

AMENDED IN SENATE JUNE 16, 2005

AMENDED IN SENATE JUNE 6, 2005

AMENDED IN SENATE MAY 25, 2005

AMENDED IN ASSEMBLY MARCH 1, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 104**

**Introduced by Assembly Member ~~Cohn~~ Bass**

(Principal coauthor: Senator Alquist)

(~~Coauthors: Assembly Members Levine, Lieber, and Montanez~~)

January 11, 2005

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An act to ~~add Section 6347 to the Family Code, relating to protective orders; amend Sections 11999.9, 11999.10, and 11999.12 of the Health and Safety Code, and to amend Sections 1210, 1210.1, and 3063.1 of, the Penal Code, relating to substance abuse and crime prevention.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 104, as amended, ~~Cohn~~ Bass. ~~Protective orders; dismissal. Substance abuse and crime prevention.~~

(1) *The Substance Abuse and Crime Prevention Act of 2000, enacted by initiative statute (Proposition 36), established the Substance Abuse Treatment Trust Fund within the State Treasury to be continuously appropriated for carrying out the purposes of the act relating to diverting from incarceration into community-based substance abuse treatment programs, nonviolent defendants, probationers, and parolees charged with simple drug possession or drug use offenses. The act requires \$120,000,000 to be continuously appropriated from the General Fund to the Substance Abuse*

*Treatment Trust Fund for the 2001-02 fiscal year, and an additional sum of \$120,000,000 for each subsequent fiscal year, concluding with the 2005-06 fiscal year. The act provides that the Legislature is not precluded from making additional appropriations to the fund. The act requires that any amendment to the act pass with a 2/3 vote of the membership of both houses of the Legislature and requires amendments to be consistent with the act's purposes.*

*This bill would express the Legislature's intent to fund the Substance Abuse Treatment Trust Fund each year in the annual Budget Act.*

*(2) The act requires the State Department of Alcohol and Drug Programs to annually conduct a study to evaluate the effectiveness and financial impact of the programs that are funded pursuant to the requirements of the act.*

*This bill would change the required components of that annual study and would additionally require the department to conduct 2 3-year followup studies to be submitted to the Legislature by July 1, 2010, and July 1, 2013.*

*(3) The act requires the department to allocate up to 0.5% of the fund's total moneys each year for a long-term study to be conducted by a public university in California aimed at evaluating the effectiveness and financial impact of the programs that are funded pursuant to the requirements of the act.*

*This bill would instead require the department to allocate up to 0.5% of the fund's total moneys each year for the studies described in (2).*

*(4) The act requires the department to annually audit the expenditures made by any county that is funded, in whole or in part, with funds provided by the act and requires counties to repay any funds that are not spent in accordance with the requirements of the act.*

*This bill would instead require the department to conduct only periodic audits. When a county is required to repay funds, the bill would authorize the county to repay those funds with trust fund moneys previously or presently allocated to the county under the act, or would authorize the department to require a corrective action by the county, instead of repayment of the funds.*

*(5) The act defines "drug treatment program" or "drug treatment" and "successful completion of treatment."*

*This bill would revise those definitions.*

(6) *The act requires any person convicted of a nonviolent drug possession offense, with certain exceptions, to receive probation with required participation in, and completion of, an appropriate drug treatment program.*

*This bill would require the court to impose appropriate drug testing as a condition of probation. The bill would also require the court, to the greatest extent possible, to monitor any person convicted of, and receiving probation for, a nonviolent drug possession offense. The bill would add to and revise the list of persons to whom these provisions do not apply.*

(7) *The act requires a drug treatment provider, on a quarterly basis after the defendant begins the drug treatment program, to prepare and forward a progress report on the individual probationer to the probation department, and to notify the probation department of other conditions related to the parolee's drug treatment.*

*This bill would require the probation department to provide reports to the court and counsel. The bill would also require the drug treatment provider to notify the court, in addition to the probation department, of other conditions related to the parolee's drug treatment.*

(8) *The act prohibits drug treatment services required as a condition of probation from exceeding 12 months, but authorizes additional aftercare services as a condition of probation to be required for up to 6 months.*

*This bill would eliminate that authorization and would instead provide an exception to the 12-month limitation if the court makes a finding that the continuation of treatment beyond 12 months is necessary for drug treatment to be successful. In that case, the bill would authorize the court to order up to 2 6-month extensions of treatment services.*

(9) *The act requires and authorizes the Parole Authority to make certain parole decisions related to a parolee's drug treatment services and parole violation and revocation.*

*This bill would shift those requirements and authorizations from the Parole Authority to the Department of Corrections Parole Division.*

(10) *The bill would make its provisions operative on July 1, 2006, and would require its provisions to be applied prospectively.*

~~Existing law authorizes the court to issue certain protective orders after notice and a hearing. These orders may have a duration of not more than 3 years, in the discretion of the court, subject to termination~~

~~or modification by further order of the court either on written stipulation filed with the court or on the motion of a party.~~

~~This bill would provide that a protective order may be dismissed by the issuing judge, to the extent feasible given the need for efficient and appropriate administration of court calendaring for both the parties and the court, on the motion of a party to terminate the order prior to its expiration date.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: ~~no~~  
yes. State-mandated local program: no.

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

1     SECTION 1. *Section 11999.9 of the Health and Safety Code*  
2     *is amended to read:*

3     11999.9. Annual Evaluation Process

4     The department shall ~~annually~~ conduct a ~~study~~ *two three-year*  
5     *followup studies* to evaluate the effectiveness and financial  
6     impact of the programs that are funded pursuant to the  
7     requirements of this act. ~~The study, and submit those evaluations~~  
8     *to the Legislature not later than July 1, 2010, and July 1, 2013.*  
9     *The evaluation studies shall include, but not be limited to, a study*  
10    ~~of the implementation process, a review of lower incarceration~~  
11    ~~costs, reductions in crime, reduced prison and jail construction,~~  
12    ~~reduced welfare costs, the adequacy of funds appropriated, and~~  
13    ~~any other impacts or issues the department can identify~~  
14    *(a) criminal justice measures on rearrests, jail and prison days*  
15    *averted, crime trends, and (b) treatment measures on completion*  
16    *rates and quality of life indicators, such as alcohol and drug use,*  
17    *employment, health, mental health, and family and social*  
18    *supports.*

19    *In addition to the studies to evaluate the effectiveness and*  
20    *financial impact of the programs that are funded pursuant to the*  
21    *requirements of this act, the department shall produce an annual*  
22    *report detailing the number and characteristics of participants*  
23    *served as a result of this act and the related costs.*

24    SEC. 2. *Section 11999.10 of the Health and Safety Code is*  
25    *amended to read:*

26    11999.10. Outside Evaluation Process

27    The department shall allocate up to 0.5 percent of the fund's  
28    ~~total monies each year for a long-term study to be conducted by a~~

1 ~~public university in California aimed at evaluating the~~  
2 ~~effectiveness and financial impact of the programs that are~~  
3 ~~funded pursuant to the requirements of this act moneys each year~~  
4 ~~to fund the costs of the studies required in Section 11999.9 by a~~  
5 ~~public or private university or other public or private institution~~  
6 ~~with similar research qualifications.~~

7 *SEC. 3. Section 11999.12 of the Health and Safety Code is*  
8 *amended to read:*

9 11999.12. Audit of Expenditures

10 The department shall ~~annually audit~~ *conduct periodic audits of*  
11 *the expenditures made by any county that is funded, in whole or*  
12 *in part, with funds provided by this act. Counties shall repay to*  
13 *the department any funds that are not spent in accordance with*  
14 *the requirements of this act. In making repayment, a county may*  
15 *use trust fund moneys previously or presently allocated to the*  
16 *county under this act, or the department may require a corrective*  
17 *action by the county in the place of repayment, as determined by*  
18 *the department.*

19 *SEC. 4. Section 1210 of the Penal Code is amended to read:*

20 1210. Definitions

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

24 (a) The term “nonviolent drug possession offense” means the  
25 unlawful personal use, possession for personal use, or  
26 transportation for personal use of any controlled substance  
27 identified in Section 11054, 11055, 11056, 11057 or 11058 of the  
28 Health and Safety Code, or the offense of being under the  
29 influence of a controlled substance in violation of Section 11550  
30 of the Health and Safety Code. The term “nonviolent drug  
31 possession offense” does not include the possession for sale,  
32 production, or manufacturing of any controlled substance and  
33 does not include violations of Section 4573.6 or 4573.8.

34 (b) The term “drug treatment program” or “drug treatment”  
35 means a state licensed and/or certified community drug treatment  
36 program, which may include one or more of the following: (1)  
37 ~~drug education, (2) outpatient treatment, half-way house~~  
38 ~~treatment, services, (3) narcotic replacement therapy, drug~~  
39 ~~education or prevention courses and/or limited inpatient or (4)~~  
40 ~~residential drug treatment as needed to address special, (5)~~

1 detoxification or relapse situations or severe dependence  
2 services, and (6) aftercare services. The term “drug treatment  
3 program” or “drug treatment” includes a drug treatment program  
4 operated under the direction of the Veterans Health  
5 Administration of the Department of Veterans Affairs or a  
6 program specified in Section ~~8001~~; such a program 8001, which  
7 shall be eligible to provide drug treatment services without  
8 regard to the licensing or certification provisions required by this  
9 subdivision. The term “drug treatment program” or “drug  
10 treatment” does not include drug treatment programs offered in a  
11 prison or jail facility.

12 (c) The term “successful completion of treatment” means that  
13 a defendant who has had drug treatment imposed as a condition  
14 of probation has completed the prescribed course of drug  
15 treatment and, as a result, there is reasonable cause to believe that  
16 ~~the defendant will not abuse controlled substances in the future~~  
17 *has continued thereafter to refrain from the use of drugs during*  
18 *the period of probation. Completion of treatment shall not*  
19 *require cessation of narcotic replacement therapy.*

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

25 *SEC. 5. Section 1210.1 of the Penal Code is amended to*  
26 *read:*

27 1210.1. Possession of Controlled Substances; Probation;  
28 Exceptions

29 (a) Notwithstanding any other provision of law, and except as  
30 provided in subdivision (b), any person convicted of a nonviolent  
31 drug possession offense shall receive probation. As a condition  
32 of probation the court shall require participation in and  
33 completion of an appropriate drug treatment program. *The court*  
34 *shall impose appropriate drug testing as a condition of*  
35 *probation.* The court may also impose, as a condition of  
36 probation, participation in vocational training, family counseling,  
37 literacy training and/or community service. A court may not  
38 impose incarceration as an additional condition of probation.  
39 Aside from the limitations imposed in this subdivision, the trial  
40 court is not otherwise limited in the type of probation conditions

1 it may impose. Probation shall be imposed by suspending the  
2 imposition of sentence. *No person shall be denied the*  
3 *opportunity to benefit from the provisions of the act based solely*  
4 *upon evidence of a co-occurring psychiatric or developmental*  
5 *disorder.*

6 *To the greatest extent possible, any person convicted of, and*  
7 *receiving probation for, a nonviolent drug possession offense*  
8 *under this section shall be monitored by the court through the*  
9 *use of dedicated calendars and the incorporation of a*  
10 *collaborative model that includes close collaboration with*  
11 *treatment providers and probation officers, drug testing*  
12 *commensurate with treatment needs, and supervision of progress*  
13 *through review hearings.*

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

19 (b) Subdivision (a) ~~does~~ shall not apply to ~~either~~ any of the  
20 following:

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

30 (2) Any defendant who *has previously served three separate*  
31 *prison terms for non-drug-related felonies within the meaning of*  
32 *subdivision (b) of Section 667.5, unless the court finds that the*  
33 *defendant does not pose a risk to the community and would*  
34 *benefit from a drug treatment program.*

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

39 ~~(3)~~

40 (4) Any defendant who:

1 (A) While ~~using a firearm~~, *armed with a deadly weapon with*  
2 *the intent to use the same as a deadly weapon*, unlawfully  
3 possesses any amount of (i) a substance containing either cocaine  
4 ~~base, cocaine, heroin, methamphetamine, or (ii) a liquid,~~  
5 ~~nonliquid, plant substance, or hand-rolled cigarette, containing~~  
6 ~~phenylelidine~~ *controlled substance identified in Section 11054,*  
7 *11055, 11056, 11057, or 11058 of the Health and Safety Code.*

8 (B) While ~~using a firearm~~ *armed with a deadly weapon with*  
9 *the intent to use the same as a deadly weapon*, is unlawfully  
10 under the influence of ~~coecaine base, cocaine, heroin,~~  
11 ~~methamphetamine or phenylelidine~~ *a controlled substance*  
12 *identified in Section 11054, 11055, 11056, 11057, or 11058 of*  
13 *the Health and Safety Code.*

14 (4)

15 (5) Any defendant who refuses drug treatment as a condition  
16 of probation.

17 (5)

18 (6) Any defendant who (A) has two separate convictions for  
19 nonviolent drug possession offenses, (B) has participated in two  
20 separate courses of drug treatment pursuant to subdivision (a),  
21 and (C) is found by the court, by clear and convincing evidence,  
22 to be unamenable to any and all forms of available drug  
23 treatment, *as defined in subdivision (b) of Section 1210.*  
24 Notwithstanding any other provision of law, the trial court shall  
25 sentence ~~such defendants~~ *the defendant* to 30 days in jail.

26 (c) Within seven days of an order imposing probation under  
27 subdivision (a), the probation department shall notify the drug  
28 treatment provider designated to provide drug treatment under  
29 subdivision (a). Within 30 days of receiving that notice, the  
30 treatment provider shall prepare a treatment plan and forward it  
31 to the probation department. ~~On a quarterly basis after the~~  
32 ~~defendant begins the drug treatment program, the~~ *for distribution*  
33 *to the court and counsel. The* treatment provider shall ~~prepare~~  
34 ~~and forward a progress report on the individual probationer to the~~  
35 ~~probation department~~ *provide to the probation department*  
36 *standardized treatment progress reports with minimum data*  
37 *elements as determined by the department, including drug test*  
38 *results. At a minimum, the reports shall be provided to the court*  
39 *every 90 days, or more frequently, as the court directs.*

1 (1) If at any point during the course of drug treatment the  
2 treatment provider notifies the probation department *and the*  
3 *court* that the defendant is unamenable to the drug treatment  
4 being provided, but may be amenable to other drug treatments or  
5 related programs, the probation department may move the court  
6 to modify the terms of probation, *or on its own motion, the court*  
7 *may modify the terms of probation after a hearing* to ensure that  
8 the defendant receives the alternative drug treatment or program.

9 (2) If at any point during the course of drug treatment the  
10 treatment provider notifies the probation department *and the*  
11 *court* that the defendant is unamenable to the drug treatment  
12 provided and all other forms of drug treatment programs pursuant  
13 to subdivision (b) of Section 1210, the probation department may  
14 move to revoke probation. At the revocation hearing, if it is  
15 proved that the defendant is unamenable to all drug treatment  
16 programs pursuant to subdivision (b) of Section 1210, the court  
17 may revoke probation.

18 (3) Drug treatment services provided by subdivision (a) as a  
19 required condition of probation may not exceed 12 months,  
20 ~~provided, however, that additional aftercare services as a~~  
21 ~~condition of probation may be required for up to six months~~  
22 *unless the court makes a finding supported by the record, that the*  
23 *continuation of treatment services beyond 12 months is necessary*  
24 *for drug treatment to be successful. If such a finding is made, the*  
25 *court may order up to two six-month extensions of treatment*  
26 *services. The provision of treatment services under this act shall*  
27 *not exceed 24 months.*

28 (d) Dismissal of charges upon successful completion of drug  
29 treatment.

30 (1) ~~At any time after~~ *After* completion of drug treatment, ~~a~~  
31 ~~defendant may petition the sentencing court for dismissal of the~~  
32 ~~charges. If~~ *and the terms of probation, the court shall conduct a*  
33 *hearing, and if* the court finds that the defendant successfully  
34 completed drug treatment, and substantially complied with the  
35 conditions of probation, the conviction on which the probation  
36 was based shall be set aside and the court shall dismiss the  
37 indictment, complaint, or information against the defendant. In  
38 addition, except as provided in paragraphs (2) and (3), both the  
39 arrest and the conviction shall be deemed never to have occurred.  
40 *The defendant may additionally petition the court for a dismissal*

1 *of charges at any time after completion of the prescribed course*  
2 *of drug treatment.* Except as provided in paragraph (2) or (3), the  
3 defendant shall thereafter be released from all penalties and  
4 disabilities resulting from the offense of which he or she has been  
5 convicted.

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

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

21 Regardless of his or her successful completion of drug  
22 treatment, the arrest and conviction on which the probation was  
23 based may be recorded by the Department of Justice and  
24 disclosed in response to any peace officer application request or  
25 any law enforcement inquiry. Dismissal of an information,  
26 complaint, or indictment under this section does not relieve a  
27 defendant of the obligation to disclose the arrest and conviction  
28 in response to any direct question contained in any questionnaire  
29 or application for public office, for a position as a peace officer  
30 as defined in Section 830, for licensure by any state or local  
31 agency, for contracting with the California State Lottery, or for  
32 purposes of serving on a jury.

33 (e) Violation of probation.

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

38 (2) Non-drug-related probation violations.

39 If a defendant receives probation under subdivision (a), and  
40 violates that probation either by being arrested for an offense that

1 is not a nonviolent drug possession offense, or by violating a  
2 non-drug-related condition of probation, and the state moves to  
3 revoke probation, the court shall conduct a hearing to determine  
4 whether probation shall be revoked. The court may modify or  
5 revoke probation if the alleged violation is proved.

6 (3) Drug-related probation violations.

7 (A) If a defendant receives probation under subdivision (a),  
8 and violates that probation either by committing a nonviolent  
9 drug possession offense, or a misdemeanor for simple possession  
10 or use of drugs or drug paraphernalia, being present where drugs  
11 are used, or failure to register as a drug offender, or any activity  
12 similar to those listed in paragraph (1) of subdivision (d) of  
13 Section 1210, or by violating a drug-related condition of  
14 probation, and the state moves to revoke probation, the court  
15 shall conduct a hearing to determine whether probation shall be  
16 revoked. The trial court shall revoke probation if the alleged  
17 probation violation is proved and the state proves by a  
18 preponderance of the evidence that the defendant poses a danger  
19 to the safety of others. If the court does not revoke probation, it  
20 may intensify or alter the drug treatment plan.

21 (B) If a defendant receives probation under subdivision (a),  
22 and for the second time violates that probation either by  
23 committing a nonviolent drug possession offense, or a  
24 misdemeanor for simple possession or use of drugs or drug  
25 paraphernalia, being present where drugs are used, or failure to  
26 register as a drug offender, or any activity similar to those listed  
27 in paragraph (1) of subdivision (d) of Section 1210, or by  
28 violating a drug-related condition of probation, and the state  
29 moves for a second time to revoke probation, the court shall  
30 conduct a hearing to determine whether probation shall be  
31 revoked. The trial court shall revoke probation if the alleged  
32 probation violation is proved and the state proves by a  
33 preponderance of the evidence either that the defendant poses a  
34 danger to the safety of others or is unamenable to drug treatment.  
35 In determining whether a defendant is unamenable to drug  
36 treatment, the court may consider, to the extent relevant, whether  
37 the defendant (i) has committed a serious violation of rules at the  
38 drug treatment program, (ii) has repeatedly committed violations  
39 of program rules that inhibit the defendant's ability to function in  
40 the program, or (iii) has continually refused to participate in the

1 program or asked to be removed from the program. If the court  
2 does not revoke probation, it may intensify or alter the drug  
3 treatment plan.

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

12 (D) If a defendant on probation at the effective date of this act  
13 for a nonviolent drug possession offense violates that probation  
14 either by being arrested for a nonviolent drug possession offense,  
15 or a misdemeanor for simple possession or use of drugs or drug  
16 paraphernalia, being present where drugs are used, or failure to  
17 register as a drug offender, or any activity similar to those listed  
18 in paragraph (1) of subdivision (d) of Section 1210, or by  
19 violating a drug-related condition of probation, and the state  
20 moves to revoke probation, the court shall conduct a hearing to  
21 determine whether probation shall be revoked. The trial court  
22 shall revoke probation if the alleged probation violation is proved  
23 and the state proves by a preponderance of the evidence that the  
24 defendant poses a danger to the safety of others. If the court does  
25 not revoke probation, it may modify probation and impose as an  
26 additional condition participation in a drug treatment program.

27 (E) If a defendant on probation at the effective date of this act  
28 for a nonviolent drug possession offense violates that probation a  
29 second time either by being arrested for a nonviolent drug  
30 possession offense, or a misdemeanor for simple possession or  
31 use of drugs or drug paraphernalia, being present where drugs are  
32 used, or failure to register as a drug offender, or any activity  
33 similar to those listed in paragraph (1) of subdivision (d) of  
34 Section 1210, or by violating a drug-related condition of  
35 probation, and the state moves for a second time to revoke  
36 probation, the court shall conduct a hearing to determine whether  
37 probation shall be revoked. The trial court shall revoke probation  
38 if the alleged probation violation is proved and the state proves  
39 by a preponderance of the evidence either that the defendant  
40 poses a danger to the safety of others or that the defendant is

1 unamenable to drug treatment. If the court does not revoke  
2 probation, it may modify probation and impose as an additional  
3 condition participation in a drug treatment program.

4 (F) If a defendant on probation at the effective date of this act  
5 for a nonviolent drug offense violates that probation a third time  
6 either by being arrested for a nonviolent drug possession offense,  
7 or by violating a drug-related condition of probation, and the  
8 state moves for a third time to revoke probation, the court shall  
9 conduct a hearing to determine whether probation shall be  
10 revoked. If the alleged probation violation is proved, the  
11 defendant is not eligible for continued probation under  
12 subdivision (a).

13 (f) The term “drug-related condition of probation” shall  
14 include a probationer’s specific drug treatment regimen,  
15 employment, vocational training, educational programs,  
16 psychological counseling, and family counseling.

17 *SEC. 6. Section 3063.1 of the Penal Code is amended to*  
18 *read:*

19 3063.1. Possession of Controlled Substances; Parole;  
20 Exceptions

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

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

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

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

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

39 (2) Any parolee who, while on parole, commits one or more  
40 nonviolent drug possession offenses and is found to have

1 concurrently committed a misdemeanor not related to the use of  
2 drugs or any felony.

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

5 (c) Within seven days of a finding that the parolee has either  
6 committed a nonviolent drug possession offense or violated any  
7 drug-related condition of parole, the *Department of Corrections*  
8 ~~Parole Authority~~ *Division* shall notify the treatment provider  
9 designated to provide drug treatment under subdivision (a).  
10 Within 30 days thereafter the treatment provider shall prepare an  
11 individualized drug treatment plan and forward it to the Parole  
12 Authority and to the ~~California~~ *Department of Corrections* Parole  
13 Division agent responsible for supervising the parolee. On a  
14 quarterly basis after the parolee begins drug treatment, the  
15 treatment provider shall prepare and forward a progress report on  
16 the individual parolee to these entities and individuals.

17 (1) If at any point during the course of drug treatment the  
18 treatment provider notifies the *Department of Corrections* Parole  
19 ~~Authority~~ *Division* that the parolee is unamenable to the drug  
20 treatment provided, but amenable to other drug treatments or  
21 related programs, the *Department of Corrections* Parole  
22 ~~Authority~~ *Division* may act to modify the terms of parole to  
23 ensure that the parolee receives the alternative drug treatment or  
24 program.

25 (2) If at any point during the course of drug treatment the  
26 treatment provider notifies the *Department of Corrections* Parole  
27 ~~Authority~~ *Division* that the parolee is unamenable to the drug  
28 treatment provided and all other forms of drug treatment  
29 provided pursuant to subdivision (b) of Section 1210 and the  
30 amenability factors described in subparagraph (B) of paragraph  
31 (3) of subdivision (e) of Section 1210.1, the *Department of*  
32 *Corrections* Parole ~~Authority~~ *Division* may act to revoke parole.  
33 At the revocation hearing, parole may be revoked if it is proved  
34 that the parolee is unamenable to all drug treatment.

35 (3) Drug treatment services provided by subdivision (a) as a  
36 required condition of parole may not exceed 12 months,  
37 ~~provided, however, that additional aftercare services as a~~  
38 ~~condition of parole may be required for up to six months unless~~  
39 *the Department of Corrections Parole Division makes a finding*  
40 *supported by the record that the continuation of treatment*

1 *services beyond 12 months is necessary for drug treatment to be*  
2 *successful. If that finding is made, the Department of Corrections*  
3 *Parole Division may order up to two six-month extensions of*  
4 *treatment services. The provision of treatment services under this*  
5 *act shall not exceed 24 months.*

6 (d) Violation of parole.

7 (1) If parole is revoked pursuant to the provisions of this  
8 subdivision, the defendant may be incarcerated pursuant to  
9 otherwise applicable law without regard to the provisions of this  
10 section. Parole shall be revoked if the parole violation is proved  
11 and a preponderance of the evidence establishes that the parolee  
12 poses a danger to the safety of others.

13 (2) Non-drug-related parole violations.

14 If a parolee receives drug treatment under subdivision (a), and  
15 during the course of drug treatment violates parole either by  
16 committing an offense other than a nonviolent drug possession  
17 offense, or by violating a non-drug-related condition of parole,  
18 and the *Department of Corrections Parole Authority Division*  
19 acts to revoke parole, a hearing shall be conducted to determine  
20 whether parole shall be revoked.

21 Parole may be modified or revoked if the parole violation is  
22 proved.

23 (3) Drug-related parole violations.

24 (A) If a parolee receives drug treatment under subdivision (a),  
25 and during the course of drug treatment violates parole either by  
26 committing a nonviolent drug possession offense, or a  
27 misdemeanor for simple possession or use of drugs or drug  
28 paraphernalia, being present where drugs are used, or failure to  
29 register as a drug offender, or any activity similar to those listed  
30 in paragraph (1) of subdivision (d) of Section 1210, or by  
31 violating a drug-related condition of parole, and the *Department*  
32 *of Corrections Parole Authority Division* acts to revoke parole, a  
33 hearing shall be conducted to determine whether parole shall be  
34 revoked. Parole shall be revoked if the parole violation is proved  
35 and a preponderance of the evidence establishes that the parolee  
36 poses a danger to the safety of others. If parole is not revoked,  
37 the conditions of parole may be intensified to achieve the goals  
38 of drug treatment.

39 (B) If a parolee receives drug treatment under subdivision (a),  
40 and during the course of drug treatment for the second time

1 violates that parole either by committing a nonviolent drug  
2 possession offense, or by violating a drug-related condition of  
3 parole, and the *Department of Corrections Parole Authority*  
4 *Division* acts for a second time to revoke parole, a hearing shall  
5 be conducted to determine whether parole shall be revoked. If the  
6 alleged parole violation is proved, the parolee is not eligible for  
7 continued parole under any provision of this section and may be  
8 reincarcerated.

9 (C) If a parolee already on parole at the effective date of this  
10 act violates that parole either by committing a nonviolent drug  
11 possession offense, or a misdemeanor for simple possession or  
12 use of drugs or drug paraphernalia, being present where drugs are  
13 used, or failure to register as a drug offender, or any activity  
14 similar to those listed in paragraph (1) of subdivision (d) of  
15 Section 1210, or by violating a drug-related condition of parole,  
16 and the *Department of Corrections Parole Authority Division*  
17 acts to revoke parole, a hearing shall be conducted to determine  
18 whether parole shall be revoked. Parole shall be revoked if the  
19 parole violation is proved and a preponderance of the evidence  
20 establishes that the parolee poses a danger to the safety of others.  
21 If parole is not revoked, the conditions of parole may be  
22 modified to include participation in a drug treatment program as  
23 provided in subdivision (a). This paragraph does not apply to any  
24 parolee who at the effective date of this act has been convicted of  
25 one or more serious or violent felonies in violation of subdivision  
26 (c) of Section 667.5 or Section 1192.7.

27 (D) If a parolee already on parole at the effective date of this  
28 act violates that parole for the second time either by committing  
29 a nonviolent drug possession offense, or by violating a  
30 drug-related condition of parole, and the *Department of*  
31 *Corrections Parole Authority Division* acts for a second time to  
32 revoke parole, a hearing shall be conducted to determine whether  
33 parole shall be revoked. If the alleged parole violation is proved,  
34 the parolee is not eligible for continued parole under any  
35 provision of this section and may be reincarcerated.

36 (e) The term “drug-related condition of parole” shall include a  
37 parolee’s specific drug treatment regimen, and, if ordered by the  
38 ~~parole authority~~ *Department of Corrections Parole Division*  
39 pursuant to this section, employment, vocational training,

1 educational programs, psychological counseling, and family  
2 counseling.

3 *SEC. 7. The provision of this act shall become operative on*  
4 *July 1, 2006, and its provisions shall be applied prospectively.*

5 *SEC. 8. The provisions of this act are severable. If any*  
6 *provision of this act or its application is held invalid, that*  
7 *invalidity shall not affect other provisions or application that can*  
8 *be given effect without the invalid provision or application.*

9 *SEC. 9. The Legislature finds and declares that the provisions*  
10 *of this act are consistent with the purposes of the Substance*  
11 *Abuse and Crime Prevention Act of 2006.*

12 *SEC. 10. It is the intent of the Legislature to fund the*  
13 *Substance Abuse Treatment Trust in the annual Budget Act.*

14 ~~SECTION 1. Section 6347 is added to the Family Code, to~~  
15 ~~read:~~

16 ~~6347. An order issued under this article may be dismissed~~  
17 ~~by the issuing judge, to the extent feasible given the need for~~  
18 ~~efficient and appropriate administration of court calendaring for~~  
19 ~~both the parties and the court, on the motion of a party to~~  
20 ~~terminate the order prior to its expiration date.~~