



CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION

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Sacramento County

June 15, 2006

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GERALD T. SHEA
San Luis Obispo County

The Honorable Denise Moreno Ducheny
California State Senate
State Capitol Building
Sacramento, CA 95814

Second Vice-President

JOHN POYNER
Colusa County

Re: SB 803 -- Sponsorship

Secretary-Treasurer

STEVE COOLEY
Los Angeles County

Dear Senator Ducheny:

Sergeant-at-Arms

GARY LIEBERSTEIN
Napa County

The California District Attorneys Association (CDA A) is pleased to be a sponsor of your measure, SB 803 (Ducheny), to improve successful drug treatment for offenders eligible for treatment pursuant to Proposition 36, the Substance Abuse and Crime Prevention Act (SACPA) of 2000.

Past President

DAVID W. PAULSON
Solano County

Proposition 36, which became effective July 1, 2001, included an appropriation of \$120 million annually from the General Fund for each fiscal year concluding with 2005-06. Even though the funding ends in June, the treatment requirements continue. Without funding, it is unclear how these services can be provided.

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The purpose of Proposition 36 is to improve public health by reducing drug abuse and drug dependence through proven and effective drug treatment strategies. Nevertheless, over the past five years, Proposition 36 has failed. As shown by the UCLA study, fewer than 25 percent of persons sent to Proposition 36 actually completed treatment. With the need to reauthorize funding comes an opportunity to do better. This can be accomplished by the Legislature authorizing adequate funding for drug treatment programs under Proposition 36 in combination with the passage of SB 803, which will improve drug treatment outcomes by increasing the oversight of funding of better treatment strategies.

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In order to further the goals of Proposition 36 to ensure that more individuals successfully complete drug treatment, *in furtherance of Proposition 36*, SB 803 does the following:

ROD PACHECO

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- States legislative intent to maintain the General Fund annual appropriation of \$120 million.
- Makes drug testing a condition of probation.
- For a non-drug related violation of probation, if probation is not revoked, the court may impose up to a 30 days jail sanction as a tool to enhance compliance.
- For a drug related violation of probation, if probation is not revoked, the court may authorize jail sanction for two days (48 hours) for first violations and five days (120 hours) for second violations.

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- For first and second violations of probation that involve the recent use of drugs, if probation is not revoked, the court may place a defendant into a detoxification program, including in a county jail program if a non-jail program is unavailable, for up to 10 days.
- For drug related violations of probation, allows Proposition 36 treatment for third and subsequent violations if the court determines that the defendant is not a danger to the community and would benefit from further Proposition 36 treatment.
- For third or subsequent drug related violations of probation, if probation is not revoked, the court may impose appropriate sanctions including jail sanctions as the court deems appropriate.
- Expands Proposition 36 exclusions to include defendants armed with a deadly weapon with intent to use (rather than just “use” of a firearm).
- Expands Proposition 36 exclusions to include defendants with three non-drug related felonies for which the defendant served three separate prison terms if the court finds that the defendant poses a present danger to the safety of others and would not benefit from a drug treatment program.
- Provides court monitoring through the use of dedicated calendar and court oversight, which involves close collaboration with treatment providers and probation, and drug testing commensurate with treatment needs, and supervision of progress through review hearings.
- Limits the definition of available drug treatment programs to Proposition 36 programs for purposes of proving a defendant is unamenable to drug treatment and thus not eligible for Proposition 36 and for bringing a motion to revoke probation or parole.
- Permits the court, on its own motion, to move to modify the terms of probation to select an alternative drug treatment program if a defendant is unamendable to a particular program.
- Changes the burden for probation and parole revocation from the defendant having to prove by a preponderance of evidence that there is a drug program to which he is amenable to requiring that the Probation Department prove that the defendant is unamenable to all 36 treatment programs.
- Requires treatment measures to be included in the State Department of Alcohol and Drug Programs studies.
- Requires treatment providers to conform to standardized treatment reports, which includes minimum data as determined by the Probation Department.
- Permits the court to require more frequent reporting requirements than the existing quarterly mandate.
- For a first or second time drug related violation of probation or for a first violation of parole the bill adds: 1) a misdemeanor for simple possession or use of drugs or drug paraphernalia; 2) being present where drugs are used; or 3) failure to register as a drug offender.

This definition is consistent with the definition of a “misdemeanor not related to the use of drugs” in Penal Code section 1201(d).

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- Adds “complaints” to the limitations for the use of Proposition 36 dismissals pursuant to successful completion of treatment (current law applies only to an indictment or information).
- Changes a requirement for violations of probation and parole from an “arrest” for an offense to “committing” an offense.

This is consistent with existing law. The fact of an arrest does not constitute a violation of probation. In order to constitute a violation of probation, the court has reason to believe that the person has violated any of the conditions of his or her probation, has become abandoned to improper associates or a vicious life, or has subsequently committed other offenses, regardless whether he or she has been prosecuted for such offenses under Penal Code section 1203.2(a).

SB 803 is a work product resulting from over a year-long negotiation process of a broad-based coalition, representing the courts, law enforcement, probation, prosecutors, public defenders, treatment providers, and counties. It is important that the Legislature pass SB 803 and approve of a budget appropriation to adequately fund Proposition 36 treatment programs to further the goals of Proposition 36.

Very truly yours,



David LaBahn
Executive Director

Cc: Assembly Committee on Public Safety
Mr. Gary Olson, Consultant, Assembly Republican Caucus