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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** SB 46                      **Hearing Date:** March 14, 2023  
**Author:** Roth  
**Version:** December 5, 2022  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Controlled substances: treatment*

## HISTORY

**Source:** Riverside County District Attorney's Office

**Prior Legislation:** SB 904 (Bates), held in Assembly Appropriations

**Support:** Arcadia Police Officers' Association; Burbank Police Officers' Association; California Coalition of School Safety Professionals; California District Attorneys Association; Claremont Police Officers Association; Corona Police Officers Association; Culver City Police Officers' Association; Fullerton Police Officers' Association; Inglewood Police Officers Association; Los Angeles School Police Officers Association; Newport Beach Police Association; Palos Verdes Police Officers Association; Placer County Deputy Sheriffs' Association; Pomona Police Officers' Association; Riverside Police Officers Association; Riverside Sheriffs' Association; San Diego County District Attorney's Office; Santa Ana Police Officers Association; Upland Police Officers Association

**Opposition:** 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 or sentenced pursuant to Penal Code section 1170(h) to successfully complete a controlled substance education or treatment program while on probation or mandatory supervision; 2) outline standards for these programs; and 3) add requirements for drug diversion education and counseling.***

*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 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 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* defines the term "successful completion of treatment" to mean that a defendant who has had drug treatment imposed as a condition of probation has completed the prescribed course of drug treatment as recommended by the treatment provider and ordered by the court and, as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future. Provides that completion of treatment does not require cessation of narcotic replacement therapy. (Pen. Code, § 1210, subd. (c).)

*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 or sentenced pursuant to Penal Code section 1170(h), after conviction for a violation of any controlled substance offense, the trial court, as a condition of probation or mandatory supervision, 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* 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. Specifies that completion of education or treatment does not require cessation of narcotic replacement therapy.

*This bill* requires the court or probation department to refer defendants only to controlled substance 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* 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.

*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 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. Requires such education to be culturally and linguistically appropriate and 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 a court, upon conviction of any felony in which the defendant is sentenced pursuant to Section 1170(h) and the court does not order suspension of the execution of the term of imprisonment, 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* amends the 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.”

*This bill* requires the initial assessment of each divertee to include the person’s cultural and linguistic background.

*This bill* requires that the 20 hours of education or counseling that a divertee receive include education about how the use of controlled substances 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 controlled substances unless under appropriate medical supervision. Requires this education to be culturally and linguistically appropriate, and 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:

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 oftentimes 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

### 2. Court-Ordered Drug Education and Treatment

#### *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 makes a number of changes to existing law. First, this bill adds individuals on mandatory supervision who were sentenced pursuant to Penal Code section 1170(h) for a conviction for a drug offense to the provision of law requiring individuals granted probation following a conviction for a drug offense to secure education or treatment. Next, this bill requires 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 requires 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 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. This bill further 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. Finally, this bill requires the court to recommend drug treatment or education to a person convicted of a felony drug offense and sentenced to state prison or pursuant to Section 1170(h) while the person is incarcerated.

#### *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 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.” This bill also requires that the 20 hours of education or counseling that a divertee receives include education about how the use of controlled substances 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, requires the education to be culturally and linguistically appropriate, and provides that the education 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. Amendments

The author intends to amend the bill to change Health and Safety Code section 11373, subdivision (c), paragraph (2) to read:

(2) A controlled substance education and treatment program shall be based on the best available current science and evidence and provide educational resources on the pathology of addiction and existing treatment modalities. The goal of a controlled substance education or treatment program shall be to save lives and reduce the risks associated with drug use ~~to stop controlled substance abuse~~, including the manufacture and distribution of controlled substances, and to reduce the recidivism that occurs from the use of controlled substances, ~~and ultimately, to save lives~~. As such, a controlled substance education or treatment program shall 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. Such education shall be culturally and linguistically appropriate and 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.

The author additionally intends to amend Health and Safety Code section 11373, subdivision (a), paragraph (2), to add “or mandatory supervision” for consistency with subdivision (a), paragraph (1) so that it reads:

(2) For purposes of this section, “complete successfully” means that a defendant who has had controlled substance education or treatment imposed as a condition of probation or mandatory supervision has completed the prescribed course of controlled substance education or treatment as recommended by the treatment provider and ordered by the court. Completion of education or treatment shall not require cessation of narcotic replacement therapy.

### 4. Argument in Support

According to a coalition of law enforcement associations, including the Riverside Sheriffs’ Association:

SB 46 would require the court or probation department to refer defendants to programs to adhere to [] specified standards. These standards would also apply to the education and counseling required for divertees in drug diversion programs.

...

Our law enforcement associations traditionally support legislation that seeks to improve the safety of the public. By improving the information provided to probationers and divertees during education and treatment program, we believe SB 46 can help them become less likely to reoffend.

## 5. Argument in Opposition

According to the Pacific Juvenile Defender Center:

SB 46 seeks to curtail the considered discretion of juvenile court judges to selectively order treatment when it would benefit youth and to select treatment programs in the community that best meet the needs of youth and their families. It also imposes a definition of “successful completion” that would allow treatment providers to dictate the length of treatment a youth and family must complete, an inherent conflict that potentially incentivizes longer courses of recommended treatment for the financial gain of providers.

Current law requires the court to order substance abuse treatment if the youth is found to have been in possession of any controlled substance, but allows the court discretion not to do so if the young person is not likely to benefit from such treatment. SB 46 would remove this discretion from the court even where the court finds that such treatment would not benefit the youth. This cookie cutter one size fits all solution is contrary to the very function of the juvenile court—to provide individualized dispositions that serve to rehabilitate the youth....

SB 46 *does* allow the court to forego ordering *the parent or guardian* to participate “to the extent the juvenile court determines that participation will not aid the education or treatment of the minor.” This same discretion should apply to any order for treatment directed to the youth.

SB 46 is also problematic in explicitly tying successful completion to completion of the course of treatment “as recommended by the treatment provider and ordered by the court.” ... PJDC is concerned that there may be an unintended negative impact on the ability of youth to have their records sealed automatically for satisfactory completion of probation if the provider has recommended a lengthier course of treatment and the court is thereby barred from finding successful completion.

...[W]e continue to move towards a health-based approach and innovation in juvenile justice treatment. ... SB 46 ... tie[s] the hands of juvenile [court] judges, who are in the best position to determine the needs of children and families. While we recognize the significant and devastating human toll of substance abuse, we believe that treatment—particularly for youth—must be tailored to the particular needs of the individual child, taking account of his or her individual circumstances.

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