

AMENDED IN ASSEMBLY MARCH 10, 2022

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 1928

Introduced by Assembly Member McCarty

February 9, 2022

An act to amend Section 4019 of, and to add and repeal Section 1203.44 of, the Penal Code, relating to drug treatment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1928, as amended, McCarty. Hope California: Secured Residential Treatment Pilot Program.

Existing law authorizes a court to grant pretrial diversion to a defendant in specified cases, including when the defendant is suffering from a mental disorder, specified controlled substances crimes, and when the defendant was, or currently is, a member of the United States military.

This bill would, until January 1, 2026, ~~authorize the Counties of Contra Costa, San Joaquin, Santa Clara, and Yolo to offer secured residential treatment pilot programs,~~ *the Counties of San Joaquin, Santa Clara, and Yolo to develop, manage, staff, and offer a secured residential treatment pilot program*, known as Hope California, for individuals suffering from substance use disorders (SUDs) who have been convicted of qualifying drug-motivated felony crimes, as specified. The bill would require the program to meet certain conditions relating to, among other things, a risk, needs, and psychological assessment, a comprehensive curriculum, a determination by a judge of the length of treatment, data collection, licensing and monitoring of the facility by the State Department of Health Care Services, and reporting to the department and the Legislature.

The bill would require the judge to offer the defendant voluntary participation in the pilot ~~programs~~, *program*, as an alternative to a jail or prison sentence otherwise imposed, if the defendant's crime was caused, in whole or in part, by the defendant's SUD, the crime was not a sex crime, serious or violent felony, or nonviolent drug possession, and the judge makes their determination based on the recommendations of the treatment providers, on a finding by the county health and human services agency that the defendant's participation would be appropriate, and on a specified report prepared with input from interested parties. Under the bill, the defendant would be eligible to receive credits for participation in the program, as specified.

The bill would set forth a procedure for the transfer of a participant out of the secured residential treatment program based on the recommendations of the treatment providers or program administrators or based on the participant's request, as specified.

The bill would require Hope California facilities to provide participants with an individualized medically assisted treatment program and provide participants with support services, including instruction on, among other things, money management, career planning, and applying for employment.

If the participant successfully completes the court-ordered drug ~~treatment~~ *treatment, as determined by treatment providers*, pursuant to the pilot program, the bill would require the court to expunge *and seal* the conviction from the participant's record and would authorize the court to expunge the conviction of any previous drug possession or drug use crimes on the participant's record.

Existing law establishes the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services, including mental health and substance use disorder services, pursuant to a schedule of benefits. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions. Existing law, with certain exceptions based in part on the type and location of the service, provides for the suspension of Medi-Cal benefits to an inmate of a public institution.

This bill would, to the extent permitted under federal and state law, make treatment provided to a participant during the program reimbursable under the Medi-Cal program, if the participant is a Medi-Cal beneficiary and the treatment is a covered benefit under the Medi-Cal program. If treatment services are not reimbursable under the

Medi-Cal program or through the participant’s personal health care coverage, the bill would authorize funds allocated to the state from the 2021 Multistate Opioid Settlement Agreement, subject to an appropriation by the Legislature, to be used to reimburse those treatment services to the extent consistent with the terms of the settlement agreement and the court’s final judgment, as specified.

This bill would make legislative findings and declarations as to the necessity of a special statute for ~~the Counties of Contra Costa, San Joaquin, Santa Clara, and Yolo~~: *the Counties of San Joaquin, Santa Clara, and Yolo*.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) A significant percentage of people arrested and charged with
- 4 crimes suffer from substance use disorders (SUDs).
- 5 (b) For many individuals suffering from SUDs, residential and
- 6 professionally conducted evidence-based treatment programs are
- 7 the best, or at times only, option for getting this population well.
- 8 (c) Our efforts in California in treating those who suffer from
- 9 SUDs, some of whom are suffering from mental health issues or
- 10 are homeless, have been unsuccessful. Although there have been
- 11 efforts to treat this population, to date, there has been limited
- 12 success.
- 13 (d) In addition, the cost of incarcerating persons involved in
- 14 substance-related crimes has increased considerably over the past
- 15 two decades in the United States.
- 16 (e) Substance offenders are the fastest increasing section of
- 17 inmates in the state prison system across the United States. In
- 18 1983, 12 adults entered prison on a drug offense for every 100,000
- 19 adults in the population. By 1998, this rate had increased more
- 20 than sevenfold to 88 per 100,000 adults. Between 1980 and 2002,
- 21 the number of persons in state prisons for substance offenses
- 22 increased from 19,000 to 265,000.
- 23 (f) The Office of National Drug Control Policy estimated that
- 24 drug abuse costs were \$180 billion in 2002. Drug-related crimes
- 25 cost \$107 billion, and \$15.8 billion was spent on drug abuse

1 treatment. Economic costs of untreated substance abuse and annual
2 total societal cost of substance abuse in the United States was
3 approximately \$510.8 billion in 1999.

4 (g) This increase in costs has affected the economic system
5 considerably and should drive society to focus on preventing the
6 escalation of substance-related crimes.

7 (h) For those who suffer from SUDs and who commit
8 drug-motivated crimes, as an alternative to a jail or prison sentence,
9 they could consent to be diverted to a secured residential treatment
10 facility, where they would receive evidence-based treatment to get
11 them well and give them the opportunity to become healthy,
12 fulfilled, and contributing members of society. One goal of this
13 pilot program is to reduce recidivism.

14 (i) If the pilot program is established, eligible individuals who
15 could consent to this alternative to sentencing in jail or prison
16 would generally be individuals who suffer from an SUD that is
17 determined to be the driving force behind the crime, and whereby
18 the crime is not a simple drug possession offense, and the
19 individual, but for this voluntary program, would be sentenced to
20 jail or prison as a result of the crime.

21 SEC. 2. Section 1203.44 is added to the Penal Code, to read:

22 1203.44. (a) ~~The Counties of Contra Costa, San Joaquin, Santa~~
23 ~~Clara, and Yolo may offer secured residential treatment pilot~~
24 ~~programs. The Counties of San Joaquin, Santa Clara, and Yolo~~
25 ~~may offer a voluntary secured residential treatment pilot program,~~
26 known as “Hope California,” consistent with this section for
27 individuals suffering from substance use disorders (SUDs) who
28 have been convicted of drug-motivated felony crimes that qualify
29 pursuant to the criteria and conditions described in subdivisions
30 (b) and (c). If offered, the pilot programs shall align with the
31 resolutions adopted by the counties in recognition of the goal of
32 ensuring that people with behavioral health conditions receive
33 treatment out of custody wherever possible. The counties may
34 offer the pilot program to eligible individuals if the program meets
35 all of the following conditions:

36 (1) The program facility is licensed by the State Department of
37 Health Care Services as an alcoholism or drug abuse recovery or
38 treatment facility pursuant to Chapter 7.5 (commencing with
39 Section 11834.01) of Part 2 of Division 10.5 of the Health and
40 Safety Code.

1 (2) (A) The program facility is a clinical setting *managed and*
2 *staffed by the county’s health and human services agency (HHSA)*
3 ~~in conjunction with~~ *with oversight provided by the county’s*
4 *probation department.*

5 (B) ~~The program is not offered in~~ *facility shall not be* a jail,
6 *prison, or other correctional setting.*

7 (C) *The program facility shall be secured but shall not include*
8 *a lockdown setting.*

9 (3) The individual, upon a judge pronouncing a sentence to be
10 served in a county jail or state prison, shall choose and consent to
11 participate in the *voluntary* program in lieu of incarceration.

12 (4) The program is limited to one facility ~~site.~~ *site per county.*

13 (5) The State Department of Health Care Services monitors the
14 program facility to ensure the health, safety, and well-being of
15 program participants.

16 (6) The State Department of Health Care Services has authority
17 to access the program facility to investigate complaints by program
18 participants and to ensure the facility complies with applicable
19 statutes and regulations.

20 (7) The program facility ensures that participants have visitation
21 rights, including through the use of a telephone.

22 (8) The county develops *and staffs* the program ~~in consultation~~
23 ~~with partnership with relevant community-based organizations~~
24 ~~and drug treatment service providers and other relevant community~~
25 ~~partners.~~ *to provide support services, including, but not limited to,*
26 *employment skill assessments, money management, technology*
27 *education, tutoring, career planning, developing resumes and*
28 *cover letters, and searching and applying for employment.*

29 (9) HHSA ensures that a risk, needs, and psychological
30 assessment, utilizing the Multidimensional Assessment of the
31 American Society of Addiction Medicine (ASAM), as part of the
32 ASAM Criteria, be performed for each individual identified as a
33 candidate for the program.

34 (10) The participant’s treatment, in terms of length and intensity,
35 within the program is based on the findings of the risk, needs, and
36 psychological assessment and the recommendations of treatment
37 providers.

38 (11) The program adopts the Treatment Criteria of ASAM. The
39 program may take into consideration evolving best practices in
40 the SUD treatment community.

1 (12) The program has a comprehensive written curriculum that
2 informs the operations of the program and outlines the treatment
3 and intervention modalities.

4 (13) *The program provides an individualized, medically assisted*
5 *treatment plan for each resident, including, but not limited to,*
6 *medically assisted treatment options and counseling based on the*
7 *recommendations of a substance use disorder specialist.*

8 ~~(13)~~

9 (14) A judge determines the length of the treatment program
10 after being informed by, and based on, the risk, needs, and
11 psychological assessment and recommendations of treatment
12 providers. After leaving the secured residential treatment facility,
13 the participant continues outpatient treatment for a period of time
14 and may also be referred to a “step-down” residential treatment
15 facility, subject to the time limit described in paragraph (2) of
16 subdivision (c).

17 ~~(14)~~

18 (15) A judge shall also determine that the program will be
19 carried out in lieu of a jail or prison sentence after making a finding
20 that the defendant’s decision to choose the alternative treatment
21 program is knowing, intelligent, and voluntary.

22 ~~(15)~~

23 (16) The program provides, for each participant successfully
24 leaving the program, a comprehensive continuum of care plan that
25 includes recommendations for outpatient care, counseling, housing
26 recommendations, and other vital components of successful
27 recovery.

28 ~~(16)~~

29 (17) To the extent permitted under federal and state law,
30 treatment provided to a participant during the program is
31 reimbursable under the Medi-Cal program, if the participant is a
32 Medi-Cal beneficiary and the treatment is a covered benefit under
33 the Medi-Cal program. If treatment services provided to a
34 participant during the program are not reimbursable under the
35 Medi-Cal program or through the participant’s personal health
36 care coverage, funds allocated to the state from the 2021 Multistate
37 Opioid Settlement Agreement, subject to an appropriation by the
38 Legislature, may be used to reimburse those treatment services to
39 the extent consistent with the terms of the Settlement Agreement

1 and the Final Judgment (People v. McKinsey & Co. (Alameda
2 County Superior Court, No. RG21087649, Feb. 4, 2021)).

3 ~~(17)~~

4 (18) An outcomes assessment is completed by an independent
5 evaluator.

6 ~~(18)~~

7 (19) The county collects and monitors all of the following data
8 for participants in the program:

9 (A) The participant's demographic information, including age,
10 gender, race, ethnicity, marital status, familial status, and
11 employment status.

12 (B) The participant's criminal history.

13 (C) The participant's risk level, as determined by the risk, needs,
14 and psychological assessment.

15 (D) The treatment provided to the participant during the
16 program, and if the participant completed that treatment.

17 (E) The participant's outcome at the time of program
18 completion, six months after completion, and one year after
19 completion, including subsequent arrests and convictions.

20 ~~(19)~~

21 (20) The county reports all of the following information annually
22 to the State Department of Health Care Services and, in compliance
23 with Section 9795 of the Government Code, to the Legislature,
24 excluding any personally identifiable information of participants:

25 (A) The risk, needs, and psychological assessment tool used for
26 the program.

27 (B) The curriculum used by each program.

28 (C) The number of participants with a program length other
29 than one year and the alternative program lengths used.

30 (D) Individual data on the number of participants participating
31 in the program.

32 (E) Individual data for the items described in paragraph~~(18)~~:
33 (19).

34 (F) A one- and three-year evaluation of the number of
35 subsequent arrests and convictions of the participants.

36 (b) (1) Eligible drug-motivated crimes shall include any felony
37 crime other than the following:

38 (A) Sex crimes as defined in subdivision (c) of Section 290.

39 (B) "Serious" felonies as defined in subdivision (c) of Section
40 1192.7 or in Section 1192.8.

1 (C) “Violent” felonies as defined in subdivision (c) of Section
2 667.5.

3 (2) Notwithstanding paragraph (1), a “nonviolent drug
4 possession offense” specified in subdivision (a) of Section 1210
5 may not be diverted pursuant to this program.

6 (c) (1) At the time of sentencing or pronouncement of judgment
7 in which sentencing is imposed, the judge shall offer the defendant
8 voluntary participation in the pilot program, as an alternative to a
9 jail or prison sentence that the judge would otherwise impose,
10 consistent with the other provisions of this section and if all of the
11 following conditions are met:

12 (A) The defendant’s crime was caused in whole or in part by
13 the defendant’s SUD.

14 (B) The defendant’s crime meets the criteria described in
15 subdivision (b).

16 (C) The judge makes their determination based on the
17 recommendations of the treatment providers who conducted the
18 assessment, on a finding by HHSA that the defendant’s
19 participation in the program would be appropriate, and on the
20 report described in subdivision (d).

21 (2) The amount of time in the secured residential treatment
22 facility shall be determined by the recommendations of the
23 treatment providers who conducted the assessment. The amount
24 of time, combined with any outpatient treatment or “step-down”
25 residential treatment pursuant to the program, shall not exceed the
26 term of imprisonment to which the defendant would otherwise be
27 sentenced, not including any additional term of imprisonment for
28 enhancements, for the drug-motivated crime. The court shall not
29 place the defendant on probation for the underlying offense. The
30 defendant shall be eligible to receive credits pursuant to Section
31 4019.

32 (3) During the period in which an individual is participating in
33 the pilot program, the individual shall be on supervision with the
34 probation department.

35 (d) To assist the court in making the determination as to whether
36 to offer the defendant placement in the secured residential treatment
37 program pursuant to subdivision (c), a report shall be prepared
38 with input from any of the interested parties, including the district
39 attorney, the attorney for the participant, the probation department,
40 HHSA, and any contracted drug treatment program provider.

1 (e) If, at any time during the individual's participation in the
2 program, it is determined by the treatment providers or program
3 administrators that continued participation in the program would
4 not be in the best interests of the individual, other participants, or
5 the program itself, the treatment providers or program
6 administrators may recommend to the court that the individual's
7 participation be terminated and that the individual be transferred
8 out of the secured residential treatment program.

9 (f) If the court, based on the recommendations of the treatment
10 providers or program administrators, determines that the participant
11 should be transferred out of the secured residential treatment phase
12 of the program prior to the end of the original order, the court shall
13 make that subsequent order, and the participant shall complete the
14 remainder of the original sentence imposed prior to their consent
15 to enter the program.

16 (g) If, at any time during the individual's participation in the
17 program, the individual determines that they no longer wish to
18 participate in the program, the individual may make a request to
19 the court for termination of their participation and be transferred
20 out of the secured residential treatment program to complete the
21 remainder of their originally imposed sentence after accounting
22 for any credits to which the individual is entitled pursuant to
23 Section 4019.

24 (h) If the treatment providers make a recommendation to the
25 court that the participant should be released prior to the end of the
26 original order based on the treatment providers' assessment that
27 the participant no longer needs to be in the secured residential
28 treatment program, the court shall make that subsequent order,
29 and paragraph ~~(15)~~ (16) of subdivision (a) shall apply.

30 (i) If the participant successfully completes the court-ordered
31 drug treatment pursuant to this program, the court shall expunge
32 *and seal* the conviction from the participant's record. The court
33 shall also have discretion to expunge the conviction of any previous
34 drug possession or drug use crimes on the participant's record,
35 including those offenses listed in Sections 11350, 11364, 11377,
36 and 11550 of the Health and Safety Code. A participant's
37 successful completion of treatment shall be *defined and* determined
38 by the treatment providers and *not by the court, district attorney's*
39 *office, or probation department and* does not require the participant

1 to complete the duration of the treatment originally ordered by the
2 court.

3 (j) The court shall ensure that the rights of any victim pursuant
4 to Section 28 of Article I of the California Constitution (Marsy’s
5 Law) are honored before expunging the conviction.

6 (k) This section shall remain in effect only until January 1,
7 2026, and as of that date is repealed.

8 SEC. 3. Section 4019 of the Penal Code, as amended by Section
9 4 of Chapter 599 of the Statutes of 2021, is amended to read:

10 4019. (a) This section applies in all of the following cases:

11 (1) When a prisoner is confined in or committed to a county
12 jail, industrial farm, or road camp or a city jail, industrial farm, or
13 road camp, including all days of custody from the date of arrest
14 to the date when the sentence commences, under a judgment of
15 imprisonment or of a fine and imprisonment until the fine is paid
16 in a criminal action or proceeding.

17 (2) When a prisoner is confined in or committed to a county
18 jail, industrial farm, or road camp or a city jail, industrial farm, or
19 road camp as a condition of probation after suspension of
20 imposition of a sentence or suspension of execution of sentence
21 in a criminal action or proceeding.

22 (3) When a prisoner is confined in or committed to a county
23 jail, industrial farm, or road camp or a city jail, industrial farm, or
24 road camp for a definite period of time for contempt pursuant to
25 a proceeding other than a criminal action or proceeding.

26 (4) When a prisoner is confined in a county jail, industrial farm,
27 or road camp or a city jail, industrial farm, or road camp following
28 arrest and prior to the imposition of sentence for a felony
29 conviction.

30 (5) When a prisoner is confined in a county jail, industrial farm,
31 or road camp or a city jail, industrial farm, or road camp as part
32 of custodial sanction imposed following a violation of postrelease
33 community supervision or parole.

34 (6) When a prisoner is confined in a county jail, industrial farm,
35 or road camp or a city jail, industrial farm, or road camp as a result
36 of a sentence imposed pursuant to subdivision (h) of Section 1170.

37 (7) When a prisoner participates in a program pursuant to
38 Section 1203.016 or Section 4024.2. Except for prisoners who
39 have already been deemed eligible to receive credits for

1 participation in a program pursuant to Section 1203.016 prior to
2 January 1, 2015, this paragraph shall apply prospectively.

3 (8) When a prisoner is confined in or committed to a state
4 hospital or other mental health treatment facility, or to a county
5 jail treatment facility, as defined in Section 1369.1, in proceedings
6 pursuant to Chapter 6 (commencing with Section 1367) of Title
7 10 of Part 2.

8 (9) When a prisoner participates in a treatment program pursuant
9 to Section 1203.44.

10 (b) Subject to subdivision (d), for each four-day period in which
11 a prisoner is confined in or committed to a facility as specified in
12 this section, one day shall be deducted from the prisoner's period
13 of confinement unless it appears by the record that the prisoner
14 has refused to satisfactorily perform labor as assigned by the
15 sheriff, chief of police, or superintendent of an industrial farm or
16 road camp.

17 (c) For each four-day period in which a prisoner is confined in
18 or committed to a facility as specified in this section, one day shall
19 be deducted from the prisoner's period of confinement unless it
20 appears by the record that the prisoner has not satisfactorily
21 complied with the reasonable rules and regulations established by
22 the sheriff, chief of police, or superintendent of an industrial farm
23 or road camp.

24 (d) This section does not require the sheriff, chief of police, or
25 superintendent of an industrial farm or road camp to assign labor
26 to a prisoner if it appears from the record that the prisoner has
27 refused to satisfactorily perform labor as assigned or that the
28 prisoner has not satisfactorily complied with the reasonable rules
29 and regulations of the sheriff, chief of police, or superintendent of
30 an industrial farm or road camp.

31 (e) A deduction shall not be made under this section unless the
32 person is committed for a period of four days or longer.

33 (f) It is the intent of the Legislature that if all days are earned
34 under this section, a term of four days will be deemed to have been
35 served for every two days spent in actual custody.

36 (g) The changes in this section as enacted by the act that added
37 this subdivision shall apply to prisoners who are confined to a
38 county jail, city jail, industrial farm, or road camp for a crime
39 committed on or after the effective date of that act.

1 (h) The changes to this section enacted by the act that added
 2 this subdivision shall apply prospectively and shall apply to
 3 prisoners who are confined to a county jail, city jail, industrial
 4 farm, or road camp for a crime committed on or after October 1,
 5 2011. Any days earned by a prisoner prior to October 1, 2011,
 6 shall be calculated at the rate required by the prior law.

7 (i) This section shall not apply, and no credits may be earned,
 8 for periods of flash incarceration imposed pursuant to Section
 9 3000.08 or 3454.

10 (j) This section shall become operative on January 1, 2023.

11 SEC. 4. The Legislature finds and declares that a special statute
 12 is necessary and that a general statute cannot be made applicable
 13 within the meaning of Section 16 of Article IV of the California
 14 Constitution because of the unique circumstances that ~~the Counties~~
 15 ~~of Contra Costa, San Joaquin, Santa Clara, and Yolo~~ *the Counties*
 16 *of San Joaquin, Santa Clara, and Yolo* have experienced with
 17 regard to difficulties in treating individuals who have been
 18 convicted of drug-motivated crimes as a result of their substance
 19 use disorders.