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**AB-890 Controlled substances: probation.** (2023-2024)

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**Assembly Bill No. 890**

**CHAPTER 818**

An act to amend Section 11373 of, and to add Section 11356.6 to, the Health and Safety Code, relating to controlled substances.

[ Approved by Governor October 13, 2023. Filed with Secretary of State October 13, 2023. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 890, Joe Patterson. Controlled substances: probation.

Existing law prohibits the possession, sale, and transport, as specified, of certain controlled substances. Existing law requires a person granted probation for controlled substance offenses to, as a condition of probation, 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.

This bill would require the court to order a person granted probation pursuant to those provisions for a violation of specified laws involving any amount of fentanyl, carfentanil, benzimidazole opiate, or any analog thereof, to successfully complete a fentanyl and synthetic opiate education program, if one is available. The bill would prohibit a defendant from being charged a fee for enrollment in that education program.

The bill would require a court ordering a defendant to complete those courses to only order the defendant to participate in programs that include, among other things, information regarding the nature and addictive elements of fentanyl and other synthetic opiates and their danger to a person's life and health. The bill would require program providers to report an unexcused absence by a defendant from a fentanyl and synthetic opiate education program to the court and the probation department within 2 business days. The bill would require the court to only refer defendants to programs that are available at no cost to the participants.

This bill would incorporate additional changes to Section 11373 of the Health and Safety Code proposed by SB 46 to be operative only if this bill and SB 46 are enacted and this bill is enacted last.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 11356.6 is added to the Health and Safety Code, to read:

**11356.6.** (a) The court shall refer a defendant subject to paragraph (2) of subdivision (a) of Section 11373 only to a fentanyl and synthetic opiate education program that meets the standards of this section.

(b) A fentanyl and synthetic opiate education program shall include education on the dangers of fentanyl and other synthetic opiates, including, but not limited to, information on all of the following:

- (1) How the use of fentanyl and synthetic opiates affects the body and brain.
- (2) The dangers of fentanyl and other synthetic opiates to a person's life and health.
- (3) Factors that contribute to physical dependence.
- (4) The physical and mental health risks associated with substance use disorders.
- (5) How to recognize and respond to the signs of a drug overdose, including information regarding access to, and the administration of, opiate antagonists and immunity for reporting a drug-related overdose pursuant to Section 11376.5.
- (6) The legality of drug testing equipment pursuant to subdivision (g) of Section 11364.5.

(c) The education may also include the criminal penalties for controlled substance offenses regarding fentanyl and other synthetic opiates.

(d) The education shall be culturally and linguistically appropriate.

(e) The court may allow a defendant to participate in a fentanyl and synthetic opiate education program via remote technology, if one is available.

(f) The program provider shall report to the probation department and the court an unexcused absence by a defendant from a fentanyl and synthetic opiate education program within two business days. A defendant who is absent from a session of the fentanyl and synthetic opiate education program shall be required to complete any and all components of the fentanyl and synthetic opiate education program that the defendant did not attend.

(g) The court shall only refer defendants to programs that are available at no cost to participants of court-ordered drug education as provided in subparagraph (B) of paragraph (2) of subdivision (a) of Section 11373.

(h) As used in this section, "opiate" includes "opioid" drugs.

**SEC. 2.** Section 11373 of the Health and Safety Code is amended to read:

**11373.** (a) (1) (A) 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 under this division, 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.

(B) If the defendant is a minor, the trial court shall also order their 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.

(C) If a minor is found by a juvenile court to have been in possession of any controlled substance, in addition to any other order it may make, the juvenile court shall 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, and it shall also order their 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.

(2) (A) To fulfill the requirements of paragraph (1), whenever a defendant is granted probation by the trial court after conviction for a violation of Section 11350, 11351, or 11352 involving any amount of fentanyl, carfentanil, benzimidazole opiate, or an analog thereof, the trial court shall order that person to successfully complete a fentanyl and synthetic opiate education program, if one is available.

(B) No fee shall be imposed for participation or enrollment in a fentanyl and synthetic opiate education program.

(b) The willful failure to complete a court ordered education or treatment program shall be a circumstance in aggravation for purposes of sentencing for any subsequent prosecution for a violation of Section 11353, 11354, or 11380. The failure to complete an education or treatment program because of the person's inability to pay the costs of the program or because of the unavailability to the defendant of appropriate programs is not a willful failure to complete the program.

(c) As used in this section, "opiate" includes "opioid" drugs.

**SEC. 2.5.** Section 11373 of the Health and Safety Code is amended to read:

**11373.** (a) (1) When a person who is otherwise eligible for probation is granted probation by the trial court or sentenced pursuant to subdivision (h) of Section 1170 of the Penal Code, after conviction for a violation of any controlled substance offense under this division, the trial court shall, as a condition of probation, order that person to complete successfully a controlled substance education or treatment program, as appropriate for the individual, approved pursuant to subdivision (c), or if none is available, from a local community agency designated by the court.

(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 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.

(3) When referring a person pursuant to this subdivision, the court shall determine the person's ability to pay. If the court finds that the person is financially unable to pay, the court may develop a sliding fee schedule for the program based on the person's ability to pay. A person who meets the criteria set forth in Section 68632 of the Government Code shall not be responsible for any costs.

(4) (A) To fulfill the requirements of paragraph (1), when a defendant is granted probation by the trial court after conviction for a violation of Section 11350, 11351, or 11352 involving any amount of fentanyl, carfentanil, benzimidazole opiate, or an analog thereof, the trial court shall order that person to successfully complete a fentanyl and synthetic opiate education program, if one is available.

(B) A fee shall not be imposed for participation or enrollment in a fentanyl and synthetic opiate education program.

(b) The willful failure to complete a court-ordered controlled substance education or treatment program shall be a circumstance in aggravation for purposes of sentencing for any subsequent prosecution for a violation of Section 11353, 11354, or 11380. The failure to complete an education or treatment program because of the person's inability to pay the costs of the program or because of the unavailability to the defendant of appropriate programs is not a willful failure to complete the program for the purposes of this section.

(c) (1) The court or the probation department shall refer defendants only to controlled substance education or treatment programs that follow standards outlined in paragraph (2), which may include, but are not limited to, lectures, classes, group discussions, and counseling. The county drug program administrator, with input from representatives of the court, the county probation department, and substance use treatment providers, shall design and implement an approval and renewal process for controlled substance education or treatment programs.

(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, including the manufacture and distribution of controlled substances, and to reduce the recidivism that occurs from the use of controlled substances. 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.

(d) Upon conviction of any felony in which the defendant is sentenced to state prison for a violation of any controlled substance offense under this division, a court shall, in addition to any other terms of imprisonment, fine, and conditions, recommend in writing that the defendant participate in a controlled substance education or treatment program while imprisoned that complies with the standards outlined in paragraph (2) of subdivision (c).

(e) Upon conviction of any felony in which the defendant is sentenced pursuant to subdivision (h) of Section 1170 of the Penal Code and the court does not order suspension of the execution of the term of imprisonment pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170 of the Penal Code, for a violation of any controlled substance offense under this division, a court shall, in addition to any other terms of imprisonment, fine, and conditions, recommend in writing that the defendant participate in a controlled substance education or treatment program while imprisoned that complies with the standards outlined in paragraph (2) of subdivision (c).

(f) As used in this section, "opiate" includes "opioid" drugs.

**SEC. 3.** Section 2.5 of this bill incorporates amendments to Section 11373 of the Health and Safety Code proposed by both this bill and Senate Bill 46. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or

before January 1, 2024, (2) each bill amends Section 11373 of the Health and Safety Code, and (3) this bill is enacted after Senate Bill 46, in which case Section 2 of this bill shall not become operative.