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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

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**Bill No:** SB 904                      **Hearing Date:** April 26, 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:** (to prior version) California District Attorneys Association; Crime Victims United; Orange County District Attorney's Office

**Opposition:** (to prior version) California Attorneys for Criminal Justice; Pacific Juvenile Defender Center

### AS PROPOSED TO BE AMENDED

#### 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; and 3) require education and treatment for drug diversion to include information on the effects of controlled substances on the brain and body, how to recognize and respond to the signs of a drug overdose, and the dangers of using controlled substances, among other things.*

*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* 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 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* 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 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* 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* 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 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:

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 makes a number of changes to existing law. First, 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.

#### *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.

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