

AMENDED IN ASSEMBLY JUNE 27, 2006

AMENDED IN ASSEMBLY JUNE 26, 2006

SENATE BILL

No. 1137

Introduced by Senator Ducheny

January 10, 2006

An act to amend Sections 11999.6, 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 drug treatment, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1137, as amended, Ducheny. Drug treatment.

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 $\frac{2}{3}$ 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.

The act creates a Substance Abuse Treatment Trust Fund to provide moneys to cover county costs associated with drug treatment programs, as specified. The act also requires annual and long-term effectiveness and financial impact studies on the programs funded by the act as well as periodic audits of the expenditures.

This bill would specify, in addition, that the moneys provided by the act cannot be used to fund in any way drug treatment courts or supervision associated with the drug treatment courts. This bill would also provide for 3-, 2-year follow-up effectiveness and fiscal impact studies, instead of the annual studies and require the department to

submit annual reports on the people served as a result of this act. *It would also revise the items to be included in the study.* This bill would permit the department to require a county to undertake a corrective action if a periodic audit determines the county has spent money provided by the act not in accordance with the act.

The act defines “drug treatment program” as state licensed or community facilities providing a specified list of services including halfway house treatments, drug prevention courses, and relapse and severe dependence issues.

This bill would remove those elements of the definition of “drug treatment program” and add aftercare services.

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. 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. The bill would require a person subject to the act to be monitored by the court, as specified.

The act does not apply to a defendant who has been convicted of one or more ~~serious or~~ violent *or serious* 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, with respect to the above description of a defendant to whom the act does not apply, add the condition that in order to exclude a defendant the court must find that the defendant poses a danger to the safety of others and would not benefit from a drug treatment program, and would similarly prohibit~~ *provide that* a person who has previously served 3 separate prison terms for non-drug-related felonies ~~benefiting from the provisions of the bill, or~~ *a person who has been convicted of a misdemeanor or a felony at*

least 5 times within the prior 30 months, may be excluded from treatment if the court makes ~~that finding~~ certain findings. The bill would provide that the court shall state its findings, and the reasons for those findings, on the record.

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 *require the treatment provider to submit the treatment plan and regular reports to the probation department. Additionally, this bill would* authorize the court, after a hearing to determine whether the defendant has successfully completed treatment and probation, including refraining from the use of drugs after completion of treatment, 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.

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~~ *enter* a residential drug treatment program, if available, or be placed in a county jail for not more than 10 days for detoxification purposes only. This bill would however, provide that no incarceration costs will be reimbursed from the fund.

~~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 authorize the Department of Corrections and Rehabilitation, Division of Adult Parole Operations to make a finding that treatment beyond 12 months is necessary, and under those conditions, treatment may be extended to 24 months. The bill would make clarifying changes to related provisions.

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.

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

Further, this bill would declare that the provisions of the act are severable and any provision found to be invalid shall be submitted to the voters at the next statewide election.

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

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

1 SECTION 1. The Legislature finds and declares the
2 following:

3 (a) On November 7, 2000, the People of the State of California
4 enacted the Substance Abuse and Crime Prevention Act of 2000
5 (hereinafter the act), codified in Sections 11999.5, 11999.6,
6 11999.9, 11999.10, and 11999.12 of the Health and Safety Code,
7 and Sections 1210, 1210.1, and 3063.1 of the Penal Code to
8 provide community-based substance abuse treatment programs
9 for nonviolent defendants, probationers and parolees charged
10 with simple drug possession or drug use offenses.

11 (b) The act provided an appropriation from the General Fund
12 to the Substance Abuse Treatment Trust Fund in the amount of
13 one hundred and twenty million dollars (\$120,000,000) annually

1 through the 2005–06 fiscal year with any additional
2 appropriation dependent on review and action by the Legislature.

3 (c) Each year following the implementation of the act the
4 Department of Alcohol and Drug Programs (hereinafter the
5 department) was required and did in fact conduct a study to
6 evaluate the effectiveness and financial impact of the programs
7 which were funded pursuant to the act. The studies have focused
8 on the implementation process, participant demographics and
9 treatment completion rates as well as other impacts and issues the
10 department identified. Reports were submitted to the Legislature
11 by the department.

12 (d) In addition, the department contracted, as required by the
13 act, with a public university, the University of California at Los
14 Angeles (hereinafter UCLA) to evaluate the effectiveness and
15 financial impact of the programs which were funded pursuant to
16 the requirements of this act and to report findings that were in
17 fact forwarded to the Legislature by the department.

18 (e) The UCLA evaluations have found that approximately 30
19 percent of referred SACPA offenders do not enter treatment.
20 Judicial monitoring, through dedicated court calendars,
21 collaboration and coordination between the courts, probation and
22 treatment, as demonstrated by drug courts, would enhance entry,
23 retention, and completion of treatment by offenders.

24 (f) The UCLA evaluations have found that 34 percent of those
25 who do in fact enter treatment complete that treatment. This
26 completion rate, as well as retention rates, can be improved
27 through the enhancement of compliance with treatment, as well
28 as tailoring treatment to the needs of offenders following
29 drug-related violations of probation to assure that the level and
30 duration of treatment they are assessed or reassessed to overcome
31 addiction, including detoxification and residential services, are
32 provided, and that treatment be of sufficient duration to meet
33 individual needs of defendants.

34 (g) SACPA does not specifically address the use of short
35 periods of jail time as a motivational tool to hold SACPA
36 offenders accountable to enter and stay in treatment. Studies have
37 reported that drug court clients were more likely to enter
38 treatment, remained in treatment significantly longer, and
39 engaged in significantly less drug use when they received swift
40 and sure sanctions and rewards, including the possibility of brief

1 periods of jail time during the course of treatment. Therefore,
2 sanctions including short periods of jail time for relapsing,
3 problematic, or recalcitrant offenders, on a showing of need after
4 consideration of important treatment and other factors, should be
5 available, not as a substitute for treatment but as a tool to
6 motivate and hold offenders accountable.

7 (h) The UCLA evaluations speak to the need to verify
8 self-reported drug use by drug testing. Drug testing is widely
9 accepted by treatment providers as an integral component of
10 treatment. In addition, test results are needed to assist providers
11 in adjusting treatment plans. Therefore, courts shall require drug
12 testing as a condition of probation, commensurate with treatment
13 needs.

14 (i) *The UCLA evaluations also speak to the high cost in terms*
15 *of arrests and convictions of violent crimes, property crimes, and*
16 *sex crimes of those presently eligible defendants who have five or*
17 *more convictions in the 30-month period prior to their SACPA*
18 *eligible arrests in comparison to the typical SACPA offender,*
19 *and recommend that the Legislature may wish to consider*
20 *possible changes as to the eligibility of these offenders who*
21 *UCLA found comprise 1.6 percent of the total number of*
22 *offenders eligible for SACPA, yet had postconviction crime costs*
23 *that were 10 times higher than the costs for the typical or median*
24 *SACPA offender during the 30-month-follow-up study period.*

25 (j) It is the intent of the Legislature, therefore, to do all of the
26 following to further the purposes of the act:

27 (1) Maintain the General Fund transfer to the Substance Abuse
28 Treatment Trust Fund, conditioned on modifications to the
29 SACPA program that will improve outcomes and promote
30 accountability consistent with the act and to further the purposes
31 of the act.

32 (2) Provide for closer judicial monitoring through dedicated
33 calendars and close collaboration between the court, probation,
34 and treatment to improve offender outcomes.

35 (3) Provide treatment, including detoxification and residential
36 services that are tailored to the individual needs of offenders, and
37 of sufficient duration to improve completion rates. In addition,
38 permit judicial discretion to provide offenders additional
39 opportunities following a third drug-related violation of
40 probation, and first non-drug-related violation of probation to

1 complete treatment, as well as, after a hearing, to remove
2 offenders from the program who pose a danger to the public and,
3 in addition, will not benefit from treatment.

4 (4) Provide brief jail sanctions to enhance accountability and
5 as a motivational tool to improve the number of defendants who
6 enter treatment, remain in treatment, and complete treatment and
7 probation consistent with the purposes of the act.

8 (5) Mandate drug testing as a treatment tool as well as a
9 method to assure accountability.

10 (6) *Provide that offenders who have five or more prior*
11 *convictions at the time they commit a SACPA eligible offense are*
12 *presumed to be eligible for SACPA. However, they may be found*
13 *ineligible by the judge after consideration and findings at a*
14 *hearing, if the offender poses a danger to the public or would not*
15 *benefit from treatment.*

16 (7) It is also the intent of the Legislature to address additional
17 issues that need clarification, or were not adequately addressed
18 by the act, that need to be resolved to further the purposes of the
19 act, consistent with the act.

20 SEC. 2. Section 11999.6 of the Health and Safety Code is
21 amended to read:

22 11999.6. Moneys deposited in the Substance Abuse
23 Treatment Trust Fund shall be distributed annually by the
24 Secretary of the Health and Human Services Agency through the
25 State Department of Alcohol and Drug Programs to counties to
26 cover the costs of placing persons in and providing drug
27 treatment programs under this act, and vocational training, family
28 counseling, and literacy training under this act. Additional costs
29 that may be reimbursed from the Substance Abuse Treatment
30 Trust Fund include probation department costs, court monitoring
31 costs and any miscellaneous costs made necessary by the
32 provisions of this act other than drug testing services of any kind.
33 Incarceration costs cannot be reimbursed from the fund. Those
34 moneys shall be allocated to counties through a fair and equitable
35 distribution formula that includes, but is not limited to, per capita
36 arrests for controlled substance possession violations and
37 substance abuse treatment caseload, as determined by the
38 department as necessary to carry out the purposes of this act. The
39 department may reserve a portion of the fund to pay for direct
40 contracts with drug treatment service providers in counties or

1 areas in which the director of the department has determined that
2 demand for drug treatment services is not adequately met by
3 existing programs. However, nothing in this section shall be
4 interpreted or construed to allow any entity to use funds from the
5 Substance Abuse Treatment Trust Fund to supplant funds from
6 any existing fund source or mechanism currently used to provide
7 substance abuse treatment. In addition, funds from the Substance
8 Abuse Treatment Trust Fund shall not be used to fund in any way
9 the drug treatment courts established pursuant to Article 2
10 (commencing with Section 11970.1) or Article 3 (commencing
11 with Section 11970.4) of Chapter 2 of Part 3 of Division 10.5,
12 including drug treatment or probation supervision associated with
13 those drug treatment courts.

14 SEC. 3. Section 11999.9 of the Health and Safety Code is
15 amended to read:

16 11999.9. (a) The department shall conduct three two-year
17 followup studies to evaluate the effectiveness and financial
18 impact of the programs that are funded pursuant to the
19 requirements of this act, and submit those studies to the
20 Legislature no later than January 1, 2009, January 1, 2011, and
21 January 1, 2013, respectively. The evaluation studies shall
22 include, but not be limited to, *a study of the implementation*
23 *process, a review of lower incarcerations costs, reductions in*
24 *crime, reduced prison and jail construction, reduced welfare*
25 *costs, the adequacy of funds appropriated, and other impacts or*
26 *issues the department can identify, in addition to all of the*
27 *following:*

28 (1) Criminal justice measures on rearrests, jail and prison days
29 averted, and crime trends.

30 (2) *A classification, in summary form, of rearrests as having*
31 *occurred as a result of:*

32 (A) *A parole violation.*

33 (B) *A parole revocation.*

34 (C) *A probation violation.*

35 (D) *A probation revocation.*

36 (3) *A classification, in summary form, of the disposition of*
37 *crimes committed in terms of whether the person was:*

38 (A) *Retained on probation.*

39 (B) *Sentenced to jail.*

40 (C) *Sentenced to prison.*

1 (4) Treatment measures on completion rates and quality of life
2 indicators, such as alcohol and drug used, employment, health,
3 mental health, and family and social supports.

4 (5) *A separate discussion of the information described in*
5 *paragraphs (1) to (3), inclusive, for offenders whose primary*
6 *drug of abuse was methamphetamine or who were arrested for*
7 *possession or use of methamphetamine and, commencing with*
8 *the report due on or before January 1, 2009, the report shall*
9 *include a separate analysis of the costs and benefits of treatment*
10 *specific to these methamphetamine offenders.*

11 (b) In addition to studies to evaluate the effectiveness and
12 financial impact of the programs that are funded pursuant to the
13 requirements of this act, the department shall produce an annual
14 report detailing the number and characteristics of participants
15 served as a result of this act, and the related costs.

16 SEC. 4. Section 11999.10 of the Health and Safety Code is
17 amended to read:

18 11999.10. The department shall allocate up to 0.5 percent of
19 the fund's total moneys each year to fund the costs of the studies
20 required in Section 11999.9 by a public or private university.

21 SEC. 5. Section 11999.12 of the Health and Safety Code is
22 amended to read:

23 11999.12. The department shall conduct periodic audits of the
24 expenditures made by any county that is funded, in whole or in
25 part, with funds provided by this act. Counties shall repay to the
26 department any funds that are not spent in accordance with the
27 requirements of this act. The department may require a corrective
28 action by the county in the place of repayment, as determined by
29 the department.

30 SEC. 6. Section 1210 of the Penal Code is amended to read:

31 1210. As used in Sections 1210.1 and 3063.1 of this code,
32 and Division 10.8 (commencing with Section 11999.4) of the
33 Health and Safety Code, the following definitions apply:

34 (a) The term "nonviolent drug possession offense" means the
35 unlawful personal use, possession for personal use, or
36 transportation for personal use of any controlled substance
37 identified in Section 11054, 11055, 11056, 11057 or 11058 of the
38 Health and Safety Code, or the offense of being under the
39 influence of a controlled substance in violation of Section 11550
40 of the Health and Safety Code. The term "nonviolent drug

1 possession offense” does not include the possession for sale,
2 production, or manufacturing of any controlled substance and
3 does not include violations of Section 4573.6 or 4573.8.

4 (b) The term “drug treatment program” or “drug treatment”
5 means a state licensed or certified community drug treatment
6 program, which may include one or more of the following: drug
7 education, outpatient services, narcotic replacement therapy,
8 residential treatment, detoxification services, and aftercare
9 services. The term “drug treatment program” or “drug treatment”
10 includes a drug treatment program operated under the direction
11 of the Veterans Health Administration of the Department of
12 Veterans Affairs or a program specified in Section 8001. That
13 type of program shall be eligible to provide drug treatment
14 services without regard to the licensing or certification provisions
15 required by this subdivision. The term “drug treatment program”
16 or “drug treatment” does not include drug treatment programs
17 offered in a prison or jail facility.

18 (c) The term “successful completion of treatment” means that
19 a defendant who has had drug treatment imposed as a condition
20 of probation has completed the prescribed course of drug
21 treatment as recommended by the treatment provider and ordered
22 by the court and, as a result, there is reasonable cause to believe
23 that the defendant will not abuse controlled substances in the
24 future. Completion of treatment shall not require cessation of
25 narcotic replacement therapy.

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

31 SEC. 7. Section 1210.1 of the Penal Code is amended to read:

32 1210.1. (a) Notwithstanding any other provision of law, and
33 except as provided in subdivision (b), any person convicted of a
34 nonviolent drug possession offense shall receive probation. As a
35 condition of probation the court shall require participation in and
36 completion of an appropriate drug treatment program. The court
37 shall impose appropriate drug testing as a condition of probation.
38 The court may also impose, as a condition of probation,
39 participation in vocational training, family counseling, literacy
40 training and/or community service. A court may not impose

1 incarceration as an additional condition of probation. Aside from
2 the limitations imposed in this subdivision, the trial court is not
3 otherwise limited in the type of probation conditions it may
4 impose. Probation shall be imposed by suspending the imposition
5 of sentence. No person shall be denied the opportunity to benefit
6 from the provisions of the Substance Abuse and Crime
7 Prevention Act of 2000 based solely upon evidence of a
8 co-occurring psychiatric or developmental disorder. To the
9 greatest extent possible, any person who is convicted of, and
10 placed on probation pursuant to this section for a nonviolent drug
11 possession offense shall be monitored by the court through the
12 use of a dedicated court calendar and the incorporation of a
13 collaborative court model of oversight that includes close
14 collaboration with treatment providers and probation, drug
15 testing commensurate with treatment needs, and supervision of
16 progress through review hearings.

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

22 (b) Subdivision (a) shall not apply to any of the following:

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

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

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

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

3 (5) Any defendant who has two separate convictions for
4 nonviolent drug possession offenses, has participated in two
5 separate courses of drug treatment pursuant to subdivision (a),
6 and is found by the court, by clear and convincing evidence, to
7 be unamenable to any and all forms of available drug treatment,
8 as defined in subdivision (b) of Section 1210. Notwithstanding
9 any other provision of law, the trial court shall sentence that
10 defendant to 30 days in jail.

11 (c) (1) Any defendant who has previously been convicted of
12 at least three non-drug-related felonies for which the defendant
13 has served three separate prison terms with in the meaning of
14 subdivision (b) of Section 667.5 shall be presumed eligible for
15 treatment under subdivision (a). The court may exclude such a
16 defendant from treatment under subdivision (a) where the court,
17 pursuant to the motion of the prosecutor or its own motion, finds
18 that the defendant poses a present danger to the safety of others
19 and would not benefit from a drug treatment program. The court
20 shall, on the record, state its findings, the reasons for those
21 findings.

22 (2) *Any defendant who has previously been convicted of a*
23 *misdemeanor or felony at least five times within the prior 30*
24 *months shall be presumed to be eligible for treatment under*
25 *subdivision (a). The court may exclude such a defendant from*
26 *treatment under subdivision (a) if the court, pursuant to the*
27 *motion of the prosecutor, or on its own motion, finds that the*
28 *defendant poses a present danger to the safety of others or would*
29 *not benefit from a drug treatment program. The court shall, on*
30 *the record, state its findings and the reasons for those findings.*

31 (d) Within seven days of an order imposing probation under
32 subdivision (a), the probation department shall notify the drug
33 treatment provider designated to provide drug treatment under
34 subdivision (a). Within 30 days of receiving that notice, the
35 treatment provider shall prepare a treatment plan and forward it
36 to the probation department for distribution to the court and
37 counsel. The treatment provider shall provide to the probation
38 department standardized treatment progress reports, with
39 minimum data elements as determined by the department,
40 including all drug testing results. At a minimum, the reports shall

1 be provided to the court every 90 days, or more frequently, as the
2 court directs.

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

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

20 (3) Drug treatment services provided by subdivision (a) as a
21 required condition of probation may not exceed 12 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 the Substance
27 Abuse and Crime Prevention Act of 2000 shall not exceed 24
28 months.

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

1 of drug treatment. Except as provided in paragraph (2) or (3), the
2 defendant shall thereafter be released from all penalties and
3 disabilities resulting from the offense of which he or she has been
4 convicted.

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

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

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

32 (f) (1) If probation is revoked pursuant to the provisions of
33 this subdivision, the defendant may be incarcerated pursuant to
34 otherwise applicable law without regard to the provisions of this
35 section. *The court may modify or revoke probation if the alleged*
36 *violation is proved.*

37 If

38 (2) *If* a defendant receives probation under subdivision (a), and
39 violates that probation either by committing an offense that is not
40 a nonviolent drug possession offense, or by violating a

1 non-drug-related condition of probation, and the state moves to
2 revoke probation, the court may remand the defendant for a
3 period not exceeding 30 days during which time the court may
4 receive input from treatment, probation, the state, and the
5 defendant, and the court may conduct further hearings as it
6 deems appropriate to determine whether or not probation should
7 be reinstated under this section. If the court reinstates the
8 defendant on probation, the court may modify the treatment plan
9 and any other terms of probation, and continue the defendant in a
10 treatment program under the Substance Abuse and Crime
11 Prevention Act of 2000. If the court reinstates the defendant on
12 probation, the court may, after receiving input from the treatment
13 provider and probation, if available, intensify or alter the
14 treatment plan under subdivision (a), and impose sanctions,
15 including jail sanctions not exceeding 30 days, a tool to enhance
16 treatment compliance.

17 ~~(A)~~

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

1 vocational training, medical conditions, medical treatment,
2 including narcotics replacement treatment, and including the
3 opinion of the defendant's licensed and treating physician if
4 immediately available and presented at the hearing, child support
5 obligations, and family responsibilities. The court shall consider
6 additional conditions of probation, which may include, but are
7 not limited to, community service and supervised work
8 programs. If one of the circumstances of the violation involves
9 recent drug use, as well as other circumstances of violation, and
10 the circumstance of recent drug use is demonstrated to the court
11 by satisfactory evidence and a finding made on the record, the
12 court may, after receiving input from treatment and probation, if
13 available, direct the defendant to enter a licensed detoxification
14 or residential treatment facility, and if there is no bed
15 immediately available in such a facility, the court may order that
16 the defendant be confined in a county jail for detoxification
17 purposes only, if the jail offers detoxification services, for a
18 period not to exceed 10 days. The detoxification services must
19 provide narcotic replacement therapy for those defendants
20 presently actually receiving narcotic replacement therapy.

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 subdivision (d) of Section 1210, or by violating a drug-related
28 condition of probation, and the state moves to revoke probation,
29 the court shall conduct a hearing to determine whether probation
30 shall be revoked. The trial court shall revoke probation if the
31 alleged probation violation is proved and the state proves by a
32 preponderance of the evidence either that the defendant poses a
33 danger to the safety of others or is unamenable to drug treatment.
34 In determining whether a defendant is unamenable to drug
35 treatment, the court may consider, to the extent relevant, whether
36 the defendant (i) has committed a serious violation of rules at the
37 drug treatment program, (ii) has repeatedly committed violations
38 of program rules that inhibit the defendant's ability to function in
39 the program, or (iii) has continually refused to participate in the
40 program or asked to be removed from the program. If the court

1 does not revoke probation, it may intensify or alter the drug
2 treatment plan, and may, in addition, if the violation does not
3 involve the recent use of drugs as a circumstance of the violation,
4 including, but not limited to, violations relating to failure to
5 appear at treatment or court, noncompliance with treatment, and
6 failure to report for drug testing, impose sanctions including jail
7 sanctions that may not exceed 120 hours of continuous custody
8 as a tool to enhance treatment compliance and impose other
9 changes in the terms and conditions of probation. The court shall
10 consider, among other factors, the seriousness of the violation,
11 previous treatment compliance, employment, education,
12 vocational training, medical conditions, medical treatment,
13 including narcotics replacement treatment, and including the
14 opinion of the defendant's licensed and treating physician if
15 immediately available and presented at the hearing, child support
16 obligations, and family responsibilities. The court shall consider
17 additional conditions of probation, which may include, but are
18 not limited to, community service and supervised work
19 programs. If one of the circumstances of the violation involves
20 recent drug use, as well as other circumstances of violation, and
21 the circumstance of recent drug use is demonstrated to the court
22 by satisfactory evidence and a finding made on the record, the
23 court may, after receiving input from treatment and probation, if
24 available, direct the defendant to enter a licensed detoxification
25 or residential treatment facility, and if there is no bed
26 immediately available in the facility, the court may order that the
27 defendant be confined in a county jail for detoxification purposes
28 only, if the jail offers detoxification services, for a period not to
29 exceed 10 days. Detoxification services must provide narcotic
30 replacement therapy for those defendants presently actually
31 receiving narcotic replacement therapy.

32 (C) If a defendant receives probation under subdivision (a),
33 and for the third or subsequent time violates that probation either
34 by committing a nonviolent drug possession offense, or by
35 violating a drug-related condition of probation, and the state
36 moves for a third or subsequent time to revoke probation, the
37 court shall conduct a hearing to determine whether probation
38 shall be revoked. If the alleged probation violation is proved, the
39 defendant is not eligible for continued probation under
40 subdivision (a) unless the court determines that the defendant is

1 not a danger to the community and would benefit from further
2 treatment under subdivision (a). The court may then either
3 intensify or alter the treatment plan under subdivision (a) or
4 transfer the defendant to a highly structured drug court. If the
5 court continues the defendant in treatment under subdivision (a),
6 or drug court, the court may impose appropriate sanctions
7 including jail sanctions as the court deems appropriate.

8 (D) If a defendant on probation at the effective date of this act
9 for a nonviolent drug possession offense violates that probation
10 either by 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 subdivision (d) of Section 1210, or by violating a drug-related
15 condition of probation, and the state moves to revoke probation,
16 the court shall conduct a hearing to determine whether probation
17 shall be revoked. The trial court shall revoke probation if the
18 alleged probation violation is proved and the state proves by a
19 preponderance of the evidence that the defendant poses a danger
20 to the safety of others. If the court does not revoke probation, it
21 may modify or alter the treatment plan, and in addition, if the
22 violation does not involve the recent use of drugs as a
23 circumstance of the violation, including, but not limited to,
24 violations relating to failure to appear at treatment or court,
25 noncompliance with treatment, and failure to report for drug
26 testing, the court may impose sanctions including jail sanctions
27 that may not exceed 48 hours of continuous custody as a tool to
28 enhance treatment compliance and impose other changes in the
29 terms and conditions of probation. The court shall consider,
30 among other factors, the seriousness of the violation, previous
31 treatment compliance, employment, education, vocational
32 training, medical conditions, medical treatment, including
33 narcotics replacement treatment, and including the opinion of the
34 defendant's licensed and treating physician if immediately
35 available and presented at the hearing, child support obligations,
36 and family responsibilities. The court shall consider additional
37 conditions of probation, which may include, but are not limited
38 to, community service and supervised work programs. If one of
39 the circumstances of the violation involves recent drug use, as
40 well as other circumstances of violation, and the circumstance of

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

12 (E) If a defendant on probation at the effective date of this act
13 for a nonviolent drug possession offense violates that probation a
14 second time either by committing a nonviolent drug possession
15 offense, or a misdemeanor for simple possession or use of drugs
16 or drug paraphernalia, being present where drugs are used, or
17 failure to register as a drug offender, or any activity similar to
18 those listed in subdivision (d) of Section 1210, or by violating a
19 drug-related condition of probation, and the state moves for a
20 second time to revoke probation, the court shall conduct a
21 hearing to determine whether probation shall be revoked. The
22 trial court shall revoke probation if the alleged probation
23 violation is proved and the state proves by a preponderance of the
24 evidence either that the defendant poses a danger to the safety of
25 others or that the defendant is unamenable to drug treatment. If
26 the court does not revoke probation, it may modify or alter the
27 treatment plan, and in addition, if the violation does not involve
28 the recent use of drugs as a circumstance of the violation,
29 including, but not limited to, violations relating to failure to
30 appear at treatment or court, noncompliance with treatment, and
31 failure to report for drug testing, the court may impose sanctions
32 including jail sanctions that may not exceed 120 hours of
33 continuous custody as a tool to enhance treatment compliance
34 and impose other changes in the terms and conditions of
35 probation. The court shall consider, among other factors, the
36 seriousness of the violation, previous treatment compliance,
37 employment, education, vocational training, medical conditions,
38 medical treatment including narcotics replacement treatment, and
39 including the opinion of the defendant's licensed and treating
40 physician if immediately available and presented at the hearing,

1 child support obligations, and family responsibilities. The court
2 shall consider additional conditions of probation, which may
3 include, but are not limited to, community service and supervised
4 work programs. If one of the circumstances of the violation
5 involves recent drug use, as well as other circumstances of
6 violation, and the circumstance of recent drug use is
7 demonstrated to the court by satisfactory evidence and a finding
8 made on the record, the court may, after receiving input from
9 treatment and probation, if available, direct the defendant to enter
10 a licensed detoxification or residential treatment facility, and if
11 there is no bed immediately available in such a facility, the court
12 may order that the defendant be confined in a county jail for
13 detoxification purposes only, if the jail offers detoxification
14 services, for a period not to exceed 10 days. The detoxification
15 services must provide narcotic replacement therapy for those
16 defendants presently actually receiving narcotic replacement
17 therapy.

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

34 (f)

35 (g) 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. 8. Section 3063.1 of the Penal Code is amended to read:

1 3063.1. (a) Notwithstanding any other provision of law, and
2 except as provided in subdivision (d), parole may not be
3 suspended or revoked for commission of a nonviolent drug
4 possession offense or for violating any drug-related condition of
5 parole.

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

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

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

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

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

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

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

39 (1) If at any point during the course of drug treatment the
40 treatment provider notifies the Department of Corrections and

1 Rehabilitation, Division of Adult Parole Operations that the
2 parolee is unamenable to the drug treatment provided, but
3 amenable to other drug treatments or related programs, the
4 Department of Corrections and Rehabilitation, Division of Adult
5 Parole Operations may act to modify the terms of parole to
6 ensure that the parolee receives the alternative drug treatment or
7 program.

8 (2) If at any point during the course of drug treatment the
9 treatment provider notifies the Department of Corrections and
10 Rehabilitation, Division of Adult Parole Operations that the
11 parolee is unamenable to the drug treatment provided and all
12 other forms of drug treatment provided pursuant to subdivision
13 (b) of Section 1210 and the amenability factors described in
14 subparagraph (B) of paragraph (3) of subdivision (e) of Section
15 1210.1, the Department of Corrections and Rehabilitation,
16 Division of Adult Parole Operations may act to revoke parole. At
17 the revocation hearing, parole may be revoked if it is proved that
18 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, unless
21 the Department of Corrections and Rehabilitation, Division of
22 Adult Parole Operations makes a finding supported by the record
23 that the continuation of treatment services beyond 12 months is
24 necessary for drug treatment to be successful. If that finding is
25 made, the Department of Corrections and Rehabilitation,
26 Division of Adult Parole Operations may order up to two
27 six-month extensions of treatment services. The provision of
28 treatment services under this act shall not exceed 24 months.

29 (d) (1) If parole is revoked pursuant to the provisions of this
30 subdivision, the defendant may be incarcerated pursuant to
31 otherwise applicable law without regard to the provisions of this
32 section. Parole shall be revoked if the parole violation is proved
33 and a preponderance of the evidence establishes that the parolee
34 poses a danger to the safety of others.

35 (2) If a parolee receives drug treatment under subdivision (a),
36 and during the course of drug treatment violates parole either by
37 committing an offense other than a nonviolent drug possession
38 offense, or by violating a non-drug-related condition of parole,
39 and the Department of Corrections and Rehabilitation, Division

1 of Adult Parole Operations acts to revoke parole, a hearing shall
2 be conducted to determine whether parole shall be revoked.

3 Parole may be modified or revoked if the parole violation is
4 proved.

5 (3) (A) If a parolee receives drug treatment under subdivision
6 (a), and during the course of drug treatment violates parole either
7 by committing a nonviolent drug possession offense, or a
8 misdemeanor for simple possession or use of drugs or drug
9 paraphernalia, being present where drugs are used, or failure to
10 register as a drug offender, or any activity similar to those listed
11 in subdivision (d) of Section 1210, or by violating a drug-related
12 condition of parole, and the Department of Corrections and
13 Rehabilitation, Division of Adult Parole Operations acts to
14 revoke parole, a hearing shall be conducted to determine whether
15 parole shall be revoked. Parole shall be revoked if the parole
16 violation is proved and a preponderance of the evidence
17 establishes that the parolee poses a danger to the safety of others.
18 If parole is not revoked, the conditions of parole may be
19 intensified to achieve the goals of drug treatment.

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

30 (C) If a parolee already on parole at the effective date of this
31 act violates that parole either by committing a nonviolent drug
32 possession offense, or a misdemeanor for simple possession or
33 use of drugs or drug paraphernalia, being present where drugs are
34 used, or failure to register as a drug offender, or any activity
35 similar to those listed in paragraph (1) of subdivision (d) of
36 Section 1210, or by violating a drug-related condition of parole,
37 and the Department of Corrections and Rehabilitation, Division
38 of Adult Parole Operations acts to revoke parole, a hearing shall
39 be conducted to determine whether parole shall be revoked.
40 Parole shall be revoked if the parole violation is proved and a

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

9 (D) If a parolee already on parole at the effective date of this
10 act violates that parole for the second time either by committing
11 a nonviolent drug possession offense, or by violating a
12 drug-related condition of parole, and the parole authority acts for
13 a second time to revoke parole, a hearing shall be conducted to
14 determine whether parole shall be revoked. If the alleged parole
15 violation is proved, the parolee may be reincarcerated or the
16 conditions of parole may be intensified to achieve the goals of
17 drug treatment.

18 ~~(e)~~

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

25 SEC. 9. The provisions of this bill shall be applied
26 prospectively. If any provision of this bill is found to be invalid,
27 the entire legislative measure shall be submitted to the voters at
28 the next statewide election.

29 SEC. 10. The Legislature finds and declares that the
30 provisions of this act are consistent with the purposes of the
31 Substance Abuse and Crime Prevention Act of 2000.

32 SEC. 11. No reimbursement is required by this act pursuant
33 to Section 6 of Article XIII B of the California Constitution
34 because the only costs that may be incurred by a local agency or
35 school district will be incurred because this act creates a new
36 crime or infraction, eliminates a crime or infraction, or changes
37 the penalty for a crime or infraction, within the meaning of
38 Section 17556 of the Government Code, or changes the
39 definition of a crime within the meaning of Section 6 of Article
40 XIII B of the California Constitution.

1 SEC. 12. This act is an urgency statute necessary for the
2 immediate preservation of the public peace, health, or safety
3 within the meaning of Article IV of the Constitution and shall go
4 into immediate effect. The facts constituting the necessity are:

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

O