

AMENDED IN ASSEMBLY JANUARY 17, 2024

AMENDED IN SENATE FEBRUARY 23, 2023

SENATE BILL

No. 21

Introduced by Senator Umberg

December 5, 2022

An act to ~~amend Section 367.75 of the Code of Civil Procedure, relating to courts,~~ add Section 11369 to the Health and Safety Code, relating to controlled substances, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 21, as amended, Umberg. ~~Civil actions: remote proceedings. Controlled substances.~~

Existing law makes it a crime to possess for sale or purchase for purpose of sale, transport, or sell, various controlled substances, including, among others, fentanyl.

This bill would require a person who is convicted of, or who pleads guilty or no contest to, the above-described crimes as they relate to fentanyl to receive a written advisory of the danger of distribution of controlled substances and that, if a person dies as a result of that action, the distributor can be charged with homicide or murder. The bill would require that the fact the advisory was given be on the record and recorded on the abstract of the conviction.

This bill would authorize a defendant who is charged with the above-described crimes to undergo a treatment program in lieu of a grant of probation or a jail or prison sentence if certain conditions are met. The bill would require the treatment program to be developed by a drug addiction expert and would authorize a defendant to participate in a substance abuse and mental health evaluation. The bill would make

any statement or information from the evaluation inadmissible in any action or proceeding. The bill would require the drug treatment program to be approved by the court and could include mental health treatment and job training. The bill would require the court to dismiss the charges upon successful completion of the treatment program.

The California Constitution provides for the Right to Truth-in-Evidence, which requires a $\frac{2}{3}$ vote of the Legislature to exclude any relevant evidence from any criminal proceeding, as specified.

This bill would make specified statements and information from the evaluation and treatment process from being used as evidence in any subsequent proceedings or actions, thereby requiring a $\frac{2}{3}$ vote.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law authorizes, until July 1, 2023, a party to appear remotely and a court to conduct conferences, hearings, proceedings, and trials in civil cases, in whole or in part, through the use of remote technology.~~

~~This bill would extend these provisions until January 1, 2026. The bill would exempt specific types of proceedings from these provisions. The bill would authorize, until January 1, 2026, a court to conduct an adoption finalization hearing, in whole or in part, through the use of remote technology, without the court making specific findings and would prohibit a court from requiring a party to appear through the use of remote technology. The bill would require each superior court to report to the Judicial Council on or before October 1, 2023, and annually thereafter, and would require the Judicial Council to report to the Legislature on or before December 31, 2023, and annually thereafter, to assess the impact of technology issues or problems affecting civil remote proceedings and purchases and leases of technology and equipment to facilitate civil remote conferences, hearings, or proceedings.~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

~~Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.~~

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

- 1 *SECTION 1. Section 11369 is added to the Health and Safety*
- 2 *Code, to read:*

1 11369. (a) *This section shall be known, and may be cited, as*
2 *Alexandra’s Law.*

3 (b) *Except as provided in subdivision (c), the court shall advise*
4 *a person who is convicted of, or who pleads guilty or no contest*
5 *to, a violation of Section 11351, Section 11352 for transporting,*
6 *importing, or selling a controlled substance, offering to transport,*
7 *import, or sell a controlled substance, or attempting to transport,*
8 *import, or sell a controlled substance, or Section 11379.6, where*
9 *the substance contained fentanyl or a fentanyl analog, of the*
10 *following:*

11 *“You are hereby advised that all illicit drugs and counterfeit*
12 *pills are dangerous to human life and become even deadlier when*
13 *they are, sometimes unknowingly, mixed with substances such as*
14 *fentanyl and analogs of fentanyl. People can and have died from*
15 *these substances, even in very small doses. It is extremely*
16 *dangerous and deadly to human life to sell or administer drugs,*
17 *in any form, when not lawfully authorized to do so. If you do so*
18 *in the future and a person dies as a result of that action, and you*
19 *knew or should have known that the substance you provided*
20 *contained fentanyl or a fentanyl analog, you may be charged with*
21 *homicide, up to and including the crime of murder, within the*
22 *meaning of Section 187 of the Penal Code. In addition, this*
23 *warning may be considered by a judge or jury as to whether you*
24 *knew or should have known that the substance you provided to the*
25 *decedent contained fentanyl.”*

26 (c) *This section does not apply to convictions for violations*
27 *identified in subdivision (b) when a defendant has exchanged the*
28 *controlled substance containing fentanyl or its analogs for another*
29 *controlled substance or alcohol.*

30 (d) *The advisory shall be included in a plea form, if used, or*
31 *the fact that the advisory was given shall be specified on the record.*

32 (e) *The fact that the advisory was given shall be recorded in*
33 *the abstract of the conviction.*

34 (f) *A person who is granted probation or who is sentenced*
35 *following a violation described in subdivision (b) shall be ordered*
36 *to successfully complete a controlled substance education,*
37 *treatment, or drug court program, as appropriate. A person shall*
38 *not be sentenced to jail or prison pursuant to this section unless*
39 *a court determines that the person is not eligible or suitable for*
40 *treatment.*

(g) (1) In lieu of a jail or prison sentence, or a grant of probation, a defendant charged with a violation described in subdivision (b) who meets all of the following conditions, may elect to undergo treatment by pleading guilty or no contest to a violation described in subdivision (b) and admitting the alleged prior convictions, waiving time for sentencing and the pronouncement of judgment, and agreeing to participate in, and complete, a detailed treatment program developed by a drug addiction expert and approved by the court.

(A) Within five years prior to the alleged commission of the charged offense, the defendant has not suffered a conviction for any offense involving controlled substances other than the offenses listed in subdivision (a) of Section 1000 of the Penal Code.

(B) The offense charged did not involve a crime of violence or threatened violence.

(C) There is no evidence of a contemporaneous violation relating to narcotics or restricted dangerous drugs other than a violation of the offenses listed in subdivision (a) of Section 1000 of the Penal Code.

(D) The defendant has no prior felony conviction within five years prior to the alleged commission of the charged offense.

(2) A defendant's plea of guilty or no contest shall not constitute a conviction for any purpose unless judgment is entered pursuant to paragraph (8) or subdivision (f).

(3) Upon or subsequent to arraignment for a violation described in subdivision (b), and at the request or with the consent of the defendant or their attorney, the court shall order a drug addiction expert to conduct a substance abuse and mental health evaluation of the defendant. The evaluation shall include an inquiry into any mental health diagnoses and symptoms, but shall not include a diagnosis or treatment recommendation, unless the evaluator is otherwise qualified to make those findings. The expert shall submit a report of the evaluation to the court and parties. The evaluation may be based on an interview of the defendant or other individuals with relevant knowledge and review of records the expert deems appropriate, such as medical records, criminal history, prior treatment history, and records pertaining to the current offense. The evaluation shall detail the defendant's drug abuse or mental health issues, if any, so the court and parties may better determine appropriate handling of the defendant's case.

1 (A) *The statement, or any information procured therefrom, made*
2 *by the defendant to a drug addiction expert or drug treatment*
3 *worker during the course of any investigation conducted by the*
4 *drug addiction expert or treatment program pursuant to this*
5 *paragraph, and prior to the reporting of the drug addiction expert's*
6 *findings and recommendations to the court, shall be inadmissible*
7 *in any action or proceeding brought subsequent to the*
8 *investigation.*

9 (B) *The statement, or any information procured therefrom, with*
10 *respect to the specific offense with which the defendant is charged,*
11 *that is made to any drug addiction expert or drug program worker*
12 *subsequent to the granting of treatment described in paragraph*
13 *(1) shall be inadmissible in any action or proceeding.*

14 (4) *Concurrent with the order for a substance abuse and mental*
15 *health evaluation of the defendant, and with the defendant's*
16 *consent, the court shall also order that a qualified individual*
17 *determine whether the defendant is eligible to receive Medi-Cal,*
18 *Medicare, or any other relevant benefits for any programs or*
19 *public social services. If the defendant did not previously consent*
20 *to an eligibility determination at arraignment, the court shall order*
21 *the eligibility determination upon and as a condition of the*
22 *defendant's agreement to participate in and complete a treatment*
23 *program as described in this subdivision.*

24 (5) *A treatment program, for the purposes of this subdivision,*
25 *may include, but is not limited to, drug treatment, mental health*
26 *treatment, job training, and any other conditions related to*
27 *treatment or a successful outcome for the defendant that the court*
28 *finds appropriate. The court shall hold regular hearings to review*
29 *the progress of the defendant. The court shall make referrals to*
30 *programs that provide services at no cost to the participant and*
31 *have been deemed by the court, the drug addiction expert, and the*
32 *parties to be credible and effective. A defendant may also choose*
33 *to pay for a program that is approved by the court.*

34 (6) *If available and applicable, the court may refer a defendant*
35 *to programs and services that use contingency management*
36 *services with incentive structures, including, but not limited to,*
37 *scaling rewards for continued evidence of specified behaviors or*
38 *adherence to treatment goals, or rewards to participants for*
39 *specified behaviors, such as negative urinalysis.*

(7) Upon the defendant's successful completion of the treatment program as specified in paragraph (1), the positive recommendation of the treatment program, and the motion of the defendant, prosecuting attorney, the court, or the probation department, the court shall dismiss this charge against the defendant and the provisions of Section 1000.4 of the Penal Code, as it read on the effective date of the act that added this section, shall apply, including the provision that the arrest upon which the defendant was deferred shall be deemed to have never occurred. A dismissal based on the successful completion of treatment shall not count as a conviction for any purpose.

(8) (A) If at any time it appears that the defendant is performing unsatisfactorily in the program, is not benefiting from treatment, is not amenable to treatment, has refused treatment, or has been convicted of a crime that was committed since starting treatment, the prosecuting attorney, the court on its own, or the probation department shall make a motion for entry of judgment and sentencing. After notice to the defendant, the court shall hold a hearing to determine whether judgment should be entered and the defendant sentenced. Judgment shall be imposed and the defendant sentenced if the court finds true one or more for the foregoing circumstances.

(B) Notwithstanding subparagraph (A) and except when the defendant has been found to have been convicted of a crime that was committed since starting treatment, the court may rerefer the defendant to treatment if the court finds that it is in the interest of justice to do so, that the defendant is currently amenable to treatment, and if the defendant agrees to participate in, and complete, a treatment program as described in this section.

(9) For time spent in residential treatment, a defendant may earn only actual credits pursuant to Section 2900.5 of the Penal Code and shall not earn conduct credits pursuant to Section 4019 of the Penal Code or any other provision. Time spent in any other type of program or counseling is not eligible for any credits.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

1 *In order for the State of California and local jurisdictions to act*
2 *with haste to address the fentanyl epidemic, it is necessary that*
3 *this act take effect immediately.*

4 ~~SECTION 1. Section 367.75 of the Code of Civil Procedure~~
5 ~~is amended to read:~~

6 ~~367.75. (a) (1) Except as provided in subdivisions (b) and (d),~~
7 ~~in civil cases, when a party has provided notice to the court and~~
8 ~~all other parties that it intends to appear remotely, a party may~~
9 ~~appear remotely and the court may conduct conferences, hearings,~~
10 ~~and proceedings, in whole or in part, through the use of remote~~
11 ~~technology.~~

12 ~~(2) This section does not apply to any of the following types of~~
13 ~~proceedings:~~

14 ~~(A) A juvenile court proceeding occurring pursuant to Section~~
15 ~~601 or 602 of the Welfare and Institutions Code.~~

16 ~~(B) An extension of juvenile commitment pursuant to Section~~
17 ~~1800 of the Welfare and Institutions Code.~~

18 ~~(C) A proceeding involving a commitment type identified~~
19 ~~pursuant to Section 4355 of Title 9 of the California Code of~~
20 ~~Regulations or any successor regulation.~~

21 ~~(D) A proceeding related to an intellectually disabled and~~
22 ~~dangerous commitment authorized pursuant to Article 2~~
23 ~~(commencing with Section 6500) of Chapter 2 of Part 2 of Division~~
24 ~~6 of the Welfare and Institutions Code.~~

25 ~~(b) Except as otherwise provided by law, the court may require~~
26 ~~a party or witness to appear in person at a conference, hearing, or~~
27 ~~proceeding described in subdivision (a), or under subdivisions (e)~~
28 ~~and (h), if any of the following conditions are present:~~

29 ~~(1) The court with jurisdiction over the case does not have the~~
30 ~~technology necessary to conduct the conference, hearing, or~~
31 ~~proceeding remotely.~~

32 ~~(2) Although the court has the requisite technology, the quality~~
33 ~~of the technology or audibility at a conference, hearing, or~~
34 ~~proceeding prevents the effective management or resolution of the~~
35 ~~conference, hearing, or proceeding.~~

36 ~~(3) The court determines on a hearing-by-hearing basis that an~~
37 ~~in-person appearance would materially assist in the determination~~
38 ~~of the conference, hearing, or proceeding or in the effective~~
39 ~~management or resolution of the particular case.~~

1 ~~(4) The quality of the technology or audibility at a conference,~~
2 ~~hearing, or proceeding inhibits the court reporter's ability to~~
3 ~~accurately prepare a transcript of the conference, hearing, or~~
4 ~~proceeding.~~

5 ~~(5) The quality of the technology or audibility at a conference,~~
6 ~~hearing, or proceeding prevents an attorney from being able to~~
7 ~~provide effective representation to the attorney's client.~~

8 ~~(6) The quality of the technology or audibility at a conference,~~
9 ~~hearing, or proceeding inhibits a court interpreter's ability to~~
10 ~~provide language access to a court user or authorized individual.~~

11 ~~(e) Notwithstanding paragraph (3) of subdivision (b), an expert~~
12 ~~witness may appear remotely absent good cause to compel~~
13 ~~in-person testimony.~~

14 ~~(d) (1) Except as otherwise provided by law and subject to the~~
15 ~~limitations of subdivision (b), upon its own motion or the motion~~
16 ~~of any party, the court may conduct a trial or evidentiary hearing,~~
17 ~~in whole or in part, through the use of remote technology, absent~~
18 ~~a showing by the opposing party as to why a remote appearance~~
19 ~~or testimony should not be allowed.~~

20 ~~(2) (A) Except as provided in Section 269 of the Code of Civil~~
21 ~~Procedure and Section 69957 of the Government Code, if the court~~
22 ~~conducts a trial, in whole or in part, through the use of remote~~
23 ~~technology, the official reporter or official reporter pro tempore~~
24 ~~shall be physically present in the courtroom.~~

25 ~~(B) If the court conducts a trial, in whole or in part, through the~~
26 ~~use of remote technology, upon request, the court interpreter shall~~
27 ~~be physically present in the courtroom.~~

28 ~~(e) (1) Before the court with jurisdiction over the case may~~
29 ~~proceed with a remote conference, hearing, proceeding, or trial,~~
30 ~~the court shall have a process for a party, witness, official reporter,~~
31 ~~official reporter pro tempore, court interpreter, or other court~~
32 ~~personnel to alert the judicial officer of technology or audibility~~
33 ~~issues that arise during the conference, hearing, proceeding, or~~
34 ~~trial.~~

35 ~~(2) The court shall require that a remote appearance by a party~~
36 ~~or witness have the necessary privacy and security appropriate for~~
37 ~~the conference, hearing, proceeding, or trial.~~

38 ~~(3) The court shall inform all parties, particularly parties without~~
39 ~~legal representation, about the potential technological or audibility~~
40 ~~issues that could arise when using remote technology, which may~~

1 require a delay of or halt the conference, hearing, proceeding, or
2 trial. The court shall make information available to self-represented
3 parties regarding the options for appearing in person and through
4 the use of remote technology.

5 (f) The court shall not require a party to appear through the use
6 of remote technology. If the court permits an appearance through
7 remote technology, the court must ensure that technology in the
8 courtroom enables all parties, whether appearing remotely or in
9 person, to fully participate in the conference, hearing, or
10 proceeding.

11 (g) A self-represented party may appear remotely in a
12 conference, hearing, or proceeding conducted through the use of
13 remote technology only if they agree to do so.

14 (h) Any juvenile dependency proceeding may be conducted in
15 whole or in part through the use of remote technology subject to
16 the following:

17 (1) Any person authorized to be present may request to appear
18 remotely.

19 (2) Any party to the proceeding may request that the court
20 compel the physical presence of a witness or party. A witness,
21 including a party providing testimony, may appear through remote
22 technology only with the consent of all parties and if the witness
23 has access to the appropriate technology.

24 (3) A court may not require a party to appear through the use
25 of remote technology.

26 (4) The confidentiality requirements that apply to an in-person
27 juvenile dependency proceeding shall apply to a juvenile
28 dependency proceeding conducted through the use of remote
29 technology.

30 (i) (1) Notwithstanding Section 8613.5 of the Family Code, in
31 an adoption proceeding under Division 13 (commencing with
32 Section 8500) of the Family Code, the court may conduct an
33 adoption finalization hearing, in whole or in part, through the use
34 of remote technology, without the court finding that it is impossible
35 or impracticable for either prospective adoptive parent to make
36 the appearance in person.

37 (2) A court shall not require a party to appear through the use
38 of remote technology.

39 (3) The confidentiality and privacy requirements that apply to
40 an in-person adoption finalization hearing, including, but not

1 limited to, the requirements in Section 8611 of the Family Code,
2 apply to an adoption finalization hearing conducted through the
3 use of remote technology.

4 (j) For purposes of this section, a party includes a nonparty
5 subject to Chapter 6 of Title 4 of Part 4 (commencing with Section
6 2020.010).

7 (k) Subject to the limitations in subdivision (b), this section is
8 not intended to prohibit the use of appearances through the use of
9 remote technology when stipulated by attorneys for represented
10 parties.

11 (l) Consistent with its constitutional rulemaking authority, the
12 Judicial Council shall adopt rules to implement the policies and
13 provisions in this section to promote statewide consistency,
14 including, but not limited to, the following procedures:

15 (1) A deadline by which a party must notify the court and the
16 other parties of their request to appear remotely.

17 (2) Procedures and standards for a judicial officer to determine
18 when a conference, hearing, or proceeding may be conducted
19 through the use of remote technology. The procedures and
20 standards shall require that a judicial officer give consideration to
21 the limited access to technology or transportation that a party or
22 witness might have.

23 (m) Each superior court shall report to the Judicial Council on
24 or before October 1, 2023, and annually thereafter, and the Judicial
25 Council shall report to the Legislature on or before December 31,
26 2023, and annually thereafter, to assess the impact of technology
27 issues or problems affecting civil remote proceedings and all
28 purchases and leases of technology or equipment to facilitate civil
29 remote conferences, hearings, or proceedings, specifying all of the
30 following for each annual reporting period:

31 (1) The number of civil proceedings conducted with the use of
32 remote technology.

33 (2) Any superior court in which technology issues or problems
34 occurred.

35 (3) The superior courts in which remote technology was used.

36 (4) The types of civil trial court conferences, hearings, or
37 proceedings in which remote technology was used.

38 (5) The cost of purchasing, leasing, or upgrading remote
39 technology.

40 (6) The type of technology and equipment purchased or leased.

1 ~~(n) This section shall remain in effect only until January 1, 2026,~~
2 ~~and as of that date is repealed.~~

3 ~~SEC. 2. This act is an urgency statute necessary for the~~
4 ~~immediate preservation of the public peace, health, or safety within~~
5 ~~the meaning of Article IV of the California Constitution and shall~~
6 ~~go into immediate effect. The facts constituting the necessity are:~~

7 ~~In order to ensure courts can continue to conduct conferences,~~
8 ~~hearings, proceedings, and trials in civil cases using remote~~
9 ~~technology, it is necessary that this act take effect immediately.~~