

AMENDED IN SENATE MAY 2, 2005  
AMENDED IN SENATE APRIL 25, 2005

**SENATE BILL**

**No. 803**

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**Introduced by Senator Ducheny**

February 22, 2005

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An act to amend Sections 11999.5, 11999.6, ~~and 11999.9~~ 11999.9, 11999.10, and 11999.12 of the Health and Safety Code, and to amend Sections 1210 ~~and 1210.1~~, 1210.1, and 3063.1 of the Penal Code, relating to drug treatment, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 803, as amended, Ducheny. Ongoing Substance Abuse and Crime Prevention Act of 2005.

Existing law, the Substance Abuse and Crime Prevention Act of 2000, was enacted by the voters at the November 2000 general election. Amendment of the act by the Legislature requires a 2/3 vote of both houses of the Legislature. The act requires all amendments to it to further the act and be consistent with its purposes. The act defines "drug treatment program" for purposes of the act, and specifically excludes in-custody drug treatment from that definition.

~~This bill would include in that definition an in-custody drug treatment and education program.~~

The act defines "successful completion of treatment" as a defendant who has completed the prescribed course of treatment and, as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future.

This bill would instead define "successful completion of treatment" as a defendant who has completed the prescribed course of treatment ~~and has continued thereafter to refrain from the use of drugs during~~

~~the period of probation. Completion of treatment would not mean cessation of narcotic replacement therapy.~~

The act requires any person convicted of a nonviolent drug possession offense to receive probation. As a condition of probation, the court is required to require a defendant to participate in, and complete, an appropriate drug treatment program. The act prohibits the imposition of incarceration as a condition of probation.

~~This bill would require drug testing as a condition of probation, and would authorize a court to order a limited sentence of incarceration in a county jail, as specified. The bill would require a person subject to the act to be monitored by the court, as specified, with a regimen of graduated sanctions.~~

The act does not apply to a defendant who has been convicted of one or more serious or violent felonies, unless the nonviolent drug possession offense occurred more than 5 years after the defendant was free from custody for the prior offense and from the commission of other types of crimes against a person.

This bill would add the condition that the court finds that the defendant does not pose a threat to the community and would benefit from a drug treatment program, and would prohibit a person who has previously served 3 separate prison terms for non-drug-related felonies from benefitting from the provisions of the bill, unless the court makes that finding.

The act does not apply to any defendant who, while using a firearm unlawfully possesses or is unlawfully under the influence of certain controlled substances.

This bill would instead make its provisions inapplicable to any defendant who, while armed with a deadly weapon unlawfully possesses or is under the influence of certain controlled substances.

Under the act, a defendant may petition the sentencing court for dismissal of the charges at any time after completion of drug treatment.

~~This bill would authorize a defendant to petition the court for dismissal of the charges after completion of drug treatment and all other terms of probation. the court, after a hearing to determine whether the defendant has successfully completed treatment and probation, to set the conviction aside, as specified.~~

Under the act, once the indictment, complaint, or information is dismissed, a record pertaining to the arrest and conviction for that offense may not be used to deny the defendant employment.

~~This bill would except employment in a position that involves the safety of the public from that provision.~~

Under the act, if a defendant violates probation, as specified, the court may revoke probation or it may intensify or alter the drug treatment plan.

This bill would authorize a court to also order incarceration for a specified period, in order to enhance treatment compliance, and in some circumstances, to order the defendant to complete an in-custody drug treatment program.

The act appropriates \$60,000,000 per year for purposes of the act, through the 2005-06 fiscal year. The act prohibits money appropriated for its purposes to be used for drug testing.

This bill would appropriate \$150,000,000 per year through the 2010-11 fiscal year. The bill would authorize money appropriated for its purposes to be used for mandatory drug testing.

Existing law requires an annual study to evaluate the effectiveness of the act.

This bill would change the items to be included in that study.

*Existing law, with some exceptions, prohibits the suspension or revocation of parole for commission of a nonviolent drug possession offense or violating any drug-related condition of parole. Further, existing law prescribes the steps the Parole Authority is to take upon this type of violation, and the actions that any drug treatment provider must thereafter take, as specified. Drug treatment services are not to be required as a condition of parole for longer than 12 months.*

*This bill would change some references to the Parole Authority, to the Department of Corrections Parole Division. Further this bill would allow the department to make a finding that treatment beyond 12 months is necessary, and under those conditions, treatment may be extended to 24 months.*

Because the bill would increase punishment for crimes, including authorizing jail time, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: yes.

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

1 SECTION 1. (a) This act shall be known and may be cited as  
2 the Ongoing Substance Abuse and Crime Prevention Act of  
3 2005.

4 (b) The Legislature finds and declares all of the followings:

5 (1) The people of the State of California voted to approve  
6 Proposition 36, the Substance Abuse and Crime Prevention Act  
7 of 2000, in the November 2000 general election. The voters  
8 declared their intent in that act to do all of the following:

9 (A) Divert from incarceration into community-based substance  
10 abuse treatment programs nonviolent defendants, probationers  
11 and parolees charged with simple drug possession or drug use  
12 offenses.

13 (B) Halt the wasteful expenditure of hundreds of millions of  
14 dollars each year on the incarceration and reincarceration of  
15 nonviolent drug users who would be better served by  
16 community-based treatment.

17 (C) Enhance public safety by reducing drug-related crime and  
18 preserving jails and prison cells for serious and violent offenders,  
19 and to improve public health by reducing drug abuse and drug  
20 dependence through proven and effective drug treatment  
21 strategies.

22 (c) Based on the experience in the implementation of the  
23 Substance Abuse and Crime Prevention Act of 2000, the  
24 evidence demonstrates all of the following:

25 (1) Drug dependent criminal offenders who receive drug  
26 treatment are far more likely to stop the abuse of drugs and  
27 commission of future crimes, as well as lead healthier, more  
28 stable and more productive lives, if they in fact successfully  
29 complete the required drug treatment program.

30 (2) Drug dependent criminal offenders who receive drug  
31 treatment are far more likely to complete the drug treatment  
32 program if they are monitored and supervised by courts that use  
33 the drug court model through dedicated calendars and include a

1 regimen of graduated sanctions and rewards, close collaboration  
2 between the court, treatment providers and probation, drug  
3 testing commensurate with treatment needs, and appropriate  
4 court monitoring and supervision of progress through frequent  
5 review hearings.

6 (3) Drug dependent criminal offenders who are unable to  
7 succeed in community treatment and remain drug and crime free  
8 while on probation will benefit from structured jail treatment  
9 programs followed by a return to community treatment. Evidence  
10 also demonstrates that incarceration is an effective tool in both  
11 treatment and prevention.

12 (4) The costs of treatment, probation supervision, court  
13 monitoring, and drug testing for the substantial number of  
14 eligible defendants sentenced under that act is one hundred fifty  
15 million dollars (\$150,000,000) per year.

16 (d) Using the drug court model through the Drug Court  
17 Partnership Act of 1998 (Sec. 11970, H.& S.C.) and the  
18 Comprehensive Drug Court Implementation Act of 1999 (Sec.  
19 11970.1, H.& S.C.) has resulted in a reduction in the  
20 expenditures each year of state and county funding for the  
21 incarceration and reincarceration of nonviolent drug users who  
22 would be better served by drug court supervised community  
23 treatment. This model should be utilized for defendants  
24 sentenced under the Substance Abuse and Crime Prevention Act  
25 of 2000 as well.

26 (e) Mandatory drug testing and the reporting of drug test  
27 results to the court serves as an effective treatment tool in  
28 determining the appropriate treatment program for the defendant,  
29 enables the court to hold the defendant accountable to refrain  
30 from the continued use of drugs, and enhances public safety.

31 SEC. 2. Section 11999.5 of the Health and Safety Code is  
32 amended to read:

33 11999.5. Upon passage of this act, \$60,000,000 shall be  
34 continuously appropriated from the General Fund to the  
35 Substance Abuse Treatment Trust Fund for the 2000-01 fiscal  
36 year. There is hereby continuously appropriated from the General  
37 Fund to the Substance Abuse Treatment Trust Fund an additional  
38 \$120,000,000 for the 2001-02 fiscal year, an additional sum of  
39 \$120,000,000 for each subsequent fiscal year until the 2005-06  
40 fiscal year, an additional sum of one hundred fifty million dollars

1 (\$150,000,000) for the 2006-07 fiscal year, and an additional  
2 sum of one hundred fifty million dollars (\$150,000,000) in each  
3 subsequent fiscal year, until the 2010-11 fiscal year. These funds  
4 shall be transferred to the Substance Abuse Treatment Trust Fund  
5 on July 1 of each of these specified fiscal years. Funds  
6 transferred to the Substance Abuse Treatment Trust Fund are not  
7 subject to annual appropriation by the Legislature and may be  
8 used without a time limit. Nothing in this section precludes  
9 additional appropriations by the Legislature to the Substance  
10 Abuse Treatment Trust Fund.

11 SEC. 3. Section 11999.6 of the Health and Safety Code is  
12 amended to read:

13 11999.6. Monies deposited in the Substance Abuse Treatment  
14 Trust Fund shall be distributed annually by the Secretary of the  
15 Health and Human Services Agency through the State  
16 Department of Alcohol and Drug Programs to counties to cover  
17 the costs of placing persons in and providing drug treatment  
18 programs under this act, and vocational training, family  
19 counseling and literacy training under this act. Additional costs  
20 that may be reimbursed from the Substance Abuse Treatment  
21 Trust Fund include probation department costs, court monitoring  
22 costs and any miscellaneous costs made necessary by the  
23 provisions of this act, including mandatory drug testing services.  
24 Those moneys shall be allocated to counties through a fair and  
25 equitable distribution formula that includes, but is not limited to,  
26 per capita arrests for controlled substance possession violations  
27 and substance abuse treatment caseload, as determined by the  
28 department as necessary to carry out the purposes of this act. The  
29 department may reserve a portion of the fund to pay for direct  
30 contracts with drug treatment service providers in counties or  
31 areas in which the director of the department has determined that  
32 demand for drug treatment services is not adequately met by  
33 existing programs. However, nothing in this section shall be  
34 interpreted or construed to allow any entity to use funds from the  
35 Substance Abuse Treatment Trust Fund to supplant funds from  
36 any existing fund source or mechanism currently used to provide  
37 substance abuse treatment.

38 SEC. 4. Section 11999.9 of the Health and Safety Code is  
39 amended to read:

1 11999.9. The department shall ~~annually conduct a study~~  
2 *conduct two three-year followup studies* to evaluate the  
3 effectiveness and financial impact of the programs that are  
4 funded pursuant to the requirements of this act, *and submit those*  
5 *evaluations to the Legislature not later than July 1, 2010, and*  
6 *July 1, 2013.* The ~~study~~ *evaluation studies* shall include ~~criminal~~  
7 ~~justice statistical data on rearrests and convictions of defendants~~  
8 ~~after their sentencing under this act by crime type, as well as the~~  
9 ~~impact, if any, of the programs on statewide crime trends, actual~~  
10 ~~prison bed days saved and jail bed days saved as a result of the~~  
11 ~~programs funded under this act, the adequacy of funds~~  
12 ~~appropriated, and any other impacts or issues the department can~~  
13 ~~identify that specifically relate to the reduction of crime and~~  
14 ~~direct savings in prison and jail costs, as well as local law~~  
15 ~~enforcement, court, court-related, custody administration, and~~  
16 ~~other criminal justice costs, but not be limited to, (a) criminal~~  
17 ~~justice measures on rearrests, jail and prison days averted, crime~~  
18 ~~trends, and (b) treatment measures on completion rates and~~  
19 ~~quality of life indicators, such as alcohol and drug use,~~  
20 ~~employment, health, mental health, and family and social~~  
21 ~~supports.~~

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

27 *SEC. 5 Section 11999.10 of the Health and Safety Code is*  
28 *amended to read:*

29 11999.10. Outside Evaluation Process

30 The department shall allocate up to 0.5 percent of the fund's  
31 ~~total monies moneys~~ each year ~~for a long-term study to be~~  
32 ~~conducted by a public university in California aimed at~~  
33 ~~evaluating the effectiveness and financial impact of the programs~~  
34 ~~that are funded pursuant to the requirements of this act to fund~~  
35 ~~the costs of the studies required in Section 11999.9 by a public or~~  
36 ~~private university or other public or private institution with~~  
37 ~~similar research qualifications.~~

38 *SEC. 6 Section 11999.12 of the Health and Safety Code is*  
39 *amended to read:*

40 11999.12. Audit of Expenditures

1 The department shall ~~annually audit~~ *conduct periodic audits of*  
2 the expenditures made by any county that is funded, in whole or  
3 in part, with funds provided by this act. Counties shall repay to  
4 the department any funds that are not spent in accordance with  
5 the requirements of this act. *In making repayment, a county may*  
6 *use trust fund moneys previously or presently allocated to the*  
7 *county under this act, or the department may require a corrective*  
8 *action by the county in the place of repayment, as determined by*  
9 *the department.*

10 ~~SEC. 5.~~

11 *SEC. 7.* Section 1210 of the Penal Code is amended to read:

12 1210. As used in Sections 1210.1 and 3063.1 of this code,  
13 and Division 10.8 (commencing with Section 11999.4) of the  
14 Health and Safety Code, the following definitions apply:

15 (a) The term “nonviolent drug possession offense” means the  
16 unlawful personal use, possession for personal use, or  
17 transportation for personal use of any controlled substance  
18 identified in Section 11054, 11055, 11056, 11057 or 11058 of the  
19 Health and Safety Code, or the offense of being under the  
20 influence of a controlled substance in violation of Section 11550  
21 of the Health and Safety Code. The term “nonviolent drug  
22 possession offense” does not include the possession for sale,  
23 production, or manufacturing of any controlled substance and  
24 does not include violations of Section 4573.6 or 4573.8.

25 (b) The term “drug treatment program” or “drug treatment”  
26 means a state licensed or certified community drug treatment  
27 program, which may include one or more of the following:  
28 ~~outpatient treatment, half-way house treatment, narcotic~~  
29 ~~replacement therapy, drug education or prevention courses and/or~~  
30 ~~limited inpatient or residential drug treatment as needed to~~  
31 ~~address special detoxification or relapse situations or severe~~  
32 ~~dependence, or an in-custody drug treatment and education~~  
33 ~~program in a county jail (1) drug education, (2) outpatient~~  
34 ~~services, (3) narcotic replacement therapy, (4) residential~~  
35 ~~treatment, (5) detoxification services, and (6) aftercare services.~~  
36 The term “drug treatment program” or “drug treatment” includes  
37 a drug treatment program operated under the direction of the  
38 Veterans Health Administration of the Department of Veterans  
39 Affairs or a program specified in Section 8001. That type of  
40 program shall be eligible to provide drug treatment services

1 without regard to the licensing or certification provisions  
2 required by this subdivision. *The term “drug treatment program”*  
3 *or “drug treatment” does not include drug treatment programs*  
4 *offered in a prison or jail facility.*

5 (c) The term “successful completion of treatment” means that  
6 a defendant who has had drug treatment imposed as a condition  
7 of probation has completed the prescribed course of drug  
8 treatment ~~and has continued thereafter to refrain from the use of~~  
9 ~~drugs during the period of probation.~~ *as recommended by the*  
10 *treatment provider and ordered by the court. Completion of*  
11 *treatment shall not require cessation of narcotic replacement*  
12 *therapy.*

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

18 ~~SEC. 6.~~

19 *SEC. 8.* Section 1210.1 of the Penal Code is amended to read:

20 1210.1. (a) Notwithstanding any other provision of law, and  
21 except as provided in subdivision (b), any person convicted of a  
22 nonviolent drug possession offense shall receive probation. As a  
23 condition of probation, the court shall require participation in and  
24 completion of an appropriate drug treatment ~~program, and~~  
25 ~~mandatory drug testing program.~~ *The court shall impose*  
26 *appropriate drug testing as a condition of probation.* The court  
27 may also impose, as a condition of probation, participation in  
28 vocational training, family counseling, literacy training and/or  
29 community service, ~~or participation in an in-custody treatment~~  
30 ~~and education program in a county jail.~~ *A court may order a*  
31 *limited sentence of incarceration in a county jail for the sole*  
32 *purpose of enhancing treatment compliance by the defendant,*  
33 ~~consistent with the drug court model service.~~ *A court may not*  
34 *impose incarceration as an additional condition of probation.*  
35 Aside from the limitations imposed in this subdivision, the trial  
36 court is not otherwise limited in the type of probation conditions  
37 it may impose. Probation ~~may~~ *shall* be imposed by suspending  
38 the imposition of sentence. *No person shall be denied the*  
39 *opportunity to benefit from the provisions of the act based solely*

1 upon evidence of a co-occurring psychiatric or developmental  
2 disorder.

3 **A**

4 To the greatest extent possible, any person who is convicted of,  
5 and placed on probation for, a nonviolent drug possession  
6 offense *under this section* shall be monitored by the court  
7 through the use of a dedicated court calendar and the  
8 incorporation of a ~~drug collaborative~~ court model of oversight  
9 that includes ~~a regimen of graduated sanctions and rewards~~, close  
10 collaboration with treatment providers and probation, drug  
11 testing commensurate with treatment needs and ~~appropriate court~~  
12 ~~monitoring and supervision of progress through frequent~~ review  
13 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 as defined in subdivision (c)  
23 of Section 667.5 or subdivision (c) of Section 1192.7, unless the  
24 nonviolent drug possession offense occurred after a period of five  
25 years in which the defendant remained free of both prison  
26 custody and the commission of an offense that results in a felony  
27 conviction other than a nonviolent drug possession offense, or a  
28 misdemeanor conviction involving physical injury or the threat  
29 of physical injury to another person, and the court finds that the  
30 defendant does not pose a risk to the community and would  
31 benefit from a drug treatment program.

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

38 (3) Any defendant who, in addition to one or more nonviolent  
39 drug possession offenses, has been convicted in the same

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

3 (4) Any defendant who, while armed with a deadly weapon  
4 *with the intent to use same as a deadly weapon*, unlawfully  
5 possesses, or is under the influence of, any controlled substance  
6 identified in Section 11054, 11055, 11056, 11057, or 11058 of  
7 the Health and Safety Code.

8 (5) Any defendant who refuses drug treatment as a condition  
9 of probation.

10 (6) Any defendant who has two separate convictions for  
11 nonviolent drug possession offenses, has participated in two  
12 separate courses of drug treatment pursuant to subdivision (a),  
13 and is found by the court, by clear and convincing evidence, to  
14 be unamenable to any and all forms of available drug treatment,  
15 as defined in subdivision (b) of Section 1210. Notwithstanding  
16 any other provision of law, the trial court shall sentence those  
17 defendants to 30 days in jail.

18 (c) Within seven days of an order imposing probation under  
19 subdivision (a), the probation department shall notify the drug  
20 treatment provider designated to provide drug treatment under  
21 subdivision (a). Within 30 days of receiving that notice, the  
22 treatment provider shall prepare a treatment plan and forward it  
23 to the probation department *for distribution to the court and*  
24 *counsel*. The treatment provider shall provide *to the probation*  
25 *department standardized* treatment progress reports, *with*  
26 *minimum data elements as determined by the department*,  
27 including all drug testing ~~results to the court or probation~~  
28 ~~department, or both, as the court directs, for consideration by the~~  
29 ~~court at each review hearing.~~ *results. At a minimum, the reports*  
30 *shall be provided to the court every 90 days, or more frequently,*  
31 *as the court directs.*

32 (1) If at any point during the course of drug treatment the  
33 treatment provider notifies the probation department ~~or~~ *and* the  
34 court that the defendant is unamenable to the drug treatment  
35 being provided, but may be amenable to other drug treatments or  
36 related programs, the probation department may move the court  
37 to modify the terms of probation, *or on its own motion, the court*  
38 *may modify the terms of probation after a hearing* to ensure that  
39 the defendant receives the alternative drug treatment or program.

1 (2) 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 provided and all other forms of drug treatment programs pursuant  
5 to subdivision (b) of Section 1210, the probation department may  
6 move to revoke probation. At the revocation hearing, if it is  
7 proved that the defendant is unamenable to all drug treatment  
8 programs pursuant to subdivision (b) of Section 1210, the court  
9 may revoke probation.

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

20 (d) (1) At any time after completion of drug treatment and the  
21 terms of probation, ~~a defendant may petition the sentencing court~~  
22 ~~for dismissal of the charges. If the court shall conduct a hearing,~~  
23 ~~and if the court finds that the defendant successfully completed~~  
24 ~~drug treatment, and substantially complied with the conditions of~~  
25 ~~probation, including refraining from the use of drugs after the~~  
26 ~~completion of treatment, the conviction on which the probation~~  
27 ~~was based shall be set aside and the court shall dismiss the~~  
28 ~~indictment, complaint, or information against the defendant. In~~  
29 ~~addition, except as provided in paragraphs (2) and (3), both the~~  
30 ~~arrest and the conviction shall be deemed never to have occurred.~~  
31 ~~The defendant may additionally petition the court for a dismissal~~  
32 ~~of charges at any time after completion of the prescribed course~~  
33 ~~of drug treatment. Except as provided in paragraph (2) or (3), the~~  
34 ~~defendant shall thereafter be released from all penalties and~~  
35 ~~disabilities resulting from the offense of which he or she has been~~  
36 ~~convicted.~~

37 (2) Dismissal of an indictment, complaint, or information  
38 pursuant to paragraph (1) does not permit a person to own,  
39 possess, or have in his or her custody or control any firearm

1 capable of being concealed upon the person or prevent his or her  
2 conviction under Section 12021.

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

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

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

31 (2) If a defendant receives probation under subdivision (a),  
32 and violates that probation either by ~~being arrested for~~  
33 *committing* an offense that is not a nonviolent drug possession  
34 offense, or by violating a non-drug-related condition of  
35 probation, and the state moves to revoke probation, the court  
36 ~~shall conduct a hearing to determine whether probation shall be~~  
37 ~~revoked. The court may modify or revoke probation if the alleged~~  
38 ~~violation is proved.~~ *may remand the defendant for a period not*  
39 *exceeding 30 days during which time the court may receive input*  
40 *from treatment, probation, the state, and the defendant, and the*

1 court may conduct further hearings as it deems appropriate to  
2 determine whether or not probation should be reinstated under  
3 this section. If the court reinstates the defendant on probation,  
4 the court may modify the treatment plan and any other terms of  
5 probation, and continue the defendant in a treatment program  
6 under this act. If the court reinstates the defendant on probation,  
7 the court may, after receiving input from the treatment provider  
8 and probation, if available, intensify or alter the treatment plan  
9 under subdivision (a), and impose sanctions, including jail  
10 sanctions not exceeding 30 days, as a treatment tool to enhance  
11 treatment compliance.

12 (3) (A) If a defendant receives probation under subdivision  
13 (a), and violates that probation either by committing a nonviolent  
14 drug possession offense, or a misdemeanor for simple possession  
15 or use of drugs or drug paraphernalia, being present where drugs  
16 are used, or failure to register as a drug offender, or any activity  
17 similar to those listed in paragraph (1) of subdivision (d) of  
18 Section 1210, or by violating a drug-related condition of  
19 probation, and the state moves to revoke probation, the court  
20 shall conduct a hearing to determine whether probation shall be  
21 revoked. The trial court shall revoke probation if the alleged  
22 probation violation is proved and the state proves by a  
23 preponderance of the evidence that the defendant poses a danger  
24 to the safety of others. If the court does not revoke probation, it  
25 may intensify or alter the drug treatment plan, ~~and may, in~~  
26 ~~addition, order incarceration in a county jail for not more than~~  
27 ~~seven days as a treatment tool under the drug court model, in~~  
28 ~~order to enhance treatment compliance.~~ and in addition, if the  
29 violation does not involve the recent use of drugs as a  
30 circumstance of the violation, including, but not limited to,  
31 violations relating to failure to appear at treatment or court,  
32 noncompliance with treatment, and failure to report for drug  
33 testing, the court may impose sanctions including jail sanctions  
34 that may not exceed 48 hours of continuous custody as a  
35 treatment tool to enhance treatment compliance and impose  
36 other changes in the terms and conditions of probation. The  
37 court shall consider, among other factors, the seriousness of the  
38 violation, previous treatment compliance, employment, medical  
39 conditions, child support obligations, and family responsibilities.  
40 If one of the circumstances of the violation involves recent drug

1 use, as well as other circumstances of violation, and the  
2 circumstance of recent drug use is demonstrated to the court by  
3 satisfactory evidence and a finding made on the record, the court  
4 may, after receiving input from treatment and probation, if  
5 available, direct the defendant to enter a licensed detoxification  
6 or residential treatment facility, and if there is no bed  
7 immediately available in such a facility, the court may order that  
8 the defendant be confined in a county jail for detoxification  
9 purposes only, if the jail offers detoxification services, for a  
10 period not to exceed 10 days. The detoxification services must  
11 provide narcotic replacement therapy for those defendants  
12 presently actually receiving narcotic replacement therapy.

13 (B) If a defendant receives probation under subdivision (a),  
14 and for the second time violates that probation either by  
15 committing a nonviolent drug possession offense, or a  
16 misdemeanor for simple possession or use of drugs or drug  
17 paraphernalia, being present where drugs are used, or failure to  
18 register as a drug offender, or any activity similar to those listed  
19 in paragraph (1) of subdivision (d) of Section 1210, or by  
20 violating a drug-related condition of probation, and the state  
21 moves ~~for a second time~~ to revoke probation, the court shall  
22 conduct a hearing to determine whether probation shall be  
23 revoked. The trial court shall revoke probation if the alleged  
24 probation violation is proved and the state proves by a  
25 preponderance of the evidence either that the defendant poses a  
26 danger to the safety of others or is unamenable to drug treatment.  
27 In determining whether a defendant is unamenable to drug  
28 treatment, the court may consider, to the extent relevant, whether  
29 the defendant (i) has committed a serious violation of rules at the  
30 drug treatment program, (ii) has repeatedly committed violations  
31 of program rules that inhibit the defendant's ability to function in  
32 the program, or (iii) has continually refused to participate in the  
33 program or asked to be removed from the program. If the court  
34 does not revoke probation, it may intensify or alter the drug  
35 treatment plan, and may, in addition, ~~order incarceration in a~~  
36 ~~county jail for not more than 14 days as a treatment tool under~~  
37 ~~the drug court model, in order to enhance treatment compliance.~~  
38 ~~In the alternative, the court may require the defendant to~~  
39 ~~successfully complete an in-custody treatment program if the~~  
40 ~~violation does not involve the recent use of drugs as a~~

1 *circumstance of the violation, including, but not limited to,*  
2 *violations relating to failure to appear at treatment or court,*  
3 *noncompliance with treatment, and failure to report for drug*  
4 *testing, impose sanctions including jail sanctions that may not*  
5 *exceed 120 hours of continuous custody as a treatment tool to*  
6 *enhance treatment compliance and impose other changes in the*  
7 *terms and conditions of probation. The court shall consider,*  
8 *among other factors, the seriousness of the violation, previous*  
9 *treatment compliance, employment, medical conditions, child*  
10 *support obligations, and family responsibilities. If one of the*  
11 *circumstances of the violation involves recent drug use, as well*  
12 *as other circumstances of violation, and the circumstance of*  
13 *recent drug use is demonstrated to the court by satisfactory*  
14 *evidence and a finding made on the record, the court may, after*  
15 *receiving input from treatment and probation, if available, direct*  
16 *the defendant to enter a licensed detoxification or residential*  
17 *treatment facility, and if there is no bed immediately available in*  
18 *the facility, the court may order that the defendant be confined in*  
19 *a county jail for detoxification purposes only, if the jail offers*  
20 *detoxification services, for a period not to exceed 10 days.*  
21 *Detoxification services must provide narcotic replacement*  
22 *therapy for those defendants presently actually receiving*  
23 *narcotic replacement therapy.*

24 (C) If a defendant receives probation under subdivision (a),  
25 and for the third or subsequent time violates that probation either  
26 by committing a nonviolent drug possession offense, or by  
27 violating a drug-related condition of probation, and the state  
28 moves for a third or subsequent time to revoke probation, the  
29 court shall conduct a hearing to determine whether probation  
30 shall be revoked. If the alleged probation violation is proved, the  
31 defendant is not eligible for continued probation under  
32 subdivision (a), ~~and the court may impose a sentence, unless the~~  
33 ~~court determines that the defendant is not a danger to the~~  
34 ~~community and would benefit from further treatment under~~  
35 ~~subdivision (a) and intensifies or alters the treatment plan. If the~~  
36 ~~court continues the defendant in treatment, the court may transfer~~  
37 ~~the defendant to a highly structured drug court that may include~~  
38 ~~the requirement that the defendant complete an in-custody~~  
39 ~~treatment program. The court may then either intensify or alter~~  
40 ~~the treatment plan under subdivision (a) or transfer the~~

1 *defendant to a highly structured drug court. If the court*  
2 *continues the defendant in treatment under subdivision (a), or*  
3 *drug court, the court may impose appropriate sanctions*  
4 *including jail sanctions as the court deems appropriate.*

5 (D) If a defendant on probation at the effective date of this act  
6 for a nonviolent drug possession offense violates that probation  
7 either by ~~being arrested for committing~~ a nonviolent drug  
8 possession offense, or a misdemeanor for simple possession or  
9 use of drugs or drug paraphernalia, being present where drugs are  
10 used, or failure to register as a drug offender, or any activity  
11 similar to those listed in paragraph (1) of subdivision (d) of  
12 Section 1210, or by violating a drug-related condition of  
13 probation, and the state moves to revoke probation, the court  
14 shall conduct a hearing to determine whether probation shall be  
15 revoked. The trial court shall revoke probation if the alleged  
16 probation violation is proved and the state proves by a  
17 preponderance of the evidence that the defendant poses a danger  
18 to the safety of others. If the court does not revoke probation, it  
19 may modify ~~probation and impose as an additional condition~~  
20 ~~participation in a drug treatment program, and may, in addition,~~  
21 ~~order incarceration in a county jail for not more than seven days~~  
22 ~~as a treatment tool under the drug court model, in order to~~  
23 ~~enhance treatment compliance; or alter the treatment plan, and in~~  
24 *addition, if the violation does not involve the recent use of drugs*  
25 *as a circumstance of the violation, including, but not limited to,*  
26 *violations relating to failure to appear at treatment or court,*  
27 *noncompliance with treatment, and failure to report for drug*  
28 *testing, the court may impose sanctions including jail sanctions*  
29 *that may not exceed 48 hours of continuous custody as a*  
30 *treatment tool to enhance treatment compliance and impose*  
31 *other changes in the terms and conditions of probation. The*  
32 *court shall consider, among other factors, the seriousness of the*  
33 *violation, previous treatment compliance, employment, medical*  
34 *conditions, child support obligations, and family responsibilities.*  
35 *If one of the circumstances of the violation involves recent drug*  
36 *use, as well as other circumstances of violation, and the*  
37 *circumstance of recent drug use is demonstrated to the court by*  
38 *satisfactory evidence and a finding made on the record, the court*  
39 *may, after receiving input from treatment and probation, if*  
40 *available, direct the defendant to enter a licensed detoxification*

1 *or residential treatment facility, and if there is no bed*  
2 *immediately available in such a facility, the court may order that*  
3 *the defendant be confined in a county jail for detoxification*  
4 *purposes only, if the jail offers detoxification services, for a*  
5 *period not to exceed 10 days. The detoxification services must*  
6 *provide narcotic replacement therapy for those defendants*  
7 *presently actually receiving narcotic replacement therapy.*

8 (E) If a defendant on probation at the effective date of this act  
9 for a nonviolent drug possession offense violates that probation a  
10 second time either by ~~being arrested for committing~~ a nonviolent  
11 drug possession offense, or a misdemeanor for simple possession  
12 or use of drugs or drug paraphernalia, being present where drugs  
13 are 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  
16 probation, and the state moves for a second time to revoke  
17 probation, the court shall conduct a hearing to determine whether  
18 probation shall be revoked. The trial court shall revoke probation  
19 if the alleged probation violation is proved and the state proves  
20 by a preponderance of the evidence either that the defendant  
21 poses a danger to the safety of others or that the defendant is  
22 unamenable to drug treatment. If the court does not revoke  
23 probation, it may modify ~~probation and impose as an additional~~  
24 ~~condition participation in a drug treatment program, and may, in~~  
25 ~~addition, order incarceration in a county jail for not more than 14~~  
26 ~~days as a treatment tool under the drug court model, in order to~~  
27 ~~enhance treatment compliance. In the alternative, the court may~~  
28 ~~require the defendant to successfully complete an in-custody~~  
29 ~~treatment program. or alter the treatment plan, and in addition, if~~  
30 *the violation does not involve the recent use of drugs as a*  
31 *circumstance of the violation, including, but not limited to,*  
32 *violations relating to failure to appear at treatment or court,*  
33 *noncompliance with treatment, and failure to report for drug*  
34 *testing, the court may impose sanctions including jail sanctions*  
35 *that may not exceed 120 hours of continuous custody as a*  
36 *treatment tool to enhance treatment compliance and impose*  
37 *other changes in the terms and conditions of probation. The*  
38 *court shall consider, among other factors, the seriousness of the*  
39 *violation, previous treatment compliance, employment, medical*  
40 *conditions, child support obligations, and family responsibilities.*

1 *If one of the circumstances of the violation involves recent drug*  
2 *use, as well as other circumstances of violation, and the*  
3 *circumstance of recent drug use is demonstrated to the court by*  
4 *satisfactory evidence and a finding made on the record, the court*  
5 *may, after receiving input from treatment and probation, if*  
6 *available, direct the defendant to enter a licensed detoxification*  
7 *or residential treatment facility, and if there is no bed*  
8 *immediately available in the facility, the court may order that the*  
9 *defendant be confined in a county jail for detoxification purposes*  
10 *only, if the jail offers detoxification services, for a period not to*  
11 *exceed 10 days. Detoxification services must provide narcotic*  
12 *replacement therapy for those defendants presently actually*  
13 *receiving narcotic replacement therapy.*

14 (F) If a defendant on probation at the effective date of this act  
15 for a nonviolent drug offense violates that probation a third *or*  
16 ~~subsequent~~ time either by ~~being arrested for committing~~ a  
17 nonviolent drug possession offense, or by violating a drug-related  
18 condition of probation, and the state moves for a third *or*  
19 ~~subsequent~~ time to revoke probation, the court shall conduct a  
20 hearing to determine whether probation shall be revoked. If the  
21 alleged probation violation is proved, the defendant is not  
22 eligible for continued probation under subdivision (a), ~~and the~~  
23 ~~court may impose a sentence~~, unless the court determines that the  
24 defendant *is not a danger to the community and* would benefit  
25 from further treatment under subdivision (a) ~~and intensifies or~~  
26 ~~alters the treatment plan. If the court continues the defendant in~~  
27 ~~treatment, the court may transfer the defendant to a highly~~  
28 ~~structured drug court that may include the requirement that the~~  
29 ~~defendant complete an in-custody treatment program.. The court~~  
30 *may then either intensify or alter the treatment plan under*  
31 *subdivision (a) or transfer the defendant to a highly structured*  
32 *drug court. If the court continues the defendant in treatment*  
33 *under subdivision (a), or drug court, the court may impose*  
34 *appropriate sanctions including jail sanctions.*

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

39 *SEC. 9. Section 3063.1 of the Penal Code is amended to*  
40 *read:*

1 3063.1. Possession of Controlled Substances; Parole;  
2 Exceptions

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

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

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

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

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

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

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

27 (c) Within seven days of a finding that the parolee has either  
28 committed a nonviolent drug possession offense or violated any  
29 drug-related condition of parole, the ~~Parole Authority~~  
30 *Department of Corrections Parole Division* shall notify the  
31 treatment provider designated to provide drug treatment under  
32 subdivision (a). Within 30 days thereafter the treatment provider  
33 shall prepare an individualized drug treatment plan and forward  
34 it to the Parole Authority and to the ~~California~~ Department of  
35 Corrections Parole Division agent responsible for supervising the  
36 parolee. On a quarterly basis after the parolee begins drug  
37 treatment, the treatment provider shall prepare and forward a  
38 progress report on the individual parolee to these entities and  
39 individuals.

1 (1) If at any point during the course of drug treatment the  
2 treatment provider notifies the ~~Parole Authority~~ *Department of*  
3 *Corrections Parole Division* that the parolee is unamenable to the  
4 drug treatment provided, but amenable to other drug treatments  
5 or related programs, the ~~Parole Authority~~ *Department of*  
6 *Corrections Parole Division* may act to modify the terms of  
7 parole to ensure that the parolee receives the alternative drug  
8 treatment or program.

9 (2) If at any point during the course of drug treatment the  
10 treatment provider notifies the ~~Parole Authority~~ *Department of*  
11 *Corrections Parole Division* that the parolee is unamenable to the  
12 drug treatment provided and all other forms of drug treatment  
13 provided pursuant to subdivision (b) of Section 1210 and the  
14 amenability factors described in subparagraph (B) of paragraph  
15 (3) of subdivision (e) of Section 1210.1, the ~~Parole Authority~~  
16 *Department of Corrections Parole Division* may act to revoke  
17 parole. At the revocation hearing, parole may be revoked if it is  
18 proved that the parolee is unamenable to all drug treatment.

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

30 (d) Violation of parole

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

37 (2) Non-drug-related parole violations

38 If a parolee receives drug treatment under subdivision (a), and  
39 during the course of drug treatment violates parole either by  
40 committing an offense other than a nonviolent drug possession

1 offense, or by violating a non-drug-related condition of parole,  
2 and the ~~Parole Authority~~ *Department of Corrections Parole*  
3 *Division* acts to revoke parole, a hearing shall be conducted to  
4 determine whether parole shall be revoked.

5 Parole may be modified or revoked if the parole violation is  
6 proved.

7 (3) Drug-related parole violations

8 (A) If a parolee receives drug treatment under subdivision (a),  
9 and during the course of drug treatment violates parole either by  
10 committing a nonviolent drug possession offense, or a  
11 misdemeanor for simple possession or use of drugs or drug  
12 paraphernalia, being present where drugs are used, or failure to  
13 register as a drug offender, or any activity similar to those listed  
14 in paragraph (1) of subdivision (d) of Section 1210, or by  
15 violating a drug-related condition of parole, and the ~~Parole~~  
16 ~~Authority~~ *Department of Corrections Parole Division* acts to  
17 revoke parole, a hearing shall be conducted to determine whether  
18 parole shall be revoked. Parole shall be revoked if the parole  
19 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 intensified to achieve the goals of drug treatment.

23 (B) If a parolee receives drug treatment under subdivision (a),  
24 and during the course of drug treatment for the second time  
25 violates that parole either by committing a nonviolent drug  
26 possession offense, or by violating a drug-related condition of  
27 parole, and the ~~Parole Authority~~ *Department of Corrections*  
28 *Parole Division* acts for a second time to revoke parole, a hearing  
29 shall be conducted to determine whether parole shall be revoked.  
30 If the alleged parole violation is proved, the parolee is not  
31 eligible for continued parole under any provision of this section  
32 and may be reincarcerated.

33 (C) If a parolee already on parole at the effective date of this  
34 act violates that parole either by committing a nonviolent drug  
35 possession offense, or a misdemeanor for simple possession or  
36 use of drugs or drug paraphernalia, being present where drugs are  
37 used, or failure to register as a drug offender, or any activity  
38 similar to those listed in paragraph (1) of subdivision (d) of  
39 Section 1210, or by violating a drug-related condition of parole,  
40 and the ~~Parole Authority~~ *Department of Corrections Parole*

1 *Division* acts to revoke parole, a hearing shall be conducted to  
2 determine whether parole shall be revoked. Parole shall be  
3 revoked if the parole violation is proved and a preponderance of  
4 the evidence establishes that the parolee poses a danger to the  
5 safety of others. If parole is not revoked, the conditions of parole  
6 may be modified to include participation in a drug treatment  
7 program as provided in subdivision (a). This paragraph does not  
8 apply to any parolee who at the effective date of this act has been  
9 convicted of one or more serious or violent felonies in violation  
10 of subdivision (c) of Section 667.5 or Section 1192.7.

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

20 (e) The term “drug-related condition of parole” shall include a  
21 parolee’s specific drug treatment regimen, and, if ordered by the  
22 ~~parole authority~~ *Department of Corrections Parole Division*  
23 pursuant to this section, employment, vocational training,  
24 educational programs, psychological counseling, and family  
25 counseling.

26 *SEC. 10. These provisions shall be applied prospectively, and*  
27 *are severable. If any provision of this act or its application is*  
28 *held invalid, that invalidity shall not affect other provisions or*  
29 *applications that can be given effect without the invalid provision*  
30 *or application.*

31 *SEC. 11. The Legislature finds and declares that the*  
32 *provision of this act are consistent with the purposes of the*  
33 *Substance Abuse and Crime Prevention Act of 2006.*

34 ~~SEC. 7.~~

35 *SEC. 12. No reimbursement is required by this act pursuant to*  
36 *Section 6 of Article XIII B of the California Constitution because*  
37 *the only costs that may be incurred by a local agency or school*  
38 *district will be incurred because this act creates a new crime or*  
39 *infraction, eliminates a crime or infraction, or changes the*  
40 *penalty for a crime or infraction, within the meaning of Section*

1 17556 of the Government Code, or changes the definition of a  
2 crime within the meaning of Section 6 of Article XIII B of the  
3 California Constitution.

4 ~~SEC. 8.~~

5 *SEC. 13.* This act is an urgency statute necessary for the  
6 immediate preservation of the public peace, health, or safety  
7 within the meaning of Article IV of the Constitution and shall go  
8 into immediate effect. The facts constituting the necessity are:

9 In order to ensure that the essential services provided under the  
10 Substance Abuse and Crime Prevention Act of 2000 continue to  
11 be provided without interruption, it is necessary that this bill go  
12 into immediate effect.

O