County of Yolo; Coordinating and Assisting Recovery Environments; Fourth and Hope; West Sacramento Chamber of Commerce; Nor-Cal Beverage; 1 private individual

Opposition: American Civil Liberties Union California Action; Anti-Recidivism Coalition; Bend the Arc: Jewish Action SoCal; CalVoices; California Access Coalition; California Association of Alcohol and Drug Program Executives, Inc.; California Association of Mental Health; California Association of Social Rehabilitation Agencies; California Attorneys for Criminal Justice; California Behavioral Health Planning Council; California Consortium of Addiction Programs and Professionals; California Council of Behavioral Health Agencies; California Public Defenders Association; California Society of Addiction Medicine; Californians for Safety and Justice; Californians United for a Responsible Budget; Care First California; County Behavioral Health Directors Association of California; Depression and Bipolar Support Alliance; Dignity and Power Now; Disability Rights California; Drug Policy Alliance; Ella Baker Center for Human Rights; Essie Justice Group; Harm Reduction Coalition; HealthRIGHT 360; Human Impact Partners; Human Rights Watch; Immigrant Legal Resource Center; Inglewood C.H.A.M.P.I.O.N.; Initiate Justice; JusticeLA Coalition; La Defensa; Law Enforcement Action Partnership; Lawyers' Committee for Civil Rights - San Francisco Bay Area; Los Angeles County Public Defenders Union; National Association of Social Workers, California Chapter; Peers Envisioning and Engaging in Recovery Services; People's Budget Orange County; Root & Rebound; San Bernardino Free Them All; San Francisco Public Defender; Silicon Valley De-bug; Stop the Musick Coalition; Students for Reproductive Freedom at UC Davis; Think Dignity; Transforming Justice Orange County; Transitions Clinic Network; Union Station Homeless Services; We the People – San Diego; Yalla Indivisible; Yolo People Power; Young Women's Freedom Center

Assembly Floor Vote:

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PURPOSE

The purpose of this bill is to 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 felony crimes, as specified.

Existing law states that pretrial diversion refers to the procedure of postponing prosecution of an offense filed as a misdemeanor either temporarily or permanently at any point in the judicial process from the point at which the accused is charged until adjudication. (Pen. Code, § 1001.1.)

Existing law authorizes diversion programs for specified crimes (Pen. Code, §§ 1000 et seq. for drug abuse; Pen. Code, § 1001.12 et seq. for child abuse; Pen. Code, §§ 1001.70 et seq. for contributing to the delinquency of another, Pen. Code, §§ 1001.60 et seq. for writing bad checks) and for specific types of offenders (Pen. Code, §§ 1001.80 et seq. for veterans; Pen. Code, §§ 1001.35 et seq. for persons with mental disorders).

Existing law provides that a court may, after considering the positions of the defense and prosecution, grant mental health diversion to a defendant if the defendant meets specified criteria. (Pen. Code, §1001.36, subs. (a)-(b).)

Existing law provides, until January 1, 2022, that the counties of Alameda, Butte, Napa, Nevada, and Santa Clara may establish a pilot program to operate a deferred entry of judgment (DEJ) pilot program for certain eligible, young-adult defendants. (Pen. Code, § 1000.7, subd. (a).)

Existing law states that a defendant may participate in a DEJ pilot program within the county's juvenile hall, for a period no longer than one year in custody, if that person is charged with committing a felony offense, except those specified, pleads guilty to the charge or charges, and the probation department determines that the person meets the specified eligibility requirements. (Pen. Code, § 1000.7, subd. (b).)

Existing law states that court shall grant DEJ in the pilot program if an eligible defendant consents to participate in the program, waives the right to a speedy trial or a speedy preliminary hearing, pleads guilty to the charge or charges, and waives time for the pronouncement of judgment. If the defendant performs satisfactorily during the period in which DEJ was granted, at the end of that period, the court shall dismiss the criminal charge or charge. (Pen. Code, § 1000.7, subs. (e) & (f).)

Existing law provides that any county that participates in the pilot program shall establish a multidisciplinary team that includes representatives from the following to meet periodically to review and discuss the implementation, practices, and impact of the program:

- Probation department;
- District Attorney's office;
- Public Defender's office;
- Courts located in the country;
- County board of supervisors;
- County health and human services department; and,
- A youth advocacy group. (Pen. Code, § 1000.7, subd. (m).)

This bill authorizes the County of Yolo may offer a pilot program, known as the Secured Residential Treatment Program, for individuals suffering from SUDs who have been convicted of drug-motivated felony crimes that qualify pursuant to the criteria and conditions provided.

This bill states that if offered, the pilot program shall align with the resolution adopted by the County of Yolo in 2015 in recognition of the national Stepping Up Initiative, with the goal of ensuring that people with behavioral health conditions receive treatment out of custody wherever possible.

This bill provides that the County of Yolo may offer the pilot program to eligible individuals if the program meets all of the following conditions:

- The county develops the program in consultation with drug treatment service providers and other relevant community partners;
- The Yolo County Health and Human Services Agency (HHSA) ensures that a risk, needs, and psychological assessment, utilizing the Multidimensional Assessment of the American Society of Addiction Medicine (ASAM), as part of the ASAM Criteria, be performed for each individual identified as a candidate for the program;
- The individual, as an alternative to a jail or prison sentence, consents to participate in the program;
- The participant's treatment, in terms of length and intensity, within the program is based on the findings of the risk, needs, and psychological assessment and the recommendations of treatment providers;
- The program adopts the Treatment Criteria of ASAM. The program may take into consideration evolving best practices in the SUD treatment community;
- The program has a comprehensive written curriculum that informs the operations of the program and outlines the treatment and intervention modalities;
- A judge determines the length of the treatment program after being informed by, and based on, the risk, needs, and psychological assessment and recommendations of treatment providers;
- After leaving the secured residential treatment facility, the participant continues outpatient treatment for a period of time and may also be referred to a "step-down" residential treatment facility, provided that the defendant's time in the program shall not exceed the maximum allowable jail or prison time for the drug-motivated crime;
- The program provides, for each participant successfully leaving the program, a comprehensive continuum of care plan that includes recommendations for outpatient care, counseling, housing recommendations, and other vital components of successful recovery;
- To the extent permitted under federal and state law, treatment provided to a participant during the program is reimbursable under Medi-Cal, if the participant is a Medi-Cal beneficiary and the treatment is a covered benefit under Medi-Cal. If treatment is not

reimbursable under Medi-Cal or through the participant's personal health care coverage, funds allocated to the state from the 2021 Multistate Opioid Settlement Agreement, subject to an appropriation by the Legislature, may be used to reimburse those treatment services to the extent consistent with the terms of the Settlement Agreement and the Final Judgment (*People v. McKinsey & Co.* (Alameda County Superior Court, No. RG21087649, Feb. 4, 2021)).

- An outcomes assessment is completed by an independent evaluator;
- The county collects and monitors all of the following data for participants in the program:
 - The participant's demographic information, including age, gender, race, ethnicity, marital status, familial status, and employment status;
 - The participant's criminal history;
 - The participant's risk level, as determined by the risk, needs, and psychological assessment;
 - The treatment provided to the participant during the program, and if the participant completed that treatment; and,
 - The participant's outcome at the time of program completion, six months after completion, and one year after completion, including subsequent arrests and convictions.
- The county reports all of the following information annually to the Department of Corrections and Rehabilitation (CDCR) and the State Department of Health Care Services to the Legislature, precluding any personally identifiable information of participants:
 - The risk, needs, and psychological assessment tool used for the program;
 - The curriculum used by each program;
 - The number of participants with a program length other than one year and the alternative program lengths used;
 - Individual data on the number of participants participating in the program;
 - Individual data for the items described that the county must collect for participants in the program; and,
 - A one- and three-year evaluation of the number of subsequent arrests and convictions of the participants.

This bill states that an eligible drug-motivated crime shall include any felony other than the following:

- A registerable sex offense;
- Serious felonies, as defined;

- Violent felonies, as defined; and,
- A “nonviolent drug possession offense” as defined.

This bill states that at the time of sentencing, the judge shall offer the defendant voluntary participation in the program as an alternative to a jail or prison sentence that the judge would otherwise impose, consistent with the other provisions of this bill and if all of the following conditions are met:

- The defendant’s crime was caused in whole or in part by the defendant’s SUD;
- The defendant’s crime was not one of those excluded crimes;
- The judge makes their determination based on the recommendations of treatment providers who conducted the assessment, on a finding by HHSA that the defendant’s participation in the program would be appropriate, and on the report prepared from interested parties, including the District Attorney and the attorney for the participant.

This bill provides that the amount of time in the secured residential treatment facility shall be based on the recommendations of the treatment providers who conducted the assessment. However, the amount of time, combined with any outpatient treatment or “step-down” residential treatment pursuant to the program, shall not exceed the maximum allowable jail or prison time for the drug-motivated crime.

This bill states that the court shall not place the defendant on probation for the underlying offense.

This bill states that during the period in which an individual is participating in the pilot program, the individual shall be on supervision with the probation department.

This bill states that in order to assist the court in making the determination that the defendant’s participation in the program is appropriate, a report shall be prepared with input from any of the interested parties, including the district attorney, the attorney for the participant, the probation department, HHSA, and any contracted drug treatment program provider.

This bill provides that if, at any time during the individual’s participation in the program, it is determined by the treatment providers or program administrators that continued participation in the program may not be in the best interests of the individual, other participants, or the program itself, the treatment providers or program administrators may recommend to the court that participation in the program may be terminated and the individual be transferred out of the secured residential treatment program.

This bill states that if the court, based on the recommendations of the treatment providers or program administrators, determines that the participant should be transferred out of the secured treatment program, the court shall make that subsequent order, and the participant shall complete the remainder of the original sentence imposed.

This bill states that if the participant determines that they no longer wish to participate in the program, the participant may make a request to the court for termination of their participation

and be transferred out of the secured residential treatment program to complete the remainder of their originally imposed sentence.

This bill provides that if, upon the recommendations of the treatment provider or program administrators, the court determines that the participant should be released from the secured residential treatment program prior to the end of the original order, the court shall make that subsequent order, and a comprehensive continuum of care plan that includes recommendations for outpatient care, counseling, housing recommendations, and other vital components of successful recovery are provided.

This bill states that if the participant successfully completes the treatment program, the court shall expunge the conviction from the participant's record. The court shall also have discretion to expunge the conviction of any previous drug possession or drug use crimes on the participant's record.

This bill contains a sunset date of January 1, 2025.

COMMENTS

1. Need for This Bill

According to the author of this bill:

The U.S. Department of Justice estimates that 58% of state prisoners and 63% of jailed inmates meet the criteria for drug dependence or abuse. Yet despite the prevalence of substance use disorder (SUD) and mental illness among these populations, the state's prison system has failed in addressing this serious health need. In California alone for the prison population, for fiscal year 2016-17, SUD was the top needed rehabilitation service; yet, only 23% of the rehabilitation budget was used for substance use disorder compared to other programs (3% of CDCRs total budget goes to rehabilitation). The Legislative Analyst's Office (LAO) reviewed the rehabilitation programs for incarcerated individuals and concluded that in order for these individuals to be successful, services needed to be evidence based and cost effective for folks with the most need. This legislation would capture this LAO recommendation by assisting those most in need according to the Health and Human Services agency in Yolo County. The pilot would provide residential evidence-based treatment for individuals that would otherwise be incarcerated with minimal opportunity to receive substance use disorder treatment.

Another key component of the pilot program is that treatment would take place at a residential facility. Substance use providers continuously highlight the need for stable housing given that inability to pay rent or threat of losing housing could lead to a relapse. For unhoused individuals, residential treatment is similarly vital, as these individuals are prone to relapse if they are unsheltered and surrounded by other users. It is crucial that we address this crisis with treatment over incarceration to ensure the health of California's incarcerated population, safeguard our communities and reduce recidivism.

2. Compulsory Treatment for SUDs

This bill authorizes the treatment of individuals with SUDs who are convicted of a felony to be in a secured residential treatment program.

This bill has received opposition from a multitude of groups and organizations, including those involved with human rights, criminal justice reform, public health, and substance use treatment. One common thread of their concerns about the policy of this bill is that involuntary treatment is ineffective, expensive and likely to be counter-productive.

Despite widespread implementation of involuntary drug treatment worldwide, there appears to be little available, high-quality research on its effectiveness. A comprehensive study was published in 2016, claiming to be the first of its kind. (Werb, “The Effectiveness of Compulsory Drug Treatment: A Systemic Review,” *International Journal of Drug Policy*, Feb. 2016, 28: 1-9, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4752879/>, [as of April 8, 2021].) That study concluded that “[e]vidence does not, on the whole, suggest improved outcomes related to compulsory treatment approaches, with some studies suggesting potential harms.” (*Id.* at 2.) The study continued, “Given the potential for human rights abuses within compulsory treatment settings, non-compulsory treatment modalities should be prioritized by policymakers seeking to reduce drug-related harms.” (*Ibid.*) It is worth noting that the study did not limit its assessment of compulsory drug treatment in detention centers, but also included compulsory treatment in inpatient and outpatient settings. (*Id.* at 10.) Other research has found that “mandated treatment was ineffective, particularly when the treatment was located in custodial settings, whereas voluntary treatment produced significant treatment effect sizes regardless of setting.” (Parhar, *Offender Treatment: A Meta-Analysis of Effectiveness*, *Criminal Justice and Behavior*, Vol. 35, No. 9, p. 1128, Sep. 2008, available at: <https://studysites.sagepub.com/stohrstudy/articles/05/Parhar.pdf>, [as of April 9, 2021].)

Opponents of this bill agree that compulsory treatment for SUDs is ineffective and can be harmful. They argue that potential harms resulting from compulsory treatment include increased risk of overdose and fostering distrust between treatment providers and patients, causing people who need help to be unlikely to seek it out in the future. They further suggest spending money on voluntary community-based treatment programs would be less expensive and produce better results.

The author of the bill reasons that the bill is voluntary, rather than mandatory, because the bill requires the consent of the defendant prior to being sentenced into the program which requires the defendant to make a choice to be placed into the program rather than being incarcerated. However, opponents argue that the choice to participate is coercive because the other option is incarceration in jail or prison. The procedure outlined in the bill requires the judge, at the time of sentencing or pronouncement of judgment to offer participation to the defendant in lieu of jail or prison time, which the court would otherwise impose. Most people, when faced with the prospect of prison or jail, would likely agree to an alternative which in this case would be treatment in a secured facility.

3. Broad Application May Lead to Disparate Application of Law

This bill authorizes the treatment program to be offered to any person who is convicted of a “drug-motivated” felony, which caused in whole or in part by the defendant’s SUD, and excludes

a violent felony, a serious felony, a registerable sex offense, or a non-violent possession offense. While the bill does require a needs, risk and psychological assessment to be conducted on any potential participant in the program and for the court to find that the defendant's participation in the program is appropriate, there are no other specific eligibility factors that would indicate a potential need for more intensive treatment, such as a long history of arrests and convictions for drug-related offenses, or referral to and subsequent failure to complete the drug court program, or repeatedly being offered available community-based treatment and refusing. Thus, it is possible that a persons of varying treatment needs could qualify for the program. The author's office has indicated that ideally the facility where the treatment program is to take place would have approximately 30 beds. It is unclear how available beds would be prioritized and whether this could lead to disparate application based on implicit bias of who is seen as needing to be in the program versus those who may be able to participate in drug court or some other form of diversion, such as mental health diversion.

Recently, the Yolo County District Attorney launched transparency portal which revealed that people of color are disproportionately represented in cases referred to the office for prosecution. (See Yolo County District Attorney's website, < <https://yoloda.org/commons-policy-changes/>> [as of June 22, 2021].) According to additional data, 25% of the Yolo County jail population is Black, while the county's demographic population is only 3% Black. (*A Year After Attack on Public Defender, DA's Office Making Changes in Effort to Decrease Racial Disparities*, *Davis Vanguard* (June 9, 2021).) The District Attorney has changed office policy to ensure that more defendants of color are diverted out of the criminal justice system.

Additionally, a person in the treatment program could spend more time overall incarcerated than other defendants who are convicted of the same offense. The court determines the duration of the treatment program at sentencing. The time spent in treatment is limited to the maximum allowable jail or prison time for the crime rather than the term of imprisonment a person would actually be sentenced to which could be much less time than the maximum allowable sentence. Also, as raised by the opposition, a person who is placed in treatment could also end up spending more time incarcerated overall than other defendants because a person who does not complete treatment can have the remainder of their original sentence of imprisonment imposed. Any credits received would not have any good conduct credits applied so each day spent in the treatment program would only count for one day, whereas a person who spends one day imprisoned in jail or prison would be statutorily eligible to earn additional credits to help reduce their overall time incarcerated.

4. Expungement Provision

This bill provides that if a person successfully completes the treatment program, the court shall expunge the conviction from the participant's record and specifies that the court has discretion to expunge any previous drug possession or drug use crimes on the participant's record.

Expungement relief allows a person to withdraw their guilty plea and have their conviction set aside and the charging document is dismissed. However, this neither erases nor seals the record of conviction. Despite the dismissal order, the conviction record remains. (*People v. Field* (1995) 31 Cal.App.4th 1778, 1787.) A background check would reveal the expunged conviction with an extra entry noting the dismissal on the record. Expungement also does not prevent the conviction from being pleaded and proved just like any other prior conviction in any subsequent prosecution. (See *People v. Diaz* (1996) 41 Cal.App.4th 1424.)

Originally, expungement relief was available to defendants placed on probation. (Pen. Code, § 1203.4.) However, expungement relief has been extended to other categories of cases, including people convicted of misdemeanors and infractions who were not granted probation. (Pen. Code, § 1203.4a.) After the enactment of Realignment, expungement was extended to persons sentenced for a realigned felony who served their sentence in county jail. (Pen. Code, § 1203.41.) In 2017, expungement relief was extended to those who were convicted of the same crimes eligible for expungement under Penal Code section 1203.41, but who served their sentence in state prison instead of county jail because they were sentenced before the enactment of Realignment. (Pen. Code, § 1203.42.)

While this bill specifically states that the person's conviction will be "expunged" upon successful completion of the program, it appears that the expungement provisions that already exist would provide an avenue for relief if the person received a traditional sentence of imprisonment in county jail for a county-jail eligible felony or felony probation.

5. Staffing and Facility Location Unclear

This bill authorizes Yolo County to establish the secured residential treatment program but does not specify the location of the facility or what type of facility would be used, such as a residential treatment center or an existing detention facility. According to the background information provided by the author, the facility is in part dependent on available funding. This bill specifies that the person's treatment is reimbursable through Medi-Cal, however Medi-Cal eligibility does not extend to persons who are incarcerated. However, Medi-Cal funds may be available to persons living in supervised residential facilities as long as the facility meets specified requirements which include the individual's freedom of movement and association. It is unlikely that treatment in a secured residential program would allow for such freedom to the individual.

Staffing of the residential treatment program is also unclear. According to information provided by the author, probation would be involved in supervising the individual as part of the Supervised Own Recognizance program which currently applies to persons who are released from the jail pending the imposition of sentencing on that person's case. However, the bill also specifies that treatment providers are involved in assessing a person for appropriate treatment and in making recommendations to the court regarding the person's participation in the program.

6. Argument in Support

According to the Yolo County District Attorney's Office:

As District Attorney of Yolo County for the past 15 years, I have seen countless individuals who suffer from substance use disorders come through the criminal justice system and, as a result of felony convictions that victimize others (beyond simple drug possession charges), they have been sentenced to jail or prison. We all know that jail is not where this population belongs and certainly that's not the place where they will get well.

This Bill would give those, who would otherwise be sentenced to jail or prison, the option of going to a secured treatment facility with no bars, guns, or guards. Their eligibility for the program would be based on an assessment of expert treatment providers who would recommend suitability and the dosage of treatment. After they have successfully completed the program, they would have their records

expunged and they would enter a residential treatment program or have intense outpatient treatment.

We want to continue working to help individuals at early stages, upstream, with their substance use disorders but the target population this Bill envisions are those individuals who are dropping down the waterfall. We can help them get well, prevent further victimization, and help them become productive members of society.

7. Argument in Opposition

According to Drug Policy Alliance:

AB 1542 is premised on the flawed notion that involuntary treatment is desirable. Involuntary substance use disorder treatment is neither effective nor ethical. Research demonstrates that offering ready available, evidence-based treatment in the community produces better outcomes than forcing people into treatment against their will. Involuntary treatment can damage the relationship between treatment provider and recipient and further traumatize individuals who have often experienced severe hardship, diminishing the likelihood of successful outcomes from the current treatment as well as engagement in future health services. Requiring that people receive involuntary treatment in a locked residential setting much like a jail or prison, as AB 1542 would do, would only exacerbate these harms.

Judges are not trained to assess peoples' substance use needs and determine the appropriate length of treatment and level of care. Yet, AB 1542 allows judges to determine the length of treatment and requires that treatment be provided in a secure facility, even if not clinically appropriate. This flies in the face of criteria developed by addiction professionals for determining the appropriate length of care, which indicate that these be based on professional assessment and individual circumstances. Most people will likely be better served by services in the community.

AB 1542 would waste resources that could be better invested in voluntary services in the community. The costs for prosecutors, defense attorneys, judges, and whatever entity would be responsible for monitoring people within the secure facility would likely take the lion's share of any funding allocated to this program; funding that could be going to treatment providers.

We also fear that AB 1542 would be used as a means for law enforcement to temporarily remove people with substance use needs from the streets in an attempt to say they are providing solutions for homelessness and public disorder. As we know from 50 years of enforcing the war on drugs, communities of color would bear the brunt of this enforcement, and Black, Latinx, Indigenous, and other people of color would almost certainly be disproportionately forced into locked treatment.

-- END --