



County of Santa Cruz

HEALTH SERVICES AGENCY

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AGENCY ADMINISTRATIVE DIVISION

May 8, 2001

AGENDA: May 22, 2001

Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

SUBJECT: Implementation of Proposition 36

Dear Board Members:

This letter is to request your Board's approval of actions to implement Proposition 36, including approving the attached Proposition 36 Implementation Plan; creating new positions in the Health Services Agency and Probation Department; adopting a resolution to accept and appropriate Proposition 36 trust funds into the 2000-01 budget; authorizing the Health Services Agency (HSA) to negotiate contracts for Proposition 36 treatment services effective July 1, 2001; and adopting a resolution supporting SB 223 (Burton) related to additional State funds for drug testing.

Background

Proposition 36, which was approved by the voters in November 2000, provides for persons convicted of non-violent drug offenses to be sentenced to probation, instead of state prison or county jail. As a condition of probation, the offender would be required to complete a drug treatment program. Proposition 36 also applies to parolees found to have committed a drug-related offense or to have violated a drug-related condition of parole. Offenders previously convicted of violent or serious crimes, persons concurrently convicted of crimes not related to the use of drugs, and persons convicted of crimes related to drug sales are not eligible for probation and treatment under the terms of Proposition 36.

Proposition 36 offenders will be assigned by the court to treatment for up to one year, followed by up to six months of aftercare. Upon successful completion of treatment under Proposition 36, the original conviction charges may be dismissed. Proposition 36 allows for several treatment attempts; however, offenders who fail to complete a drug treatment program for the third time are excluded from Proposition 36 and maybe sentenced to incarceration.

The proposition provides additional funding to counties to support expansion of drug treatment related to the proposition. Funding from the proposition may also be used to offset new criminal justice system costs related to the proposition. After providing \$60 million of new State General

Funds in 2000-01, \$120 million will be provided annually through 200506. Santa Cruz County's allocation for 2000-01 is \$504,846. The State Department of Alcohol and Drug Programs issued a preliminary allocation of Proposition 36 funding for 2001-02 which includes \$972,890 for Santa Cruz County. Proposition 36 funds may not be used for drug testing. The provisions of Proposition 36 become effective July 1, 2001.

On February 27, 2001, your Board designated HSA as the lead agency responsible for administration of the funds, and established a trust fund for deposit of Proposition 36 funds. Duties of the lead agency include coordination of a plan for expenditure of the funds, direct provision and/or contracting for services authorized under the act, administration of Proposition 36 funds, data reporting, and program evaluation.

Proposition 36 Planning Process

HSA convened a Proposition 36 Planning Committee, consisting of representatives from County agencies and criminal justice system partners affected by Proposition 36, to develop a Proposition 36 Implementation Plan. The Criminal Justice Council's Drug and Alcohol Task Force convened an ad hoc sub-committee of affected County agencies, alcohol and drug service providers, and interested persons to review issues related to Proposition 36 implementation and provide input to the Proposition 36 Planning Committee. This ad hoc sub-committee also sponsored a well-publicized meeting of alcohol and drug treatment providers to review the draft Proposition 36 implementation plan. In addition, the Criminal Justice Council co-sponsored with the United Way's Together for Youth prevention coalition a public forum in March 2001 attended by approximately 100 people to educate the community about the proposition and obtain input for local implementation.

Proposition 36 Implementation Plan

In order to receive Proposition 36 funds for 2001-02, recently issued State regulations require your Board to approve a County plan for implementation of Proposition 36 and submit it to the State by June 1, 2001. The attached Proposition 36 Implementation Plan is a consensus document developed by the Proposition 36 Planning Committee, and has been reviewed by the Alcohol and Drug Abuse Commission and at a well-publicized meeting of the Criminal Justice Council Drug and Alcohol Task Force's Proposition 36 ad hoc sub-committee.

Key elements of the Proposition 36 Implementation Plan include the following:

- An estimated 618 offenders per year will qualify for Proposition 36 services. Because some will not comply with treatment requirements, an estimated 469 persons per year will participate in some form of Proposition 36 treatment services. This estimate of 469 clients per year includes 20 parolees per year based on State Board of Corrections estimates, which may be conservative.
- Offenders will be assessed by HSA Alcohol and Drug Program staff, who will develop treatment plan recommendations for approval by the court and Probation regarding the type, intensity and duration of treatment services. HSA staff will also recommend a specific treatment provider who is appropriate to provide the recommended services, and will case manage referrals for ancillary services such as vocational training, literacy and mental health services. The Human Resources Agency has participated in the Planning Committee to strengthen linkages with existing literacy and vocational training resources. Parolees who qualify under

Proposition 36 will also be referred to HSA Alcohol and Drug Program staff, who will make treatment plan recommendations for approval by the Board of Prison Terms.

- Clients will participate in treatment services as required by the court, and the provider will bill HSA for the services. As required by State regulations, Proposition 36 funds may only be spent on treatment providers that are licensed or certified by the State Department of Alcohol and Drug Programs. However, Proposition 36 funds may be spent on clean and sober living homes, provided that the client is concurrently enrolled in a licensed or certified treatment program. HSA will develop a contract with any interested licensed or certified treatment provider in the County, and reimburse providers for actual units of service delivered up to limits allowed in each client's approved treatment plan. A provider's receipt of Proposition 36 referrals will depend on the extent to which their services match clients' treatment needs, the cost and quality of services, the responsiveness of the provider to defendant progress reporting requirements, and compliance with fiscal and administrative requirements.
- Some clients may be required to live in a clean and sober house in addition to participating in treatment services. There is currently no license or certification process at the State level for assuring the quality of clean and sober homes. HSA will work with the Proposition 36 Planning Committee to develop a local quality assurance mechanism for clean and sober homes that receive Proposition 36 referrals. As needed, HSA will work with other interagency planning committees to increase the availability of affordable clean and sober housing.
- Drug testing will be required of all participants, and will be conducted by treatment providers and the Probation Department. Proposition 36 funds may not be used for drug testing. The Probation Department has requested \$60,000 for 2001-02 to fund drug testing services, and additional funds may become available through the State. Some service providers also do testing as part of their treatment program.
- The Probation Department will supervise and monitor the client's compliance with terms of probation, including participation in treatment. As required by Proposition 36, treatment providers will report on the client's progress in treatment at least quarterly, and will report to Probation immediately if the client is not complying with treatment requirements. If the client is not progressing in treatment, they may be referred back to HSA Alcohol and Drug Program staff for re-assessment and further treatment recommendations.
- To facilitate coordination of case handling, improve efficiency and increase consistency of defendants' probation and treatment requirements, the courts are considering assignment of all Proposition 36 cases, Drug Court cases and PC 1000 Deferred Entry of Judgment drug cases to a single consolidated court focusing on drug-related criminal behavior.
- HSA Alcohol and Drug Program staff will be responsible for contract administration, coordination of ongoing interagency implementation efforts, and meeting State administrative requirements for programmatic and fiscal reporting, and program evaluation. The program evaluation will include outcome data on alcohol and drug use, employment, **homelessness**, and criminal recidivism.
- Based on current projections of the number of defendants eligible for Proposition 36 services and their projected treatment needs, it appears that there may not be enough Proposition 36 funds available on an ongoing basis to fully fund needed treatment and probation services. Similar funding insufficiencies have been projected in other counties. Because of the

availability of unused one-time start-up funds in 2000-01 and the gradual start-up of services in 2001-02, there is projected to be enough Proposition 36 funds to fully support treatment and probation services until the end of 2002-03. However, beginning in 2003-04, funding may be insufficient, and waiting lists or displacement of non-Proposition 36 clients may occur if additional funding cannot be obtained. It should be emphasized that much is unknown about the number of offenders eligible for Proposition 36 services, their treatment needs, and level of compliance with treatment requirements. Consequently, HSA will track resource issues as implementation progresses, and work with the Proposition 36 Planning Committee to recommend appropriate responses and report to your Board.

Staffing

The Proposition 36 Planning Committee recommends the following positions to conduct the assessment, case management, probation supervision and administrative duties described above:

- Alcohol and Drug Program: 2.0 full-time equivalent (FTE) Mental Health Client Specialists, a 0.5 FTE Departmental Administrative Analyst, and a 0.5 FTE Senior Case Data Clerk. The Departmental Administrative Analyst and Senior Case Data Clerk are requested to both be full-time positions. The remainder of each position will be funded with non-Proposition 36 resources, and will spend the balance of their time on other new projects, including implementation of the Proposition 10 children's services grant and the AB1913 juvenile justice program.
- Probation: 1 .0 FTE Deputy Probation Officer III, 1 .0 FTE Deputy Probation Officer II, 1 .0 FTE Probation Aide, and 1 .0 FTE Typist Clerk III.

In order to comply with State mandates to begin providing Proposition 36 services on July 1, 2001, HSA and the Probation Department are requesting your Board to instruct the Personnel Department to initiate classification and recruitment prior to July 1st for positions that will become effective on July 1, 2001. The new positions in HSA and Probation are not included in the current 2000-01 budget or in the current 2001-02 budget request, and instead will be included in Supplemental Budgets for 2001-02.

Efforts to hire staff for these positions will begin immediately upon classification by the Personnel Department, except for the Deputy Probation Officer II and one of the Mental Health Client Specialists. Hiring for these two positions will be deferred until mid-year as the ramp-up in the caseload occurs. Staff in both the Alcohol and Drug Program and Probation Department Proposition 36 units will have bilingual Spanish-speaking capability. Efforts are underway to co-locate the Alcohol and Drug Program and Probation staff to increase efficiency and teamwork.

Contracts for Treatment Services

As described above, HSA plans to develop contracts with any licensed or certified treatment program interested in providing treatment services, and then refer clients to programs based on clients' treatment needs, the cost and quality of services, and administrative and reporting capabilities. For treatment providers that already have contracts with the HSA Alcohol and Drug Program, new Proposition 36 services can be funded for two months of 2001-02 through the Board-approved Continuing Agreements List until contract amendments for Proposition 36 services can be finalized in September.

However, for treatment providers that do not currently have a contract with the HSA Alcohol and Drug Program, new contracts will need to be developed. It is unlikely that these contracts can be finalized prior to your Board's July recess. Consequently, HSA is requesting approval to negotiate contracts effective July 1, 2001 and to return in August 2001 for approval. These contracts will include clean and sober living programs and others currently not under contract.

HSA will develop contracts with each of the service providers based on an estimate of the amount of funds the provider will need to provide services for the first two quarters of the 2001-02 fiscal year. After gaining experience with clients' treatment needs and referral patterns, HSA will return mid-year if necessary to adjust providers' contract amounts to ensure that contract amounts are sufficient to cover the remainder of the fiscal year.

F u n d i n g

The Planning Committee is in agreement that drug testing of Proposition 36 defendants is a necessary part of an effective treatment program, and is essential to providing client accountability. However, Proposition 36 funds may not be used for drug testing services. The Planning Committee requests your Board's adoption of the attached resolution in support of SB223 (Burton), which will appropriate State General Funds for drug testing services for Proposition 36 clients. There are concerns among some departments that language changes in SB223 are needed; however, there is consensus among the Planning Committee that the need for funding for Proposition 36-related drug testing merits your Board's support for SB223.

2000-01 Funding

The attached resolution accepts and appropriates \$3,200 of Proposition 36 trust funds for travel for members of the Planning Committee to attend a statewide conference on Proposition 36 implementation in San Diego in May 2001.

Supplemental Budget Requests

HSA and Probation plan to return to your Board with Supplemental Budget Requests to fully implement Proposition 36 during 2001-02. These Supplemental Requests will include continuation of the positions described above, operating expenses, purchase of equipment and fixed assets for start-up, client revenues, and funding for approximately six months of expenditures for contracted treatment services.

It is therefore **RECOMMENDED** that your Board:

1. Approve the attached Proposition 36 Implementation Plan;
2. Authorize the addition of the following positions in the Health Services Agency (HSA) Alcohol and Drug Program (Index 364032) and the Probation Department (Index 574000) effective July 1, 2001, and refer the positions to the Personnel Department for classification prior to July 1, 2001:
 - In HSA, add 2.0 full-time equivalent (FTE) Mental Health Client Specialists, a 1.0 FTE Senior Case Data Clerk, and a 1.0 FTE Departmental Administrative Analyst.
 - In Probation, add a 1.0 FTE Deputy Probation Officer III, a 1.0 FTE Deputy Probation Officer II, a 1.0 FTE Probation Aide, and a 1.0 FTE Typist Clerk III;

3. Authorize the HSA Administrator to negotiate contracts for Proposition 36 drug treatment services with licensed or certified drug treatment providers to be effective July 1, 2001 and return on August 7, 2001 for approval of the contracts;
4. Adopt the attached resolution in support of SB223 (Burton) to provide new State General Funds for drug testing services for Proposition 36 defendants;
5. Adopt the attached resolution accepting and appropriating \$3,200 of unanticipated State revenue into the HSA Alcohol and Drug Program; and
6. Direct the HSA Administrator to return in February 2002 with a report on the status of Proposition 36 implementation and any needed contract amendments to ensure the continued availability of Proposition 36 drug treatment services.

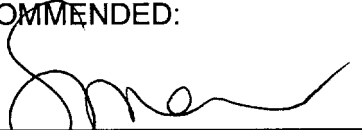
Sincerely,



Rama Khalsa, Ph.D., Administrator
Health Services Agency

Attachments: AUD60
Proposition 36 Implementation Plan
Resolution
SB223

RECOMMENDED:



Susan A. Mauriello
County Administrative Officer

cc: County Administrative Officer
Auditor Controller
County Counsel
HSA Administration
Mental Health and Substance Abuse Services Director
Alcohol and Drug Program Administrator
Judge Thomas Kelly
Courts Administrator
Sheriff
District Attorney
Public Defender
Chief Probation Officer
Local Parole Office
Executive Director, Criminal Justice Council

BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CRUZ, STATE OF *CALIFORNIA

RESOLUTION NO. _____

On the motion of Supervisor _____
duly seconded by Supervisor _____
the following resolution is adopted:

RESOLUTION ACCEPTING UNANTICIPATED REVENUE

WHEREAS, the County of Santa Cruz is a recipient of funds from **the State Dept. of Alcohol and Drug Programs** for the Proposition 36 program.; and

WHEREAS, the County is recipient of funds in the amount of \$ 3,200.00_____ which ~~are either~~ in excess of ~~those anticipated~~ or are not specifically set forth in the current fiscal year budget of the County; and

WHEREAS, pursuant to Government Code Section 29130(c)/29064(b), such funds may be made available for specific appropriation by a four-fifths vote of the Board of **Supervisors**;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the Santa **Cruz** County Auditor-Controller accept **funds** in the amount of \$ 3,200.00 into

Department **HSA Alcohol and Drug Program**

T/C	Index Number	Revenue Subobject Number	Account Name	Amount
0 0 1	364032	0691	State - Prop 36 Sub Abuse Trmt.	\$3,200.00

and that such funds be and are hereby appropriated as follows:

T/C	Index Number	Expenditure Subobject Number	PRJ/UCD	Account Name	Amount
021	364032	4162		Lodging	\$1,944
021	364032	4164		Meals	828
021	364032	4166		Mileage	108
021	364032	4168		Travel - Other	320
				TOTAL	\$3,200

DEPARTMENT HEAD I hereby certify that the fiscal provisions have been researched and that the Revenue(s) (has been) (will be) received within the current fiscal year.

By *Rana Khaleel*
by Department Head

Date 5-8-01

COUNTY ADMINISTRATIVE OFFICER

11/45

Recommended to Board

☐ Not Recommended to Board

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa **Cruz**,
State of California, this _____ day of _____ 19____
by the following vote (requires three-fifths vote for approval):

AYES: SUPERVISORS

NOES: SUPERVISORS

ABSENT: SUPERVISORS

CHAIR OF THE BOARD

ATTEST:

Clerk of the Board

APPROVED AS TO FORM:

Rafael Garcia
County Counsel

#364032-0691
APPROVED AS TO ACCOUNTING DETAIL:

PSillan 5-11-01
Auditor-Controller

Distribution:

Auditor-Controller
County Council
County Administrative. Officer
Originating Department

COUNTY OF SANTA CRUZ

PROPOSITION 36 IMPLEMENTATION PLAN

In compliance with California Code of Regulations, Title 9, Section 95 15, the County of Santa Cruz submits this plan for implementation of Proposition 36 to the State Department of Alcohol and Drug Programs. The plan follows the format of the regulations.

A. County Identifying Information

The lead agency for implementation of Proposition 36 in Santa Cruz County is:

Health Services Agency
1400 Emeline Avenue
Santa Cruz, CA 95060

Contact Person: William F. Manov, Ph.D.
Alcohol and Drug Program Administrator
(83 1) 454-4050 phone
(83 1) 454-4747 fax

B. Fiscal Year

This plan applies to the 2001-02 fiscal year.

C. Coordination of Services

The Health Services Agency (HSA) was designated by the Board of Supervisors as the lead agency responsible for administration of Proposition 36 funds. Duties of the lead agency include coordination of a plan for expenditure of the funds, direct provision and/or contracting for services authorized under the act, administration of Proposition 36 funds, data reporting, and program evaluation. HSA convened a Proposition 36 Planning Committee, consisting of representatives from County agencies and criminal justice system partners affected by Proposition 36, to develop a Proposition 36 Implementation Plan. Representation on the Proposition 36 Planning Committee includes the following:

- ☐♦♦♦
- District Attorney
- Public Defender
- Defense Bar
- Probation
- Health Services Agency
- State Parole
- Sheriff
- County Administrative Office

- Criminal Justice Council
- Human Resources Agency

The Criminal Justice Council's Drug and Alcohol Task Force convened an ad hoc sub-committee of affected County agencies, alcohol and drug service providers, and interested persons to review issues related to Proposition 36 implementation and give provider input to the Proposition 36 Planning Committee. This ad hoc sub-committee also sponsored a well-publicized meeting of alcohol and drug treatment providers to review the draft Proposition 36 implementation plan. In addition, the Criminal Justice Council co-sponsored with the United Way's Together for Youth prevention coalition a public forum in March 2001 attended by approximately 100 people to educate the community about the proposition and obtain input for local implementation.

The Proposition 36 Planning Committee will continue to meet during the start-up phase of the program to guide its overall implementation. The Health Services Agency and the Probation Department plan to co-locate line and supervisory staff to facilitate coordination of client case management on a day-to-day basis.

D. Plan to Provide and Fund Services

The County's Proposition 36 implementation plan is founded upon the values of close collaboration and cooperation among the stakeholders to promote client recovery, ensure client accountability, and protect public safety. Elements of the service provision plan include client flow, assessment, referral, provision of alcohol and drug treatment services, case monitoring, drug testing, and program evaluation.

Assessment, Treatment Recommendations and Referral

To facilitate coordination of case handling, improve efficiency and increase consistency of defendants' probation and treatment requirements, the courts will assign all Proposition 36 cases and Drug Court cases to a single court. Clients will be referred from the court to the HSA Alcohol and Drug Program (ADP). ADP will be notified to be expecting the client from the court within a specified time period. If the client does not contact ADP within the specified time period, ADP will notify Probation.

ADP staff will conduct an alcohol and drug assessment with the client (see Section E below for details of the assessment process), find an appropriate program to provide the services, and send a written report of the assessment and treatment recommendations to the court and Probation. Needs for ancillary services (literacy training, vocational and family counseling, mental health and medical services) will also be assessed using a brief screening instrument, and service recommendations developed. If a more extensive assessment of ancillary needs (e.g., learning disabilities) is required, the client will be referred out to community resources for the assessment.

Parolees who qualify under Proposition 36 will also be referred to HSA Alcohol and Drug Program staff, who will conduct assessment and make treatment plan

recommendations for approval by the Board of Prison Terms. Parolee's compliance with treatment requirements will be tracked by Parole, based on reports from treatment providers.

Based on ADP treatment recommendations and a Probation risk assessment, the court will order a treatment placement and give the client an enrolment deadline. The treatment provider will be notified by Probation to expect the client. If the client does not arrive at the treatment provider within the enrollment deadline, the treatment provider will notify Probation.

Treatment Services

Treatment services will be provided in three levels of intensity (tracks):

- Track I: Three months of weekly outpatient education and counseling services, provided primarily in a group format, similar to the existing PC 1000 Deferred Judgment Program. Topics will include the effects of alcohol and drugs, the addiction and recovery process, and family dynamics. Ancillary services will be provided through referral or directly. The goals of Track I services will be to help clients examine the impact of alcohol and drug use on their lives, and motivate them toward recovery.
- Track II: Up to six months of outpatient services, which may be augmented by up to three months of clean and sober housing. Ancillary services will be provided through referral or directly.
- Track III: Up to one year of intensive treatment services based upon an individualized case plan developed by ADP. Services may include detoxification, residential treatment, clean and sober housing, outpatient, and methadone maintenance. Ancillary services will be provided through referral or directly.

Reporting from the treatment provider to Probation will include quarterly progress reports as required by Proposition 36, and reporting on an exception basis for clients who are non-compliant with court orders for treatment.

As needed, clients who are not succeeding in treatment may be referred back to ADP for reassessment and revision of their case plan.

ADP will have primary responsibility for management of subcontracts for treatment services and reporting to the State.

Supervision and Monitoring

Probation will have primary responsibility for tracking client compliance with mandated treatment services, based on information from ADP and providers. The level of supervision will be based on a public safety risk assessment, level of treatment (track),

and treatment phase (early recovery vs. aftercare/recovery maintenance). Supervision will be based on reports from treatment providers and drug tests, and may include home and field visits.

For clients who are not complying with treatment requirements or for whom additional service needs are identified, Probation will work with ADP, the treatment provider and the court to revise the service plan and/or determine that the client is unamenable to treatment.

Drug Testing

Random drug testing will be required of all Proposition 36 clients, and will be conducted by treatment providers and the Probation Department. Proposition 36 funds will not be used for drug testing. The frequency of drug testing will depend on the treatment track, the phase of treatment (early recovery vs. aftercare/recovery maintenance), and the client's progress in treatment.

Service Provider Funding

As required by State regulations, Proposition 36 funds may only be spent on treatment providers that are licensed or certified by the State Department of Alcohol and Drug Programs. The one exception to the licensing and certification requirement is clean and sober housing, where Proposition 36 funds may be spent on clean and sober housing if the client is concurrently participating in a licensed or certified non-residential alcohol and drug treatment program.

HSA will develop a contract with any interested licensed or certified treatment provider in the County, and reimburse providers for actual units of service delivered up to limits allowed in each client's approved treatment plan. A provider's receipt of Proposition 36 referrals will depend on the extent to which their services match clients' treatment needs, the cost and quality of services, the responsiveness of the provider to defendant progress reporting requirements, and compliance with fiscal and administrative requirements.

HSA will develop contracts with each of the licensed or certified service providers based on an estimate of the amount of funds the provider will need to provide services for the first two quarters of the 2001-02 fiscal year. After gaining experience with clients' treatment needs and referral patterns, HSA will adjust, if necessary, providers' contract amounts to ensure that contract amounts are sufficient to cover the remainder of the fiscal year.

The State will permit Proposition 36 funds to be spent on clean and sober living homes, provided that the client living in the clean and sober living home is also participating in a licensed or certified treatment program. Based upon the individualized case plan, the County will provide short-term subsidies for clean and sober housing. Rather than developing separate contracts with each clean and sober house operator, the County will contract with a non-profit agency to administer clean sober housing funds. Based on

current projections of client needs, it appears that there may be a need to expand clean and sober housing opportunities in the County. Given the shortage of affordable housing in the County, HSA may need to link with other interagency committees working on housing issues to develop more affordable clean and sober housing for Proposition 36 clients.

There is currently no license or certification process at the State level for assuring the quality of clean and sober homes. HSA will work with the Proposition 36 Planning Committee to develop a local quality assurance mechanism for clean and sober homes that receive Proposition 36 referrals.

Program Evaluation

Proposition 36 requires that the State Department of Alcohol and Drug Programs conduct a statewide evaluation of the impact of Proposition 36. The County ADP will have primary responsibility for ensuring that State mandates related to program evaluation are met. Treatment providers will use the California Alcohol and Drug Data System (CADDs) Supplemental Report at admission and discharge to determine pre-post changes in alcohol and drug use, employment, housing, and other critical outcome indicators for program evaluation. The CADDs Supplemental Report is currently in use across the County-funded alcohol and drug treatment system. Treatment compliance, drug testing, recidivism and other criminal justice system data provided by Probation will also be used for evaluation purposes. There is a need for an improved information system to provide planning and outcome data needed for Proposition 36 implementation.

E. Assessment and Placement Recommendations

ADP staff will conduct a thorough assessment of each client using the Addiction Severity Index (ASI) Lite, and develop treatment recommendations using the American Society of Addiction Medicine Patient Placement Criteria. Both of these tools are research-tested, used nation-wide, and are consistent with best practice standards for the field. Needs for ancillary services (literacy training, vocational and family counseling, mental health and medical services) will also be assessed and service recommendations developed.

The client flow and referral process are described in Section D. above.

F. and G.: Planned Expenditures

Proposition 36 funds will be expended on HSA Alcohol and Drug Program staff and operating costs, Probation Department staff and operating costs, contracted treatment services, and ancillary services such as vocational and literacy training. Attachment A provides a 5-year budget for Proposition 36 services, which is based on the estimated numbers of clients and their treatment needs as described in Section H. below.

As shown in Attachment A, the total 2001-02 budget for Proposition 36 services is projected to be \$982,715. Drug testing will be supported by non-Proposition 36 funds.

Total expenditures for each type of service are summarized below, along with a separate listing of administrative expenditures associated with each type of service.

HSA Alcohol and Drug Program (includes assessment, case management and administration): \$155,089 total. Administrative costs for 2001-02 are \$58,172, and include a .5 full-time equivalent (FTE) Departmental Administrative Analyst, a .5 FTE Senior Case Data Clerk, and related operating expenses and one-time start-up equipment.

Probation Department (includes supervision and monitoring): \$194,095 total. Administrative costs for 2001-02 are \$40,741, and include a 1.0 FTE Typist Clerk III and related operating expenses and one-time start-up equipment.

Contracted Alcohol and Drug Treatment Services \$623,530. Administrative costs are negotiated separately for each contracted treatment provider, and are included in the overall unit of service rate. Since the County will be using a variety of treatment providers depending on the clients' individual needs, it is not possible at this time to specify administrative costs for contracted treatment services.

Ancillary Services: Ancillary services such as vocational training and literacy training will be provided primarily through referrals to existing County-operated and community-based programs supported with non-Proposition 36 funds. Proposition 36 funds totaling \$10,000 will be allocated to a community-based agency to provide case funds to be used at the discretion of the ADP Case Managers for ancillary services which cannot be obtained through other means. The administrative overhead rate for the community-based agency managing these case funds is anticipated to be 5.5%, or \$550.

As shown in Attachment A, based on current projections of the number of defendants eligible for Proposition 36 services and their projected treatment needs, it appears that there may not be enough Proposition 36 funds available on an ongoing basis to fully fund needed treatment and probation services. Similar funding insufficiencies have been projected in other counties. Because of the availability of unused one-time start-up funds in 2000-01 and the gradual start-up of services in 2001-02, there is projected to be enough Proposition 36 funds to fully support treatment and probation services until the end of 2002-03. However, beginning in 2003-04, funding may be insufficient, and waiting lists or displacement of non-Proposition 36 clients may occur if additional funding cannot be obtained. It should be emphasized that much is unknown about the number of offenders eligible for Proposition 36 services, their treatment needs, and level of compliance with treatment requirements. Consequently, HSA will track resource issues as implementation progresses, and work with the Proposition 36 Planning Committee to recommend appropriate responses.

H. Numbers of Clients, Referral Sources, and Type of Treatment

Attachment B describes the method used to estimate the number of referrals from the Probation Department and State Parole for Proposition 36 services. An estimated 618 offenders per year will qualify for Proposition 36 services. Because some will not comply

with treatment requirements, an estimated 469 persons per year will participate in some form of Proposition 36 treatment services. Of these estimated 469 treatment participants, approximately 449 will be referred by Probation and 20 by State Parole. Parole estimates were provided by the State Board of Corrections.

Attachment C provides estimates of the types of treatment services needed by clients and estimates of the numbers of beds needed for residential treatment and sober living facilities. Projected service needs are shown below, and will be adjusted as experience with the client population and their treatment needs is gained.

- A projected 10% of clients (47 clients of the total 469 caseload) will participate in Track I services (3-month outpatient education and treatment motivation).
- Seventy percent of the caseload (235 clients) is projected to participate in Track III 6-month outpatient services, with 20% of those (94 clients) needing an average of 3-months of supported sober living services in addition to outpatient treatment.
- Twenty percent of the caseload (93 clients) will need intensive Track III **services**, including a projected 10 % (47 clients) in residential treatment an average of 3 months followed by outpatient treatment and supported sober living; 5% of the caseload (23 clients who will need detoxification services in addition to residential treatment, outpatient and supported sober living; and 5% of the caseload (23 clients) who will participate in methadone maintenance treatment.

Based on the above projections of numbers of clients and their treatment needs, Attachment C indicates that approximately 45 sober living beds, 18 residential treatment beds, and one detoxification bed will be needed to accommodate Proposition 36 treatment needs. It is anticipated that outpatient services can be started up relatively quickly if funding is available. It is not known at this time if available licensed residential treatment capacity and sober living capacity in the County is sufficient to meet the needs of Proposition 36 clients. HSA will work with the Proposition 36 Planning Committee and treatment providers to track treatment and sober living capacity issues and develop appropriate recommendations.

Implementation Issues

Despite extensive research and the collective wisdom and experience of the Proposition 36 Planning Committee, there are many unknowns about the impact of Proposition 36 and the issues that will need to be addressed as implementation progresses. Major questions and implementation issues to be addressed by the Planning Committee over the upcoming year are listed below.

- How will Proposition 36 influence defendant, defense bar and prosecutor decisions regarding plea bargains and requests for jury trials, and what impact will any changes in practice have on criminal justice system workload and logistics?

- How will Proposition 36 affect caseloads in the PC 1000 Deferred Entry of Judgment drug program and the Drug Court, and what impact will any such changes have on target populations and resources needed to operate these programs?
- What are the criminal justice system workload and logistical implications of the proposed consolidation of Proposition 36 cases and Drug Court cases into a single court, and are there enough resources currently available to support a consolidated court for drug cases?
- Are projections of the number of clients participating in treatment reasonably accurate, and are estimates of their treatment needs accurate? Will there be enough treatment capacity available locally and, if not, can treatment capacity be developed quickly enough to meet the demand for services?
- Will there be sufficient resources available to meet the treatment and supervision needs of Proposition 36 clients? If not, will the mandates of Proposition 36 require that non-Proposition 36 clients be displaced from treatment, or will Proposition 36 clients be placed on waiting lists as other clients currently are?
- Will there be sufficient clean and sober housing resources available to meet the needs of Proposition 36 clients, and what can the County and community-based organizations do to increase the availability of affordable clean and sober housing?
- In the absence of a Statewide licensure or certification process for clean and sober housing, how can the County ensure the quality of clean and sober housing to be supported with Proposition 36 funds? What should the standards for quality assurance be, and how can clean and sober houses be monitored in a cost-efficient manner?
- What will the ancillary services needs (e.g., literacy and vocational services) of Proposition 36 clients be, and are available resources in the community be sufficient to meet these needs?

PROPOSITION 36 FIVE-YEAR BUDGET

EXPENSES

Assessment and Administration	2001-02	2002-03	2003-04	2004-05	2005-06
Personnel	Year One	Year Two	Year Three	Year Four	Year Five
2.0 FTE Mental Health Client Specialists (w/benefits) and 4% annual COLA	67,000	120,640	125,466	130,485	135,704
.5 FTE Departmental Administrative Analyst (w/ benefits) + 4% annual COLA	33,105	34,512	35,892	37,326	38,821
.5 FTE Sr. Case Data Clerk (w/ benefits) + 4% annual COLA	20,493	21,313	22,166	23,053	23,975
4.5% salary savings	<u>-6,331</u>	<u>-7,941</u>	<u>-8,259</u>	<u>-8,589</u>	<u>-8,933</u>
Subtotal Personnel Expenses	\$134,347	\$168,524	\$175,265	1182,277	5189,568

Operating Expenses

Telephones (\$1,000 per year per FTE)	3,000	3,000	3,000	3,000	3,000
Office space (200 s.f. x \$1.00 per s.f. x 12 mos.)	2,400	2,400	2,400	2,400	2,400
Copier (\$100 per month x 12 mos.)	1,200	1,200	1,200	1,200	1,200
Computer support (\$1,000 per year per FTE)	3,000	3,000	3,000	3,000	3,000
Office supplies (\$100 per month)	1,200	1,200	1,200	1,200	1,200
Mileage (200 miles/month x 2 Case Mgrs x .345 per mile x 12 mos.)	1,242	1,656	1,656	1,656	1,656
Training (\$200 per year per FTE)	<u>600</u>	<u>600</u>	<u>600</u>	<u>600</u>	<u>600</u>
Subtotal Operating Expenses	\$12,642	\$13,056	\$13,056	\$13,056	\$13,056

Start-up Equipment

Computers (3 @ \$1,200 each)	3,600	0	0	0	0
Modular desks, file cabinets, chairs, etc. for two staff	<u>4,500</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Subtotal Start-up Equipment	\$8,100	\$0	\$0	\$0	\$0

Total Assessment and Administration \$155,089 \$181,580 5188,321 \$195,333 \$202,624

Probation

Personnel					
1.0 FTE Deputy PO III (w/benefits) and 4% annual COLA	49,846	51,640	53,914	56,071	58,314
1.0 FTE Deputy PO II (w/benefits) and 4% annual COLA	22,425	46,646	48,512	50,452	52,470
1.0 Probation Aide (w/benefits) and 4% annual COLA	40,664	42,291	43,983	45,742	47,572
1.0 FTE Typist Clerk III (w/benefits) and 4% annual COLA	35,017	36,416	37,875	39,390	40,966
4.5% salary savings	<u>-6,658</u>	<u>-7,974</u>	<u>-8,293</u>	<u>-8,624</u>	<u>-8,969</u>
Subtotal Personnel	\$141,295	\$169,221	\$175,991	\$183,031	\$190,353

Operating Expenses

Computer support (\$1,500 per year per FTE)	6,000	6,000	6,000	6,000	6,000
Other operating expenses (\$2,800 per FTE)	<u>9,800</u>	<u>11,200</u>	<u>11,200</u>	<u>11,200</u>	<u>11,200</u>
Subtotal Operating Expenses	\$15,800	\$17,200	\$17,200	\$17,200	\$17,200

Start-up Equipment

Office furniture (\$3,000 per FTE)	12,000	0	0	0	0
Automobile	<u>25,000</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Subtotal Start-up Equipment	\$37,000	\$0	\$0	\$0	\$0

Total Probation \$194,095 \$186,421 \$193,191 \$200,231 \$207,553

Alcohol and Drug Treatment

Alcohol and Drug Treatment Expenses with 4% annual COLA \$623,530 \$1,247,060 \$1,296,942 \$1,348,820 \$1,402,773

Ancillary Services (literacy training, vocational training, etc.)

\$10,000 \$10,000 \$10,000 \$10,000

Total Prop 36 Expenses \$982,715 \$1,625,061 \$1,688,455 \$1,754,384 \$1,822,949

Drug Testing (non-Prop 36 funds)

\$60,000 \$60,000 \$60,000 \$60,000 \$60,000

Total Program Expense \$1,042,715 \$1,685,061 \$1,748,455 \$1,814,384 \$1,882,949

REVENUES

Proposition 36 Funds	856,168	1,442,787	1,161,363	972,890	972,890
Proposition 36 Trust Funds Interest (6% annual)	60,581	50,342	34,841	29,187	29,187
Treatment Fees (\$15/week per client x 50% collection rate)	33,360	66,720	66,720	66,720	66,720
Probation Fees (\$25/month per client x 50% collection)	13,900	27,800	27,800	27,600	27,600
Outside Revenues (CalWORKs, Medical @ 3% of total treatment expense)	18,706	37,412	38,908	40,465	42,083
County General Funds (for drug testing)	60,000	60,000	60,000	60,000	60,000
Use of non-Prop 36 Treatment Services	<u>0</u>	<u>0</u>	<u>358,823</u>	<u>617,322</u>	<u>684,269</u>

Total Revenues \$1,042,715 \$1,685,061 \$1,748,455 \$1,814,384 \$1,882,949

Attachment B

Estimate of Prop 36 Clients Participating in Treatment

The number of probationers seeking treatment under Proposition 36 was estimated based upon an analysis of potential Prop 36 eligible cases filed from 1/1/00 to 6/30/00. The analysis was based on the following criteria:

- Cases filed with strikes charges were not included.
- Cases which had prior strikes convictions were not included.
- Cases filed with possession for sales charges were not included.
- Cases for marijuana and hashish possession were not included.

Estimates of the numbers of parolees eligible under Prop 36 were obtained from State Parole.

<u>Criteria</u>	Cases 1/1/00 to <u>6/30/00</u>
Cases with non-violent drug offenses.	4 8 2
Cases with possible disqualifying misdemeanor or felony (169), of which 50% will be plea bargained away or not sustained	<u><85></u>
Cases which included a deferred entry of judgment referral	<u><98></u>
Total Prop 36 estimated cases 1/1/00 to 6/30/00	<u>299</u>
x 2 for 12 month period	<u>x 2</u>
Total annualized estimate of Prop 36 probation cases	<u>598</u>
Assume that 75% will participate in treatment	<u>x .75</u>
Total estimated annual number of Prop 36 Probation eligibles participating in treatment	<u>449</u>
Estimated annual number of parolees participating in treatment	<u>20</u>
Total estimated annual number of Prop 36 eligibles participating in treatment	<u>469</u>

The following factors may increase or decrease the numbers of persons actually entering alcohol and drug treatment services under Prop 36.

<u>Potential Factors Influencing Estimate</u>	<u>Impact on Estimate</u>
• The analysis considers only charges filed. Not all filings result in convictions.	Decrease
• Some defendants may have more than one filed case with a different case number during the target period. The analysis may contain more than one case per person.	Decrease
• The estimate does not include persons who opted for deferred entry of judgment programs. Persons who fail deferred entry of judgment programs may end up in a Prop 36 program.	Increase

- | | |
|--|----------|
| • District Attorney plea bargain practices may change in response to Prop 36. | Decrease |
| • Defendant and defense bar plea bargain practices may change in response to Prop 36. | Decrease |
| • Some persons are simultaneously on probation and parole, and may be double-counted in the estimate. | Decrease |
| • 75% of eligibles are assumed to participate in treatment. This percentage may be overly pessimistic or optimistic. | Unknown |

Number of Clients

<u>Estimated Beds Needed</u>	
<u>Assumptions</u>	
. 90% Occupancy	
.) Avg Detox LOS = 5 days	
.) Avg Resid LOS = 87 days	
Sober Living <u>Beds</u>	Detox <u>Beds</u>
	Residential <u>Beds</u>
26	0
13	0
6	1
<u>0</u>	<u>0</u>
45	1

Treatment Costs

<u>Assumptions</u>	<u># of Participants</u>	<u>Cost</u>
<u>Track I</u>		
10% will participate in Track I @ \$530 per episode.	47	\$24,910
<u>Track II</u>		
50% will participate in Outpatient (@ \$1,400 per episode) with no sober living.	235	\$329,000
20% will participate in Outpatient with 3 mos. sober living (\$450/month for sober living).	94	258,500
<u>Track III</u>		
10% in residential (\$5,150 per residential episode) with outpatient aftercare and 3 mos. sober living.	47	371,300
5% in detox (\$600 per detox episode) plus residential followed by outpatient and 3 mos. sober living.	23	195,500
5% in methadone maintenance (\$2,950 per episode).	23	<u>67,850</u>
Subtotal Treatment Expenses		\$1,247,060

**BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA**

RESOLUTION NO.

On the motion of Supervisor
Duly seconded of Supervisor
The following resolution is adopted

RESOLUTION SUPPORTING THE PASSAGE OF SENATE BILL 223

WHEREAS, the voters have adopted the Substance Abuse and Crime Prevention Act of 2000 (Proposition 36), which mandates drug treatment instead of incarceration for certain drug offenses; and

WHEREAS, drug testing of Proposition 36 program participants is necessary to promote recovery and ensure client accountability; and

WHEREAS, Proposition 36 does not permit funding provided under Proposition 36 to be used for drug testing; and

WHEREAS, SB 223 (Burton) would provide funding for drug testing of Proposition 36 program participants.

NOW, THEREFORE, BE IT RESOLVED that the Santa Cruz County Board of Supervisors supports SB 223 (Burton), which would provide \$18 million Statewide for drug testing of Proposition 36 program participants.

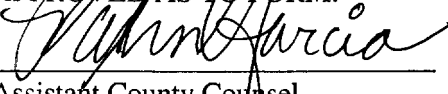
PASSED AND ADOPTED, by the Board of Supervisors of the County of Santa Cruz, State of California, this twenty-second day of May, 2001 by the following vote:

AYES : SUPERVISORS
NOES : S U P E R V I S O R S
ABSTAIN: SUPERVISORS

Chair of the Board

ATTEST: _____
Clerk of the Board

APPROVED AS TO FORM:



Assistant County Counsel

Distribution: CAO
 Auditor-Controller
 District Attorney

County Counsel
HSA Administration
Public Defender

Superior Courts
Probation
Sheriff

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BILL NUMBER: SB 223 AMENDED
BILL TEXT

AMENDED IN SENATE APRIL 5, 2001

INTRODUCED BY Senator Burton

FEBRUARY 14, 2001

An act to add Division 10.9 (commencing with Section 11999.20) to the Health and Safety Code, and to amend Sections 1210, 1210.1, and 3063.1 of, and to add Sections 1210.5 and 3063.2 to , the Penal Code, relating to drug testing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 223, as amended, Burton. Drug testing.

Existing law added by initiative statute provides that effective July 1, 2001, except as specified, a person convicted of a nonviolent drug possession offense shall receive probation with completion of a drug treatment program as a condition of probation. That initiative statute also provides that effective July 1, 2001, except as specified, a person's parole may not be suspended or revoked for commission of a nonviolent drug possession offense or for violating a drug-related condition of parole, but that an additional condition of parole for those offenses or violations shall be completion of a drug treatment program. Existing law creates a state fund to award counties money to implement the drug treatment requirements of the initiative statute, but prohibits money in that fund from being used to pay for the cost of drug testing.

Existing law provides that if a person who is placed on probation for a nonviolent drug possession offense or who is on parole violates a drug-related condition of probation or parole, then, for the first drug-related violation, the person's probation or parole cannot be revoked unless the state proves that the person is a danger to the safety of others. Existing law further provides that for the 2nd drug-related violation of probation, the person's probation cannot be revoked unless the state proves either that the person poses a danger to the safety of others or is unamenable to drug treatment.

This bill would appropriate ~~an unspecified sum of money~~ \$18,000,000 from the General Fund to be used by the State Department of Drug and Alcohol Programs to award counties ~~but~~ grants to pay for drug testing if the counties create a plan for implementing the above-mentioned initiative statute ~~grants to pay for drug testing~~ and for implementing a drug testing program that is primarily used as a treatment tool . This bill further states that where drug treatment is a condition of a person's probation or parole, drug testing shall ~~primarily~~ be used as a drug treatment tool and the results of any urinalysis shall not be given greater weight than other aspects of the person's treatment program. This bill would also specify that for the purposes of the initiative, drug treatment must be provided by a program that is licensed or certified by the state. In addition, this bill would require that a person given probation pursuant to the initiative be supervised by a probation department or, if ordered or approved by the court, a designee . ~~This bill would also set~~

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~~forth presumptions for a court or the Parole Authority to use in determining whether a probationer or parolee ordered to undergo drug treatment is in compliance with that condition of his or her probation or parole. Specifically, this bill would provide that where the probationer or parolee submits a positive drug test, the probationer or parolee should remain in some type of drug treatment program, particularly if the probationer or parolee has made progress in other aspects of treatment, as specified. This bill would also provide that this presumption could be overcome if it is shown that the probationer or parolee poses a substantial danger to themselves or others, or unamenable to drug treatment.~~

This bill would provide that, except as specified, if a person who is placed on probation for a nonviolent drug possession offense or who is on parole violates a drug-related condition of probation or parole, or commits a nonviolent drug possession offense, the person's probation or parole can only be revoked for the violation or the commission of the nonviolent drug possession offense if the state proves the alleged violation or offense and, where applicable, that the person is a danger to others or unamenable to drug treatment. This bill would also direct the court or Parole Authority to broadly interpret the phrase "drug-related condition" of probation or parole.

Since this bill would add provisions that supplement provisions of the above-mentioned initiative, it would amend that initiative statute and, in accordance with the requirements of that initiative statute, would require a 2/3 vote for enactment by the Legislature.

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

Vote: 2/3. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

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

SECTION 1. Division 10.9 (commencing with Section 11999.20) is added to the Health and Safety Code, to read:

DIVISION 10.9. SUBSTANCE ABUSE TESTING AND TREATMENT
ACCOUNTABILITY PROGRAM

11999.20. The State Department of Alcohol and Drug Programs shall administer and award grants to counties to supplement funding provided under the Substance Abuse and Crime Prevention Act of 2000 for the purpose of funding substance abuse testing for eligible offenders. Funding shall be used to supplement, rather than supplant, funding for existing substance abuse testing programs.

11999.25. (a) To be eligible for a grant pursuant to this division, a county shall establish a multiagency task force, ~~chaired by the county alcohol and drug administrator,~~ for the purpose of developing a plan for implementing the Substance Abuse and Crime Prevention Act of 2000 and shall submit a supplemental Substance Abuse Testing and Treatment Accountability Program plan to the State Department of Alcohol and Drug Programs that complies with the terms of this section .

(b) The multiagency task force shall evaluate existing services, identify service gaps and underserved populations, establish priorities, and develop a cost-effective and culturally competent plan for implementing the Substance Abuse and Crime Prevention Act of 2000. The plan shall be approved by the county's board of supervisors and by the Director of the State Department of Alcohol and Drug Programs .

(c) The plan developed by the multiagency task force shall specify how substance abuse treatment services will be coordinated and

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provided to eligible offenders. The plan shall, at a minimum, include all of the following:

(1) The assessment process that will be used to determine the appropriate placement for treatment of eligible offenders, including the need for vocational training, family counseling, literacy training, mental health treatment, and other services that may improve the effectiveness of the treatment.

(2) The standards that will be used for ensuring that providers use methods of treatment that have been generally accepted in the recovery community as effective, and that include the provision of vocational training, family counseling, literacy training, mental health treatment, and other services deemed necessary by the assessment process.

(3) The policies and procedures for substance abuse testing that assure that testing is primarily used as a treatment tool *within the context of treatment by licensed or certified providers*, and in a manner that is consistent with Section 1210.5 of the Penal Code.

(4) The policies and procedures for providing monitoring and case management of eligible offenders.

~~(5) The manner in which outcome and performance measures will be implemented to determine the effectiveness of the program.~~

~~(6) The policies and procedures for assuring that an appropriate drug treatment program is available to parolees who are required to participate in and complete a drug treatment program by the Parole Authority pursuant to Section 3063.1 of the Penal Code.~~

(c) The State Department of Alcohol and Drug Programs shall establish a fair and equitable distribution formula for allocating money to eligible counties.

SEC. 2. *Section 1210 of the Penal Code is amended to read:*

1210. Definitions

As used in Sections 1210.1 and 3063.1 of this code, and Division 10.8 (commencing with Section 11999.4) of the Health and Safety Code:

(a) The term "nonviolent drug possession offense" means the unlawful possession, use, or transportation for personal use of any controlled substance identified in Section 11054, 11055, 11056, 11057 or 11058 of the Health and Safety Code, or the offense of being under the influence of a controlled substance in violation of Section 11550 of the Health and Safety Code. The term "nonviolent drug possession offense" does not include the possession for sale, production, or manufacturing of any controlled substance.

(b) The term "drug treatment program" or "drug treatment" means a state licensed and/or certified community drug treatment program, which may include one or more of the following: outpatient treatment, half-way house treatment, narcotic replacement therapy, drug education or prevention courses and/or limited inpatient or residential drug treatment as needed to address special detoxification or relapse situations or severe dependence. The term "drug treatment program" or "drug treatment" does not include drug treatment programs offered in a prison or jail facility.

(c) The term "successful completion of treatment" means that a defendant who has had drug treatment imposed as a condition of probation has completed the prescribed course of drug treatment and, as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future.

(d) The term "misdemeanor not related to the use of drugs" means a misdemeanor that does not involve (1) the simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or (2) any activity similar to those listed in paragraph (1).

SEC. 3. *Section 1210.1 of the Penal Code is amended to read:*

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1210.1. Possession of Controlled Substances; Probation;
Exceptions

(a) Notwithstanding any other provision of law, and except as provided in subdivision (b), any person convicted of a nonviolent drug possession offense shall receive probation *and shall be supervised by the probation department or a designee as ordered or approved by the court* .

As a condition of probation the court shall require participation in and completion of an appropriate drug treatment program. The court may also impose, as a condition of probation, participation in vocational training, family counseling, literacy training and/or community service. A court may not impose incarceration as an additional condition of probation. Aside from the limitations imposed in this subdivision, the trial court is not otherwise limited in the type of probation conditions it may impose.

In addition to any fine assessed under other provisions of law, the trial judge may require any person convicted of a nonviolent drug possession offense who is reasonably able to do so to contribute to the cost of his or her own placement in a drug treatment program.

(b) Subdivision (a) does not apply to either of the following:

(1) Any defendant who previously has been convicted of one or more serious or violent felonies in violation of subdivision (c) of Section 667.5 or Section 1192.7, unless the nonviolent drug possession offense occurred after a period of five years in which the defendant remained free of both prison custody and the commission of an offense that results in (A) a felony conviction other than a nonviolent drug possession offense, or (B) a misdemeanor conviction involving physical injury or the threat of physical injury to another person.

(2) Any defendant who, in addition to one or more nonviolent drug possession offenses, has been convicted in the same proceeding of a misdemeanor not related to the use of drugs or any felony.

(3) Any defendant who:

(A) While using a firearm, unlawfully possesses any amount of (i) a substance containing either cocaine base, cocaine, heroin, methamphetamine, or (ii) a liquid, non-liquid, plant substance, or hand-rolled cigarette, containing phencyclidine.

(B) While using a firearm, is unlawfully under the influence of cocaine base, cocaine, heroin, methamphetamine or phencyclidine.

(4) Any defendant who refuses drug treatment as a condition of probation.

(5) Any defendant who (A) has two separate convictions for nonviolent drug possession offenses, (B) has participated in two separate courses of drug treatment pursuant to subdivision (a), and (C) is found by the court, by clear and convincing evidence, to be unamenable to any and all forms of available drug treatment. Notwithstanding any other provision of law, the trial court shall sentence such defendants to 30 days in jail.

(c) Within seven days of an order imposing probation under subdivision (a), the probation department shall notify the drug treatment provider designated to provide drug treatment under subdivision (a). Within 30 days of receiving that notice, the treatment provider shall prepare a treatment plan and forward it to the probation department. On a quarterly basis after the defendant begins the drug treatment program, the treatment provider shall prepare and forward a progress report to the probation department.

(1) If at any point during the course of drug treatment the treatment provider notifies the probation department that the defendant is unamenable to the drug treatment being provided, but may be amenable to other drug treatments or related programs, the probation department may move the court to modify the terms of probation to ensure that the defendant receives the alternative drug treatment or program.

(2) If at any point during the course of drug treatment the

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treatment provider notifies the probation department that the defendant is unamenable to the drug treatment provided and all other forms of drug treatment, the probation department may move to revoke probation. At the revocation hearing, unless the defendant proves by a preponderance of the evidence that there is a drug treatment program to which he or she is amenable, the court may revoke probation.

(3) Drug treatment services provided by subdivision (a) as a required condition of probation may not exceed 12 months, provided, however, that additional aftercare services as a condition of probation may be required for up to six months.

(d) Dismissal of charges upon successful completion of drug treatment

(1) At any time after completion of drug treatment, a defendant may petition the sentencing court for dismissal of the charges. If the court finds that the defendant successfully completed drug treatment, and substantially complied with the conditions of probation, the conviction on which the probation was based shall be set aside and the court shall dismiss the indictment or information against the defendant. In addition, the arrest on which the conviction was based shall be deemed never to have occurred. Except as provided in paragraph (2) or (3), the defendant shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted.

(2) Dismissal of an indictment or information pursuant to paragraph (1) does not permit a person to own, possess, or have in his or her custody or control any firearm capable of being concealed upon the person or prevent his or her conviction under Section 12021.

(3) Except as provided below, after an indictment or information is dismissed pursuant to paragraph (1), the defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or convicted for the offense. Except as provided below, a record pertaining to an arrest or conviction resulting in successful completion of a drug treatment program under this section may not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

Regardless of his or her successful completion of drug treatment, the arrest and conviction on which the probation was based may be recorded by the Department of Justice and disclosed in response to any peace officer application request or any law enforcement inquiry.

Dismissal of an information or indictment under this section does not relieve a defendant of the obligation to disclose the arrest and conviction in response to any direct question contained in any questionnaire or application for public office, for a position as a peace officer as defined in Section 830, for licensure by any state or local agency, for contracting with the California State Lottery, or for purposes of serving on a jury.

(e) Violation of probation

(1) If probation is revoked pursuant to the provisions of this subdivision, the defendant may be incarcerated pursuant to otherwise applicable law without regard to the provisions of this section.

(2) Non-drug-related probation violations

If a defendant receives probation under subdivision (a), and violates that probation either by being arrested for an offense that is not a nonviolent drug possession offense, or by violating a non-drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The court may modify or revoke probation if the alleged violation is proved.

(3) Drug-related probation violations

(A) If a defendant receives probation under subdivision (a), and violates that probation either by ~~being arrested for~~

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committing a nonviolent drug possession offense or by violating a drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if *and only if*, the alleged probation violation is proved and the state proves by a preponderance of the evidence that the defendant poses a danger to the safety of others. If the court does not revoke probation, it may intensify or alter the drug treatment plan.

(B) If a defendant receives probation under subdivision (a), and for the second time violates that probation either by ~~being arrested for~~ committing a nonviolent drug possession offense, or by violating a drug-related condition of probation, and the state moves for a second time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if *and only if*, the alleged probation violation is proved and the state proves by a preponderance of the evidence either that the defendant poses a danger to the safety of others or is unamenable to drug treatment. In determining whether a defendant is unamenable to drug treatment, the court may consider, to the extent relevant, whether the defendant (i) has committed a serious violation of rules at the drug treatment program, (ii) has repeatedly committed violations of program rules that inhibit the defendant's ability to function in the program, or (iii) has continually refused to participate in the program or asked to be removed from the program. If the court does not revoke probation, it may intensify or alter the drug treatment plan.

(C) If a defendant receives probation under subdivision (a), and for the third time violates that probation either by ~~being arrested for~~ committing a nonviolent drug possession offense, or by violating a drug-related condition of probation, and the state moves for a third time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. If the alleged probation violation is proved, the defendant is not eligible for continued probation under subdivision (a).

(D) If a defendant on probation at the effective date of this act for a nonviolent drug possession offense violates that probation either by being arrested for a nonviolent drug possession offense, or by violating a drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if *and only if*, the alleged probation violation is proved and the state proves by a preponderance of the evidence that the defendant poses a danger to the safety of others. If the court does not revoke probation, it may modify probation and impose as an additional condition participation in a drug treatment program.

(E) If a defendant on probation at the effective date of this act for a nonviolent drug possession offense violates that probation a second time either by being arrested for a nonviolent drug possession offense, or by violating a drug-related condition of probation, and the state moves for a second time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if *and only if*, the alleged probation violation is proved and the state proves by a preponderance of the evidence either that the defendant poses a danger to the safety of others or that the defendant is unamenable to drug treatment. If the court does not revoke probation, it may modify probation and impose as an additional condition participation in a drug treatment program.

(F) If a defendant on probation at the effective date of this act for a nonviolent drug offense violates that probation a third time

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either by being arrested for a nonviolent drug possession offense, or by violating a drug-related condition of probation, and the state moves for a third time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. If the alleged probation violation is proved, the defendant is not eligible for continued probation under subdivision (a).

(f) The court shall broadly interpret the term "drug-related condition of probation."

SEC. 4. Section 1210.5 is added to the Penal Code, to read:

1210.5. In a case where a ~~defendant~~ person has been ordered to undergo drug treatment as a condition of probation, any court ordered drug testing shall ~~primarily~~ be used as a treatment tool. ~~There shall be a presumption that a defendant who has submitted a positive drug test should remain in treatment, whether in the current regimen or an intensified treatment. The presumption shall be strengthened where the defendant had made progress in other aspects of treatment, including, but not limited to, his or her drug treatment program, family responsibilities, employment, and literacy or vocational programs. The presumption can be overcome by a showing that the defendant is a substantial danger to the safety to themselves or others, or a showing that the defendant is unamenable to drug treatment.~~ In evaluating a probationer's treatment program, results of any urinalysis shall be given no greater weight than any other aspects of the probationer's individual treatment program.

~~SEC. 3.~~

SEC. 5. Section 3063.1 of the Penal Code is amended to read:

3063.1. Possession of Controlled Substances; Parole; Exceptions

(a) Notwithstanding any other provision of law, and except as provided in subdivision ~~(b)~~ (d) parole may not be suspended or revoked for commission of a nonviolent drug possession offense or for violating any drug-related condition of parole.

As an additional condition of parole for all such offenses or violations, the Parole Authority shall require participation in and completion of an appropriate drug treatment program. Vocational training, family counseling and literacy training may be imposed as additional parole conditions.

The Parole Authority may require any person on parole who commits a nonviolent drug possession offense or violates any drug-related condition of parole, and who is reasonably able to do so, to contribute to the cost of his or her own placement in a drug treatment program.

(b) Subdivision (a) does not apply to:

(1) Any parolee who has been convicted of one or more serious or violent felonies in violation of subdivision (c) of Section 667.5 or Section 1192.7.

(2) Any parolee who, while on parole, commits one or more nonviolent drug possession offenses and is found to have concurrently committed a misdemeanor not related to the use of drugs or any felony.

(3) Any parolee who refuses drug treatment as a condition of parole.

(c) Within seven days of a finding that the parolee has either committed a nonviolent drug possession offense or violated any drug-related condition of parole, the Parole Authority shall notify the treatment provider designated to provide drug treatment under subdivision (a). Within 30 days thereafter the treatment provider shall prepare a drug treatment plan and forward it to the Parole Authority and to the California Department of Corrections Parole Division agent responsible for supervising the parolee. On a

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quarterly basis after the parolee begins drug treatment, the treatment provider shall prepare and forward a progress report to these entities and individuals.

(1) If at any point during the course of drug treatment the treatment provider notifies the Parole Authority that the parolee is unamenable to the drug treatment provided, but amenable to other drug treatments or related programs, the Parole Authority may act to modify the terms of parole to ensure that the parolee receives the alternative drug treatment or program.

(2) If at any point during the course of drug treatment the treatment provider notifies the Parole Authority that the parolee is unamenable to the drug treatment provided and all other forms of drug treatment, the Parole Authority may act to revoke parole. At the revocation hearing, parole may be revoked unless the parolee proves by a preponderance of the evidence that there is a drug treatment program to which he or she is amenable.

(3) Drug treatment services provided by subdivision (a) as a required condition of parole may not exceed 12 months, provided, however, that additional aftercare services as a condition of ~~probation~~ parole may be required for up to six months.

(d) Violation of parole

(1) If parole is revoked pursuant to the provisions of this subdivision, the defendant may be incarcerated pursuant to otherwise applicable law without regard to the provisions of this section.

(2) Non-drug-related parole violations

If a parolee receives drug treatment under subdivision (a), and during the course of drug treatment violates parole either by ~~being arrested for~~ committing an offense other than a nonviolent drug possession offense, or by violating a non-drug-related condition of parole, and the Parole Authority acts to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked. Parole may be modified or revoked if the parole violation is proved.

(3) Drug-related parole violations

(A) If a parolee receives drug treatment under subdivision (a), and during the course of drug treatment violates parole either by ~~being arrested for~~ committing a nonviolent drug possession offense, or by violating a drug-related condition of parole, and the Parole Authority acts to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked. Parole shall be revoked if ~~and only if~~, the parole violation is proved and a preponderance of the evidence establishes that the parolee poses a danger to the safety of others. If parole is not revoked, the conditions of parole may be intensified to achieve the goals of drug treatment.

(B) If a parolee receives drug treatment under subdivision (a), and during the course of drug treatment for the second time violates that parole either by ~~being arrested for~~ committing a nonviolent drug possession offense, or by violating a drug-related condition of parole, and the Parole Authority acts for a second time to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked. If the alleged parole violation is proved, the parolee is not eligible for continued parole under any provision of this section and may be reincarcerated.

(C) If a parolee already on parole at the effective date of this act violates that parole either by ~~being arrested for~~ committing a nonviolent drug possession offense, or by violating a drug-related condition of parole, and the Parole Authority acts to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked. Parole shall be revoked if ~~and only if~~, the parole violation is proved and a preponderance of the evidence establishes that the parolee poses a

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danger to the safety of others. If parole is not revoked, the conditions of parole may be modified to include participation in a drug treatment program as provided in subdivision (a). This paragraph does not apply to any parolee who at the effective date of this act has been convicted of one or more serious or violent felonies in violation of subdivision (c) of Section 667.5 or Section 1192.7.

(D) If a parolee already on parole at the effective date of this act violates that parole for the second time either by ~~being arrested for~~ committing a nonviolent drug possession offense, or by violating a drug-related condition of parole, and the Parole Authority acts for a second time to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked. If the alleged parole violation is proved, the parolee is not eligible for continued parole under any provision of this section and may be reincarcerated.

(e) *The court or Parole Authority shall broadly interpret the term "drug-related condition of parole."*

SEC. 6. Section 3063.2 is added to the Penal Code, to read:

3063.2. In a case where a parolee had been ordered to undergo drug treatment as a condition of parole, ~~drug testing shall~~ ~~prima ly~~ any drug testing of the parolee shall be used as a treatment tool. ~~There shall be a presumption that a parolee who has submitted a positive drug test should remain in treatment, whether in the current regimen or an intensified program. The presumption shall be strengthened where the parolee has made progress in other aspects of treatment, including, but not limited to, his or her drug treatment program, family responsibilities, employment, and literacy or vocational programs. The presumption can be overcome by a showing that the parolee is a substantial danger to the safety to themselves or others, or a showing that he or she is unamenable to drug treatment.~~

In evaluating a parolee's treatment program, results of any urinalysis shall be given no greater weight than any other aspects of the parolee's individual treatment program.

~~4.~~

SEC. 7. The sum of ~~(\$)~~ ~~eighteen million dollars (\$18,000,000)~~ is hereby appropriated from the General Fund to the State Department of Drug and Alcohol Programs for expenditure to implement Division 10.9 of the Health and Safety-Code.

~~SEC. 5.~~

SEC. 8. 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 Constitution and shall go into immediate effect. The facts constituting the necessity are: in order to preserve the public health by successfully implementing the Substance Abuse and Crime Prevention Act of 2000, funds for drug testing must be made available immediately.