07-0081

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November 6, 2007

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Ms. Krystal Paris
Initiative Coordinator
Office of the Attorney General
State of California
PO Box 994255
Sacramento, CA 94244-25550

Re: Request for Title and Summary for Proposed Initiative

Dear Ms. Paris:

Pursuant to Article II, Section 10(d) of the California Constitution, I am submitting the attached proposed statewide ballot measure to your office and request that you prepare a title and summary of the measure as provided by law. Included with this submission is the required proponent affidavit signed by me pursuant to section 9608 of the California Elections Code. I have also included a check to cover the $200 filing fee. My address as registered to vote is provided on Attachment 'A' to this letter.

Thank you for your time and attention to this important matter. If you require additional information or have any questions, please contact me at (510) 229-5211 or legalaffairs@drugpolicy.org.

Sincerely,

Daniel N. Abrahamson, Esq.

Enclosures

SECTION 1. Title.

This Act shall be known and may be cited as the "Nonviolent Offender Rehabilitation Act of 2008."

SECTION 2. Findings and Declarations.

The People of the State of California hereby find and declare all of the following:

I. Failure to Provide Effective Rehabilitation is a Costly Mistake

(a) California's prison system has failed in its mission to rehabilitate criminals and protect public safety.
(b) State prisons are severely overcrowded and highly unsafe, currently with 175,000 inmates squeezed into facilities designed for about 100,000. Many of these inmates entered prison for nonviolent crimes and for nonviolent parole violations.
(c) Drug addiction is a leading cause of crime in California, with high prevalence among arrestees, prisoners and parolees. Moreover, untreated addiction is deadly: drug overdose is the second leading cause of accidental death in the United States and disproportionately impacts persons recently released from jail and prison.
(d) Punishment alone largely fails to change nonviolent criminal behavior, particularly when such behavior is driven by addiction and lack of basic education and skills.
(e) California's corrections system does not provide meaningful rehabilitation services to most inmates and parolees. Nonviolent offenders can languish for years behind bars without education, vocational training, or rehabilitation programs of any kind. These inmates are then released into our communities without access to meaningful services, and with no skills or opportunities to help them safely and successfully be reintegrated into society.
(f) California's criminal justice system fails to offer effective drug treatment to tens of thousands of nonviolent offenders each year whose drug offenses and other criminal activity are driven by substance abuse and addiction. Moreover, courts are required to spend scarce resources on processing routine cases of adult marijuana possession, a waste of resources that can be curtailed by penalizing small amounts of marijuana possession as an infraction.
(g) California now offers virtually no publicly funded drug treatment options for youth under the age of 18, a tragic and short-sighted failure, in that young people with drug problems are at the highest risk to lead lives of addiction and criminality as adults. New sources of funding must be found for youth programs. At the same time, youth under the age of 18 who are arrested for possession of marijuana should receive appropriate, science-based drug education programs.
(h) California spends excessive time and resources monitoring nonviolent former inmates. Many states require much less supervision for low-risk offenders and have lower recidivism rates. Parole supervision should be targeted to more dangerous offenders, with serious or violent criminals given heightened parole supervision.
(i) High rates of incarceration and re-incarceration result, in part, from lack of appropriate treatment and rehabilitation options for youth and nonviolent offenders. Moreover, prison overcrowding makes rehabilitation almost impossible, and the lack of rehabilitation for nonviolent prisoners and parolees contributes directly to recidivism and re-incarceration of recently released inmates.

(j) Studies show that providing drug treatment and rehabilitation services to youth, to nonviolent offenders, and to nonviolent prisoners and parolees is an effective strategy to reduce future criminality and recidivism.
(k) In light of the crisis in California's prison system, Californians need and demand a major re-orientation of state policies to provide greater rehabilitation, accountability and treatment options for youth, nonviolent offenders and nonviolent prisoners and parolees.

II. Treatment and Rehabilitation Enhance Public Safety

(a) Public safety is enhanced when young people are offered drug education and treatment, including family counseling, upon the first signs of a substance abuse problem.
(b) Public safety is enhanced when nonviolent, addicted offenders receive effective drug treatment and mental health services, instead of incarceration.
(c) Public safety is enhanced when nonviolent prisoners and parolees participate in effective rehabilitation programs designed to assist them in a successful reintegration into society.
(d) Public safety and institutional safety are enhanced when prisons are not forced to house more inmates than they were designed to hold. Rehabilitation programs have more successful outcomes when there is adequate space for programs and a minimum of lockdowns that impede such programs. Further, rehabilitation programs achieve better results when inmates have incentive to participate in and complete such programs.
(e) Public safety is enhanced when probation and parole officers oversee manageable caseloads and can focus on serious and violent offenders.
(f) California can protect public safety, save hundreds of millions of dollars, and reduce the unnecessary incarceration of nonviolent offenders by:
(1) expanding treatment opportunities for youth;
(2) diverting nonviolent offenders to treatment and providing incentives for them to complete such treatment;
(3) creating incentives for nonviolent inmates to behave in prison and to participate in and complete meaningful rehabilitation programs; and
(4) focusing parole resources on more dangerous offenders, and extending the period of supervision for such offenders, while providing effective rehabilitation programs for parolees.

III. Oversight and Accountability Are Critical for Individual Offenders and for Systems

(a) Offenders participating in rehabilitation and treatment programs in the criminal justice system must be held accountable by courts and parole authorities through the use of regular status hearings and structured responses to problems during treatment and rehabilitation.
(b) The criminal justice system must recognize that addiction, by definition, is a chronic, relapsing disease, and that addiction, standing alone, is not a behavioral problem for which punishment is appropriate. Punishing addiction has not worked and has proven counterproductive. Accordingly, it is incumbent upon criminal justice professionals to adhere to scientific research and clinical best practices that, among other things, recognize the various stages of recovery, endorse the use of incentives to improve treatment success rates, and sharply curtail the types and severity of sanctions used to respond to problems in treatment.
(c) Oversight and evaluation of treatment and rehabilitation programs is essential to ensure that appropriate programs are offered and best practices are adopted. To this end, independent

researchers should study treatment and rehabilitation programs for youth, nonviolent offenders, inmates and parolees, and should report those results to the public. In addition, government agencies implementing new treatment and rehabilitation programs should be monitored and guided by independent commissions and authorities, with public input, to keep these efforts transparent and responsive to the public.

IV. Treatment and Rehabilitation Are Already a Proven Success; Programs Should Be Improved and Expanded

(a) Broadly based rehabilitation programs for nonviolent offenders in California are a proven success. In November 2000, the people approved Proposition 36, the Substance Abuse and Crime Prevention Act of 2000, requiring community-based drug treatment instead of incarceration for nonviolent drug possession offenders.
(b) Since its passage in 2000, Proposition 36 has offered treatment to over 190,000 non-violent drug possession offenders. It has guided roughly 36,000 people into treatment each year.
(c) The treatment success rate for Proposition 36 is on a par with success rates found for some of the most effective treatment systems studied in California and across America.
(d) Independent studies by researchers at the University of California, Los Angeles, show that Proposition 36 saves taxpayers between $2.50 and $4.00 for every $1.00 invested in the program. Overall, the program saved taxpayers nearly $1.8 billion during the first six years of the new law's implementation.
(e) Despite its success, Proposition 36 treatment programs are not funded adequately. As a result, people in the program all too often receive less treatment, or the wrong kind of treatment. Two studies released in 2006 indicated that funding should be at least $228 million to $256 million, however, less than half the suggested amount was appropriated for fiscal year 2007-08, and counties are now sharply curtailing the type, intensity, and quality of treatment offered. California is better served by adequately investing in cost-effective treatment for nonviolent offenders.
(f) Several other states have successfully reduced recidivism by former inmates by providing rehabilitation programs before and after release from prison. Small-scale efforts in recent years in California have been less successful, due to the limited scope of the programs and the substantial barriers to implementation of those programs.
(g) It is time to expand drug treatment diversion pioneered by Proposition 36, and to coordinate, cohere, supervise, and, where appropriate, universalize multiple independent programs.
(h) California must commit to providing effective treatment to low-level offenders caught up in the criminal justice system and continue this commitment to rehabilitation for persons who are incarcerated, and after their release. The failure to seize these opportunities to address some of the root causes of criminal behavior risks the return of many offenders to the criminal justice system.
(i) Existing laws allowing people suffering from addiction to be prematurely terminated from treatment and incarcerated due to foreseeable relapses or problems should be amended to promote continued treatment, provided that a person is not committing additional crimes.
(j) The use of jail time to punish relapses and misbehavior during the treatment period has never been proved effective, and therefore should be reserved only for those people who are at imminent risk of being terminated from probation and treatment, and only after incentives and graduated sanctions have failed.

(k) Community-based treatment should be an option for a wider range of nonviolent offenders than covered by Proposition 36, provided that the offender's conduct is found to result primarily from the offender's underlying substance abuse problems. Where such offenders are afforded treatment instead of incarceration, the criminal justice system should be given additional tools and resources to provide effective treatment, ensure offender accountability, and prevent future criminality.
(l) In 2006, the Legislature passed a bill known as Senate Bill 1137 (Chapter 63, 2006 statutes) attempting to amend Proposition 36. The proposed amendments, however, were enjoined by a court as likely unconstitutional because they conflict with the original measure. If the amendments are eventually ruled invalid, the legislation calls for them to be placed before the electors. In considering this measure, the People are considering substantially similar legislation, and therefore declare it unnecessary and undesirable for the 2006 legislation to be referred to the ballot.

SECTION 3. Purposes and Intents.

The People hereby declare that the intents and purposes of this measure are to:

(a) Prevent crime, promote addiction recovery, provide rehabilitation services and restorative justice programs, and heighten accountability for youth and nonviolent offenders.
(b) Reduce prison overcrowding and use prison beds primarily for serious and violent offenders and sex offenders, who pose the greatest risks to our communities.
(c) Create a continuum of care providing drug treatment and related services for at-risk youth and for people entering treatment through the court system, with graduated steps tied to the severity of a person's substance abuse problems and criminal history, beginning with programs under Penal Code Section 1000.
(d) Create a continuum of care providing rehabilitation programs for prison inmates, parolees and former parolees, with the goal of reducing recidivism and preventing future criminal activity by offering appropriate services whenever they are necessary.
(e) Preserve valuable court resources currently spent processing adults caught possessing marijuana for personal use by penalizing possession of small amounts of marijuana for personal use as an infraction with a fine, diverting young people caught using marijuana into appropriate science-based drug education programs, and providing additional money for youth programs through the re-direction of fines paid by people caught possessing marijuana.
(f) Limit the use of state prisons to punish minor parole violations by nonviolent parolees, provided that such parolees have never committed a serious or violent felony, a sex offense requiring registration, or a gang crime.
(h) Provide appropriate incentives and rewards for nonviolent offenders, prisoners and parolees who participate in treatment and rehabilitation, to encourage participation and completion of such programs.
(i) Improve the efficacy of our criminal justice system by making appropriate treatment and rehabilitative services a major focus in the processing of nonviolent offenders.
(j) Transform the culture of our state corrections system by elevating the mission of rehabilitation of prisoners and former inmates and integrating that mission with parole through creating new rehabilitation positions, including a new secretary, at the Department of Corrections and Rehabilitation.

(k) Extend parole supervision for serious and violent offenders, and to reduce parole caseloads so that parole officers can focus on more dangerous offenders.
(l) Refocus parole supervision for nonviolent offenders to prioritize their re-integration into society, free from lives of addiction and crime.
(m) Fund adequately and to ensure effective, high quality treatment and rehabilitation programs for all of the populations referenced herein.
(n) Provide a range of programs and incentives for nonviolent offenders, prison inmates and parolees, without limiting the range of programs or incentives that may be offered to persons who do not qualify under the terms of this measure.
(o) Prevent overdose death and morbidity by offering overdose awareness and prevention education to inmates in county jails.
(p) Ensure independent oversight and guidance to government agencies charged with implementing the programs outlined in this Act by appointing diverse groups of stakeholders to help serve as the public's eyes, ears, and voices in shaping and monitoring the implementation of the Act.
(q) Strengthen California's drug courts by adequately funding those courts, permitting those courts to fashion their own eligibility criteria and operating procedures, and holding them accountable by requiring those courts, for the first time, to systematically collect and report data regarding their budgets, expenditures, operations, and treatment outcomes.
(r) Provide voters with the final say on these matters at the time of the election on this measure, and to therefore strike a provision of Senate Bill 1137 (Chapter 63, 2006 statutes) that might otherwise require a future election on substantially the same subject.

SECTION 4. Addition of a Secretary of Rehabilitation and Parole to the Department of Corrections and Rehabilitation.

Section 12838 of the Government Code is hereby amended to read:

12838. (a) There is hereby created in state government the Department of Corrections and Rehabilitation, to be headed by ~~a secretary, who shall be~~ *two secretaries who shall be known as the Secretary of Rehabilitation and Parole and the Secretary of Corrections. The Secretary of Rehabilitation and Parole shall be appointed by the Governor no later than February 1, 2009, subject to Senate confirmation, and shall serve a six-year term. The Secretary of Corrections shall be* appointed by the Governor, subject to Senate confirmation, and shall serve at the pleasure of the Governor. *The secretaries shall be eligible for reappointment.* The Department of Corrections and Rehabilitation shall consist of Adult Operations, Adult Programs, Juvenile Justice, the Corrections Standards Authority, ~~the Board of Parole Hearings,~~ the State Commission on Juvenile Justice, the Prison Industry Authority, ~~and~~ the Prison Industry Board, *and Parole Policy, Programs and Hearings, to include the Board of Parole Hearings. The duties of the two secretaries shall be divided as follows:*

(1) The Secretary of Rehabilitation and Parole shall have primary responsibility for parole policies and rehabilitation programs, including all such programs operated by the Department, whether inside prison or outside, at the effective date of this Act, and shall exercise duties such as those set forth in Penal Code sections 4056.5 and 5060;

(2) The Secretary of Corrections shall have primary responsibility for institutions and shall exercise duties such as those set forth in Penal Code sections 5054.1 5054.2, 5061, 5062, 5063, 5084 and 5084;

(3) The Legislature shall by a majority vote delineate the responsibilities of the secretaries consistent with the purposes and intents of their respective positions.

(b) The Governor, upon recommendation of the ~~secretary~~ *secretaries,* may appoint two undersecretaries of the Department of Corrections and Rehabilitation, subject to Senate confirmation. The undersecretaries shall hold office *for a term of five years* ~~at the pleasure of the Governor~~. One undersecretary shall oversee program support and the other undersecretary shall oversee program operations for the department. *The undersecretaries serving at the effective date of this Act shall continue to serve at the pleasure of the Governor.*

(c) The Governor, upon recommendation of the ~~secretary~~ *secretaries,* shall appoint three chief deputy secretaries, subject to Senate confirmation, who shall hold office *for a term of five years* ~~at the pleasure of the Governor~~. One chief deputy secretary shall oversee adult operations, one chief deputy secretary shall oversee adult programs, and one chief deputy secretary shall oversee juvenile justice for the department. *The chief deputy secretaries serving at the effective date of this Act shall continue to serve at the pleasure of the Governor.*

(d) The Governor, upon recommendation of the ~~secretary~~ *secretaries,* shall appoint an assistant secretary, subject to Senate confirmation, who shall be responsible for health care policy for the department, and shall serve at the pleasure of the Governor.

(e) The Governor, upon recommendation of the ~~secretary~~ *secretaries,* shall appoint an Assistant Secretary for Victim and Survivor Rights and Services, and an Assistant Secretary for Correctional Safety, who shall serve at the pleasure of the Governor.

SECTION 5. Section 12838.1 of the Government Code is hereby amended to read:

12838.1. There is hereby created within the Department of Corrections and Rehabilitation, under the Chief Deputy Secretary for Adult Operations, the Division of Adult Institutions ~~and the Division of Adult Parole Operations~~. ~~Each~~ *The* division shall be headed by a division chief, who shall be appointed by the Governor, upon recommendation of the ~~secretary~~ *secretaries,* subject to Senate confirmation, who shall serve at the pleasure of the Governor.

(b) The Governor shall, upon recommendation of the ~~secretary~~ *secretaries,* appoint five subordinate officers to the Chief of the Division of Adult Institutions, subject to Senate confirmation, who shall serve at the pleasure of the Governor. Each subordinate officer appointed pursuant to this subdivision shall oversee an identified category of adult institutions, one of which shall be female offender facilities.

SECTION 6. Section 12838.2 of the Government Code is hereby amended to read:

12838.2. *(a)* There is hereby created within the Department of Corrections and Rehabilitation, under the Chief Deputy Secretary for Adult Programs, the Division of Community Partnerships, the Division of Education, Vocations and Offender Programs, and the Division of Correctional Health Care Services. Each division shall be headed by a chief who shall be appointed by the Governor, at the recommendation of the ~~secretary~~ *secretaries,* subject to Senate confirmation, who shall serve at the pleasure of the Governor.

(b) There is hereby created within the Department of Corrections and Rehabilitation, under the Secretary of Rehabilitation and Parole, the Division of Parole Policy, Programs and Hearings, which, notwithstanding any other law, shall include the Board of Parole Hearings and the Adult Parole Operations Authority, and which shall retain all of the powers, duties, responsibilities, obligations, liabilities and jurisdiction of the former Division of Adult Parole Operations. The division shall be headed by a chief who shall be appointed by the Governor, upon recommendation of the Secretary of Rehabilitation and Parole, and who shall serve a five-year term and who shall be eligible for reappointment. The Secretary of Rehabilitation and Parole shall ensure that the Division of Parole Policy, Programs and Hearings fully coordinates activities, as appropriate, with the other divisions under his or her direct authority, as well as with other divisions of the Department, with the goal of successful reintegration of former inmates into society.

(c) There is hereby created within the Department of Corrections and Rehabilitation, under the Secretary of Rehabilitation and Parole, the Division of Research for Recovery and Re-Entry Matters. This division shall be headed by a chief who shall be appointed by the Secretary of Rehabilitation and Parole, who shall serve a five-year term, and who shall be eligible for reappointment. This division shall coordinate data collection and publish information about the Department's rehabilitation programs consistent with the mandates of the Parole Reform Oversight and Accountability Board. Nothing in this section precludes the Legislature by majority vote from creating additional divisions under the Secretary of Rehabilitation and Parole.

SECTION 7. Section 12838.4 of the Government Code is hereby amended to read:

12838.4. The Board of Parole Hearings is hereby created. The Board of Parole Hearings shall be comprised of ~~17~~ *29* commissioners, who shall be appointed by the Governor, *upon recommendation of the Secretary of Rehabilitation and Parole,* ~~subject to Senate confirmation,~~ for three-year terms. The Board of Parole Hearings hereby succeeds to, and is vested with, all the powers, duties, responsibilities, obligations, liabilities, and jurisdiction of the following entities, which shall no longer exist: Board of Prison Terms, Narcotic Addict Evaluation Authority, and Youthful Offender Parole Board. For purposes of this article, the above entities shall be known as "predecessor entities." *Notwithstanding this section, commissioners who are serving on the Board of Parole Hearings on the effective date of this Act shall serve the remainder of their terms.*

SECTION 8. Section 12838.7 of the Government Code is hereby amended to read:

12838.7. (a) The ~~Secretary~~ *Secretaries* of the Department of Corrections and Rehabilitation shall serve as the Chief Executive Officer*s* of the Department of Corrections and Rehabilitation and shall have all of the powers and authority *within their respective jurisdictions, as delineated by the Legislature pursuant to the terms of subdivision (a) of Section 12838,* which are conferred upon a head of a state department by Chapter 2 (commencing with Section 11150) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Without limiting any other powers or duties, the ~~secretary~~ *secretaries* shall assure compliance with the terms of any state plan, memorandums of understanding, administrative order, interagency agreements, assurances, single state agency obligations, federal statute and regulations, and any other form of agreement or obligation that vital government activities rely upon, or are a condition to, the continued receipt by the department of state or federal funds or services. This includes, but is not limited to, the designation, appointment, and provision of individuals, groups, and resources to fulfill specific obligations of any agency, board, or department that is abolished pursuant to Section 12838.4 or 12838.5.

SECTION 9. Section 12838.12 of the Government Code is hereby amended to read:

12838.12. (a) Any officer or employee of the predecessor entities who is engaged in the performance of a function specified in this reorganization plan and who is serving in the state civil service, other than as a temporary employee, shall be transferred to the Department of Corrections and Rehabilitation pursuant to the provisions of Section 19050.9.

(b) Any officer or employee of the continuing entities who is engaged in the performance of a function specified in this reorganization plan and who is serving in the state civil service, other than as a temporary employee, shall continue such status with the continuing entity pursuant to the provisions of Section 19050.9.

(c) The status, position, and rights of any officer or employee of the predecessor entities shall not be affected by the transfer and shall be retained by the person as an officer or employee of the Department of Corrections and Rehabilitation, as the case may be, pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code), except as to a position that is exempt from civil service.

(d) It is the intent of the People that to the extent permitted by law any positions created pursuant to this Act under the Secretary for Rehabilitation and Parole shall be occupied by the same category of rehabilitation personnel, sworn peace officers and other employees employed by the Department to provide services prior to this Act, and that the status, position, and rights of any officer or employee of the Department of Corrections and Rehabilitation shall not be affected by the structural changes to the Department required by the Act, and officers and employees shall be retained by the Department pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code), except as to a position that is exempt from civil service.

SECTION 10. Section 12838.13 of the Government Code is hereby amended to read:

12838.13. This article as amended shall become operative as of July 1, ~~2005~~ *2009, except that the Secretary of Rehabilitation and Parole shall be appointed by February 1, 2009, as provided.*

SECTION 11. Section 1210 of the Penal Code is amended to read:

1210. As used in Sections *1210.01 to 1210.05, inclusive, and Sections* 1210.1, *1210.2* and 3063.1 of this code, and Division 10.8 (commencing with Section 11999.4) of the Health and Safety Code, the following definitions apply:

(a) The term "nonviolent drug possession offense" means the unlawful personal use, possession for personal use, or transportation for personal use, *or being under the influence* of any controlled substance identified in Section 11054, 11055, 11056, 11057 or 11058 of the Health and Safety Code, *or of any controlled substance analog as defined in Section 11401 of the Health and Safety Code,* or the offense of being under the influence of a controlled substance in violation of Section 11550 of the Health and Safety Code, *or of any drug paraphernalia offense as defined in Section 11364 of the Health and Safety Code or Section 4140 of the Business and Professions Code*. The term "nonviolent drug possession offense" does not include the possession for sale, *transportation for sale,* production, or manufacturing of any controlled substance and does not include violations of Section 4573.6 or 4573.8. *A jury's determination that a defendant is guilty of simple possession is a dispositive finding that the defendant is eligible for probation under this Act absent other disqualifying factors set forth in separate sections of the Act. People v. Dove, 124 Cal.App.4th 1 (2004), is hereby nullified.*

(b) The term "drug treatment program," *"interim treatment program"* or "drug treatment" means a ~~state~~ licensed or certified community drug treatment program, which may include one or more of the following: *science-based* drug education, outpatient services, *medication-assisted treatment* ~~narcotic replacement therapy,~~ residential treatment, *mental health services* ~~detoxification services~~, and aftercare *or continuing care*~~services~~. The term "drug treatment program" or "drug treatment" includes a drug treatment program operated under the direction of the Veterans Health Administration of the Department of Veterans Affairs or a program specified in Section 8001. That type of program shall be eligible to provide drug treatment services without regard to the licensing or certification provisions required by this subdivision. *Detoxification services in a non-custodial setting, and/or mental health services, may be provided as a part of drug treatment as defined in this subdivision, but neither service shall be deemed sufficient to serve as treatment.* The term "drug treatment program" or "drug treatment" does not include drug treatment programs offered in a prison, ~~or~~ jail *or other custodial* facility.

(c) The term "medication-assisted treatment" means the medically indicated and medically managed use of any prescription medication, with the defendant's consent, as a part of drug treatment, or as a complement or supplement to such treatment. Examples include, but are not limited to, the use of anti-psychotics, relapse prevention medications, mood stabilizers, and opioid agonists (including methadone and buprenorphine). Drugs or medicines used as a part of medication-assisted treatment are presumptively a legitimate and allowable expense in addition to the costs of treatment services.

~~(c)~~*(d) The term "harm reduction therapy" and "harm reduction services" means programs guided by a public health philosophy which promotes methods of reducing the physical, social, emotional, and economic harms associated with drug misuse and other harmful behaviors on individuals, their families, and their communities. Harm reduction therapy recognizes that people use drugs, including alcohol, for a variety of reasons, and strives for an integrated treatment approach that addresses the complex relationship that people develop with psychoactive substances over the course of their lives, in the context of the social and occupational impacts and psychological and emotional implications of their substance misuse. Harm reduction programs are free of judgment or blame and directly involve the client in setting his or her own goals.*

(e) The term "successful completion of treatment" means that a defendant who has had drug treatment imposed as a condition of probation has completed the prescribed course of drug treatment as recommended by the treatment provider and ordered by the court and, as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future. *Successful* ~~Cessation of narcotic replacement therapy.~~ completion of treatment shall not require *termination or detoxification from medication-assisted treatments, or other medications which the court may verify to be taken pursuant to a valid prescription or otherwise taken consistent with state law.*

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

(g) The term "clinical assessment" means an evaluation performed by a qualified health care professional or drug treatment professional certified by the state Department of Alcohol and Drug Programs, pursuant to regulations approved by the Oversight Commission, using a standardized tool to determine an individual's social and educational history, drug use history, addiction severity and other factors indicating the individual's needs and the appropriate course of drug treatment, including opioid agonist treatment. When appropriate, a clinical assessment may include a separate evaluation of mental health needs and/or psychiatric and psychological factors.

(h) The term "criminal history evaluation" means a report by a probation department or other entity appointed by the court detailing a defendant's history of arrest, conviction, incarceration and recidivism. Such an evaluation may include opinions or recommendations regarding the risk of recidivism by the defendant and appropriate monitoring conditions for the defendant.

(i) The term "addiction training" shall mean an educational program about drug abuse and addiction intended for an audience of persons working with defendants placed into treatment under the terms of this Act. The objectives and content of addiction training programs shall be established by the Department of Alcohol and Drug Programs in collaboration with a statewide association of physicians specializing in addiction and with the Judicial Council; provided, however, that one required portion of every addiction training course shall consist of education regarding opioid addiction and opioid agonist therapies and one portion shall cover principles

and practices of harm reduction. Such training programs may be paid for from the Substance Abuse Treatment Trust Fund, in an amount approved by the Oversight Commission.

(j) "Incentives and rewards" means a response by a treatment provider or by the court to a client's or defendant's progress, attainment of certain goals or benchmarks, or other good behavior in the course of treatment pursuant to this section, or the promise of such rewards, intended to encourage future progress and good behavior. Counties may spend funds allocated under this section to provide a range of such benefits to persons undergoing treatment pursuant to this section, consistent with regulations approved by the Oversight Commission. The Department of Alcohol and Drug Programs shall annually publish a list of examples of appropriate incentives and rewards.

(k) The term "drug-related condition of probation" shall be interpreted broadly and shall include, but not be limited to, a probationer's specific drug treatment regimen, employment, vocational training, educational programs, psychological counseling, and family counseling.

(l) "Graduated sanction" means a response by a treatment provider or by the court to a client's or defendant's misbehavior, probation violations or relapse during treatment, intended to hold a person accountable for his or her actions, provide a negative consequence and deter future problems from occurring. Sanctions are graduated in that they begin with a minimal negative consequence and become more onerous with additional misbehavior, violations or relapses. Examples may include, but not be limited to, requiring additional visits to treatment, increased frequency of drug testing, attendance at a greater number of court sessions or community service. The Department of Alcohol and Drug Programs shall annually publish a list of examples of appropriate sanctions. Graduated sanctions do not include jail sanctions.

(m) "Jail sanction" means the imposition of a term of incarceration in a county jail in response to a defendant's misbehavior or probation violations. The length of time allowable for a jail sanction may be specified by statute; otherwise, no jail sanction shall exceed 10 days. Imposition of a jail sanction does not require, or imply, the termination of drug treatment.

When determining whether to impose jail sanctions, the court shall consider, among other factors, the seriousness of the violation, previous treatment compliance, employment, education, vocational training, medical conditions, medical treatment, including opioid agonist treatment, and including the opinion of the defendant's licensed and treating physician if available and presented at the hearing, child support obligations, and family responsibilities. The court shall also consider whether illicit drugs are available in the county's jail, the prevalence of drug use therein, and any documented impact of drug-related harms resulting from drug use in jail.

(n) "Youth programs" means non-custodial programs and services for youth under the age of 18 who are considered to be nonviolent and at risk of committing future drug offenses, pursuant to guidelines established by the Oversight Commission. Services may include, but shall not be limited to: drug treatment programs; family therapy for the youth, parent, guardian or primary caregiver; mental health counseling; psychiatric medication, counseling and consultation; education stipends for fees at university, college, technical or trade schools; employment stipends; and transportation to any of these services.

SECTION 12. Section 1210.01 is added to the Penal Code to read:

1210.01 Assessment of Defendants Prior to Charging or Eligibility Determination

Notwithstanding any other provision of law, the court may order a clinical assessment and/or criminal history evaluation for any person arrested for an offense that might result in diversion and treatment under Track I, Track II, or Track III, as provided in sections 1210.03 to 1210.05, inclusive, section 1210.1 and section 1210.2. The costs of the clinical assessment shall be reimbursable from funds provided pursuant to this Act. The defendant shall have the right to counsel and may refuse the clinical assessment and/or any interview for the criminal history evaluation until after the arraignment and a plea is entered.

For any defendant who does appear for a clinical assessment or criminal history evaluation, no statement made by the defendant, or any information revealed during the course of the assessment or evaluation with respect to the specific offense with which the defendant is charged shall be admissible in any action or proceeding brought subsequently, including a sentencing hearing.

SECTION 13. Section 1210.02 is added to the Penal Code to read:

1210.02 Treatment Placement, Monitoring Conditions, Payment, Judicial Training

(a) Any defendant found eligible for treatment diversion under Track I, Track II or Track III shall be placed into appropriate treatment and shall have monitoring conditions imposed consistent with the following terms:

(1) In determining an appropriate treatment program, the court must rely upon the clinical assessment of the defendant.

Prior to a final determination of the appropriate treatment program and the availability of such a program for the defendant, the court may order the defendant to attend any available treatment program that partly serves the defendant's needs as an interim measure for purposes of quickly engaging the defendant in treatment, provided that such an interim placement shall be for no more than sixty days. Defendants who refuse to attend such an interim treatment program shall not accrue violations of drug-related conditions of probation until placement in an appropriate treatment program. Defendants who participate in an interim treatment program shall not accrue program violations or violations of drug-related conditions of probation while attending an interim placement. The court shall credit the time that the defendant attends an interim treatment program toward the overall period of treatment required.

(2) The court shall refer the defendant to opioid agonist treatment or other medication-assisted treatments where the clinical assessment indicates the need for such treatment.

(3) In determining the appropriate monitoring conditions and requirements imposed upon the defendant, the court must rely upon the criminal history evaluation and clinical assessment.

(4) A defendant may request to be referred to a drug treatment program in any county.

(5) Any defendant who is participating in a treatment program in Track I, Track II or Track III may be required to undergo analysis of his or her urine for the purpose of testing for the presence of any drug as part of the program. The results of such analysis may be used solely as a treatment tool to tailor the response of the treatment program and the court to the defendant's relapse. Such results shall be given no greater weight than any other aspects of the defendant's individual treatment program. Results of such testing shall not be admissible as a basis for any new criminal prosecution or proceeding, nor shall such results be cause, in and of themselves, for the court to enter judgment in a case where the defendant has had entry of judgment deferred under Track I diversion, or for the court to find that a violation of probation has occurred. A court may consider a test result as positive only if the laboratory performing such analysis utilized the following procedures and standards: validity testing, initial and confirmation testing, cutoff concentrations, dilution and adulteration criteria, and split specimen procedures.

(6) No person otherwise eligible for treatment shall be denied access to treatment due to the presence of a co-occurring psychiatric or developmental disorder or language barrier, nor shall an eligible defendant be required to cease the use of any medication-assisted treatments, or other medications taken pursuant to a valid prescription or otherwise taken consistent with state law, subject to court verification.

(7) In addition to any fine assessed under other provisions of law, the trial judge may require any person placed in Track I, Track II or Track III treatment who is reasonably able to do so to contribute to the cost of his or her own placement in an appropriate drug treatment program, detoxification services or urinalysis, provided that:

(A) Failure to pay such costs shall not be grounds for a treatment provider to refuse to report a client's completion of a program.

(B) Failure to pay such costs shall not be grounds for a court to deny dismissal of charges, indictment, complaint or conviction.

(C) Failure to pay such costs shall not be grounds to refuse to seal records upon satisfactory performance or successful completion of treatment under Tracks I or II, respectively.

(D) Before or after the completion of treatment, the court may require community service as an alternative to the payment of outstanding fees, fines or court costs, or may use administrative or civil methods to require payment of any outstanding amount.

(E) A person who is unable to pay the cost of his or her placement in a drug treatment program shall not be deprived of appropriate drug treatment or urinalysis ordered by the court.

(8) The court may also require participation in educational programs, vocational training, family counseling, health care, including mental health services, literacy training and/or community service, harm reduction services, and any other services that may be identified as

appropriate by the clinical assessment of the defendant or through other evaluations of the defendant's needs.

(b) After July 1, 2010, every judge regularly presiding over a Track I, Track II or Track III diversion case after a defendant is ordered to appear for a clinical assessment shall annually complete an addiction training course.

SECTION 14. Section 1210.03 is added to the Penal Code to read:

1210.03 Track I. Treatment Diversion with Deferred Entry of Judgment.

(a) Notwithstanding any other provision of law, drug treatment shall be provided to eligible defendants. A defendant is eligible for the disposition options, sanctions and treatment programs of Track I diversion if:

(1) The defendant is charged with one or more nonviolent drug possession offenses.

(2) The defendant has never been convicted of an offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony.

(3) The defendant has no prior conviction for any felony, other than a single nonviolent drug possession offense, within five years prior to the alleged commission of the charged offense.

(4) The defendant is not charged with any other offense that is not a nonviolent drug possession offense.

(b) A defendant who is not eligible solely because of a concurrent charge for another offense as provided in paragraph (4) of subdivision (a), whether in the same or another case, in the same or another jurisdiction, may be deemed eligible for Track I treatment pursuant to this section if the court determines that it is in the interest of the defendant and in the furtherance of justice to permit deferred entry of judgment.

(c) A defendant may refuse Track I treatment. No defendant shall be ruled ineligible for Track I treatment solely because of failure to complete a diversion program offered pursuant to Penal Code Section 1000.

(d) A defense attorney, a prosecuting attorney, or the court on its own motion, may request Track I treatment diversion for any defendant when it appears that the defendant meets the criteria set forth in Section 1210.03(a) or the court has made the findings specified in Section 1210.03(b). The court shall order an evidentiary hearing in any case in which there is a dispute as to the defendant's eligibility for Track I treatment diversion. The prosecution shall have the burden to prove that the defendant is not eligible. If the defendant is found ineligible, the court shall state the grounds for so finding on the record.

(e) If the court determines that a defendant is eligible for Track I treatment diversion, the court shall provide the following to the defendant and his or her attorney:

(1) A full description of the procedures for Track I treatment diversion, including any waivers required of the defendant, the defendant's right to refuse the program, the defendant's rights during the program, the potential duration of the program, the benefits a defendant may expect for completing the program and the consequences of failure to complete the program.

(2) A general explanation of the roles and authorities of the probation department, the prosecuting attorney, the program, and the court in the process. An explanation of criminal record retention and disposition resulting from participation in the deferred entry of judgment program and the defendant's rights relative to answering questions about his or her arrest and deferred entry of judgment following successful completion of the program.

(f) If the defendant consents and waives his or her right to a speedy trial or a speedy preliminary hearing, the court shall grant deferred entry of judgment if the defendant pleads guilty to the charge or charges and waives time for the pronouncement of judgment.

(g) At the time that deferred entry of judgment is granted, any bail bond or undertaking, or deposit in lieu thereof, on file by or on behalf of the defendant shall be exonerated.

(h) At the time deferred entry of judgment is granted, the court shall seal from public view all records and files concerning the qualifying offense, including all records of arrest and detention, for the period the defendant is participating in a treatment program referred to in this section or is on a waiting list for a program referred to in this section.

(i) The court shall order the defendant to appear for a clinical assessment and criminal history evaluation, and shall thereafter order the defendant to attend and complete an appropriate treatment program. If the defendant had a clinical assessment performed prior to a determination of eligibility, the court may order a new assessment. The court shall thereafter place the defendant in treatment and set monitoring conditions consistent with the terms and requirements of Section 1210.02.

(j) If a defendant receives deferred entry of judgment under this section, and has not yet begun treatment within 30 days of the grant of deferred entry of judgment, the court shall conduct a hearing to determine the reasons for the defendant's failure to begin treatment. The court shall consider evidence from the parties, probation department and treatment provider. At the hearing, the defendant may refuse treatment and deferred entry of judgment.

If the defendant does not refuse treatment, the court may re-refer the defendant to the treatment program and may impose graduated sanctions or may enter judgment for the defendant's failure to start treatment, provided, however, that sanctions shall not be imposed or judgment entered when the defendant's failure to begin treatment resulted from a county's inability to provide appropriate treatment in a timely manner or from the county's failure to make treatment reasonably accessible, such as the failure to offer child care for a parenting defendant or failure

to provide transportation if needed. A defendant for whom judgment is entered due to failure to begin treatment shall be transferred to Track II treatment diversion.

The court shall collect and report all data relevant to a defendant's failure to begin treatment within 30 days, the reasons therefore, and the court's responses, in any form required by the Oversight Commission. Such data regarding treatment show rates shall be published by the Department, or researchers designated by the Oversight Commission, on a county-by-county and statewide basis, not less than once per year.

(k) The period during which deferred entry of judgment is granted shall be for no less than six months nor longer than 18 months. Progress reports shall be filed with the court by the treatment provider and the probation department as directed by the court.

(l) No statement that is made during the course of treatment or any information procured therefrom, with respect to the specific offense with which the defendant is charged shall be admissible in any action or proceeding brought subsequently, including a sentencing hearing.

(m) Deferred entry of judgment for a violation of Section 11368 of the Health and Safety Code shall not prohibit any administrative agency from taking disciplinary action against a licensee or from denying a license. Nothing in this subdivision shall be construed to expand or restrict the provisions of Section 1210.05.

(n) A defendant's plea of guilty pursuant to this chapter shall not constitute a conviction for any purpose unless a judgment of guilty is entered pursuant to Section 1210.04.

(o) During periodic review hearings to evaluate a defendant's progress, the court shall consider the use of incentives and rewards to encourage continued progress, and may impose graduated sanctions in response to problems reported by the treatment provider or probation department, or in the court's discretion, without entry of judgment. The court may not impose a jail sanction on a defendant participating in Track I treatment diversion.

(p) If the defendant has performed satisfactorily during the period in which deferred entry of judgment was granted, the criminal charge or charges shall be dismissed and the case records and files shall be permanently sealed, including any record of arrest and detention.

SECTION 15. Section 1210.04 is added to the Penal Code to read:

1210.04. If it appears to the treatment provider, the prosecuting attorney, the court, or the probation department that the defendant is performing unsatisfactorily in the assigned program, or the defendant is convicted of a misdemeanor not related to the use of drugs, or the defendant is convicted of a felony that is not a nonviolent drug possession offense, or the defendant has engaged in criminal conduct rendering him or her unsuitable for deferred entry of judgment, the prosecuting attorney or the court on its own, may make a motion for entry of judgment.

After notice to the defendant, the court shall hold a hearing to determine whether judgment should be entered. If the court finds that the defendant is not performing satisfactorily in the

assigned program, or that the defendant is not benefiting from education, treatment, or rehabilitation, or the court finds that the defendant has been convicted of a crime as indicated above, or that the defendant has engaged in criminal conduct rendering him or her unsuitable for deferred entry of judgment, the court shall render a finding of guilt to the charge or charges pled, enter judgment, and schedule a sentencing hearing as otherwise provided in this code.

In determining whether the defendant has performed satisfactorily or unsatisfactorily in any treatment program, the court shall be guided by the evaluation provided for the court by the qualified treatment professional in charge of the defendant's treatment program, and the treatment provider's opinion as to the prospects for the defendant to return to treatment and continue treatment successfully with changes in the treatment plan.

If the court does not enter judgment, the treatment plan may be amended, and graduated sanctions may be imposed, consistent with the recommendation of the treatment provider.

If the court does enter judgment, the court shall sentence the defendant to Track II probation and treatment, if eligible. If the defendant has committed a new offense that is a misdemeanor not related to the use of drugs or a felony that is not a nonviolent drug possession offense, sentencing is not controlled by this section.

SECTION 16. Section 1210.05 is added to the Penal Code to read:

1210.05 (a) Any record filed with the Department of Justice shall indicate the disposition in those cases deferred pursuant to this chapter. Notwithstanding any other provision of law, upon successful completion of a deferred entry of judgment program, the arrest upon which the judgment was deferred shall be deemed to have never occurred. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted deferred entry of judgment for the offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a deferred entry of judgment program shall not be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(b) The defendant shall be advised that, regardless of his or her successful completion of the deferred entry of judgment program, the arrest upon which the judgment was deferred may be disclosed by the Department of Justice in response to any peace officer application request and that, notwithstanding subdivision (a), this section does not relieve him or her of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

SECTION 17. Section 1210.1 of the Penal Code is hereby amended to read:

Section 1210.1 *Track II. Treatment Diversion After a Conviction.* ~~Possession Of Controlled Substances; Probation; Exceptions.~~

(a) Notwithstanding any other provision of law, and except as provided in subdivision ~~(b)~~*(f)*, any person *who is ineligible for Track I deferred entry diversion and is* convicted of a nonviolent

drug possession offense shall receive probation. As a condition of probation the court shall require participation in and completion of an appropriate drug treatment program. ~~The court shall impose appropriate drug testing as a condition of probation. The court may also impose, as a condition of probation, participation in vocational training, family counseling, literacy training and/or community service.~~ A court may not impose incarceration as an additional condition of probation. *The court shall order the defendant to appear for a clinical assessment and criminal history evaluation, and shall thereafter order the defendant to attend and complete an appropriate treatment program. If the defendant had a clinical assessment performed prior to a determination of eligibility, the court may order a new assessment. The court shall thereafter place the defendant in treatment and set monitoring conditions consistent with the terms and requirements of Section 1210.02.*

(b) Aside from the limitations imposed in this subdivision, the trial court is not otherwise limited in the type of probation conditions it may impose. Probation shall be imposed by suspending the imposition of sentence. ~~No person shall be denied the opportunity to benefit from the provisions of the Substance Abuse and Crime Prevention Act of 2000 based solely upon evidence of a co-occurring psychiatric or developmental disorder.~~

(c) Upon granting probation under subdivision (a), the court shall seal all records and files concerning the qualifying offense, including all records of arrest, detention, and conviction, for the period that the defendant is in treatment or on a waiting list for treatment.

(d) To the greatest extent possible, any person who is convicted of, and placed on probation pursuant to this section for a nonviolent drug possession offense shall be monitored by the court through the use of a dedicated court calendar and the incorporation of a collaborative court model of oversight that includes close collaboration with treatment providers and probation, drug testing commensurate with treatment needs, and supervision of progress through review hearings. ~~In addition to any fine assessed under other provisions of law, the trial judge may require any person convicted of a nonviolent drug possession offense who is reasonably able to do so to contribute to the cost of his or her own placement in a drug treatment program.~~

(e) Any person who has been ordered to complete a drug treatment program pursuant to this section shall not be required to comply with the drug offender registration provisions of section 11590 of the Health and Safety Code during the course of treatment. Said exemption will become permanent upon the successful completion of the drug treatment program. Any person convicted of a nonviolent drug offense that was deemed ineligible for participation in or has been excluded from continued participation in this act shall be subject to the provisions of Section 11590 of the Health and Safety Code.

~~(b)~~*(f)* Subdivision (a) shall not apply to any of the following:

(1) Any defendant who previously has been convicted of one or more violent or serious felonies as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7, respectively, unless the nonviolent drug possession offense occurred after a period of five years in which the defendant remained free of both prison custody and the commission of an offense that results in a

felony conviction other than a nonviolent drug possession offense, or a misdemeanor conviction involving physical injury or the threat of physical injury to another person.

(2) Any defendant who, in addition to one or more nonviolent drug possession offenses, has been convicted in the same proceeding of a misdemeanor not related to the use of drugs or any felony *that is not a nonviolent drug possession offense~~.~~, except that with respect to a misdemeanor conviction the court shall have discretion to declare the person eligible for treatment under subdivision (a) and suspend sentencing during participation in drug treatment.*

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

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

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

(6) Any defendant who, in the 30 months prior to the current conviction, has five or more convictions for any offense or combination of offenses, including nonviolent drug possession offenses, and not including infractions. A defendant who is ineligible for Track II treatment diversion solely on the basis of this finding shall be eligible for Track III treatment diversion.

(g) No defendant shall be ruled ineligible for Track II treatment because of failure to complete a diversion program offered pursuant to Penal Code Section 1000.

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

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

~~(d)~~*(h)* Within seven days of an order imposing probation under subdivision (a), the probation department shall notify the drug treatment provider designated to provide drug treatment under

subdivision (a). Within 30 days of receiving that notice, the treatment provider shall prepare a treatment plan and forward it to the probation department for distribution to the court and counsel. The treatment provider shall provide to the probation department standardized treatment progress reports, with minimum data elements as determined by the department, including all drug testing results. At a minimum, the reports shall be provided to the court every 90 days, or more frequently, as the court directs.

(1) If a defendant receives probation under subdivision (a), and has not yet begun treatment within 30 days of the grant of probation, the court shall conduct a hearing to determine the reasons for the defendant's failure to appear at treatment. The court shall consider evidence from the parties, probation department and treatment provider. At the hearing, the defendant may refuse treatment under subdivision (a).

If the defendant does not refuse treatment, the court may re-refer the defendant to the treatment program and may impose graduated sanctions or may revoke the defendant's probation for the defendant's failure to start treatment, provided, however, that sanctions shall not be imposed or probation revoked when the defendant's failure to begin treatment resulted from a county's inability to provide appropriate treatment in a timely manner or from the county's failure to make treatment reasonably accessible, such as the failure to offer child care for a parenting defendant or failure to provide transportation if needed. A defendant whose probation is terminated for failure to begin treatment may be transferred to Track III treatment diversion in the discretion of the court.

The court shall collect and report all data relevant to a defendant's failure to begin treatment within 30 days, the reasons therefore, and the court's responses, in any form required by the Oversight Commission. Such data regarding treatment show rates shall be published by the Department, or researchers designated by the Oversight Commission, on a county-by-county and statewide basis, not less than once per year.

(2) During periodic review hearings to evaluate a defendant's progress, the court shall consider the use of incentives and rewards to encourage continued progress, and may impose graduated sanctions in response to problems reported by the treatment provider or probation department, or in the court's discretion, with or without a finding that a violation of probation has occurred.

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

~~(2)~~*(4)* If at any point during the course of drug treatment the treatment provider notifies the probation department and the court that the defendant is unamenable to the drug treatment provided and all other forms of drug treatment programs pursuant to subdivision (b) of Section 1210, the probation department may move to revoke probation. At the revocation hearing, *the prosecution must prove the defendant is unamenable to all drug treatment programs pursuant to*

subdivision (b) of Section 1210 ~~if it is proved that the defendant is unamenable to all drug treatment programs pursuant to subdivision (b) of Section 1210~~, *whereupon* the court may revoke probation.

~~(3)~~*(5)* Drug treatment services provided by subdivision (a) as a required condition of probation may not exceed 12 months, unless the court makes a finding supported by the record, that the continuation of treatment services beyond 12 months is necessary for drug treatment to be successful. If such a finding is made, the court may order up to two six-month extensions of treatment services. The provision of treatment services under *this section* ~~the Substance Abuse and Crime Prevention Act of 2000~~ shall not exceed 24 months.

(6) When the defendant completes the required treatment program, the treatment provider shall notify the court within seven days. The court shall amend the terms of probation to provide for no more than six months of continued supervision after the date of treatment completion. Aftercare or continuing care services may be required and provided during this period.

~~(c)~~*(i)* (1) At any time after completion of drug treatment and the terms of probation, the court shall conduct a hearing, and if the court finds that the defendant successfully completed drug treatment, and substantially complied with the conditions of probation, including refraining from the use of drugs after the completion of treatment, the conviction on which the probation was based shall be set aside and the court shall dismiss the indictment, complaint, or information against the defendant, *and the court shall order the case records and files to remain sealed, including any record of arrest, detention, and conviction.* In addition, except as provided in paragraphs (2) and (3), both the arrest and the conviction shall be deemed never to have occurred. The defendant may additionally petition the court for a dismissal of charges at any time after completion of the prescribed course of drug treatment. Except as provided in paragraph (2) or (3), the defendant shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted.

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

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

Regardless of his or her successful completion of drug treatment, the arrest and conviction on which the probation was based may be recorded by the Department of Justice and disclosed in response to any peace officer application request or any law enforcement inquiry. Dismissal of an information, complaint, or indictment under this section does not relieve a defendant of the obligation to disclose the arrest and conviction in response to any direct question contained in any questionnaire or application for public office, for a position as a peace officer as defined in

Section 830, for licensure by any state or local agency, for contracting with the California State Lottery, or for purposes of serving on a jury.

~~(f)~~*(j)* (1) If probation is revoked pursuant to the provisions of this subdivision, *the court may sentence the defendant to Track III probation and treatment or the court shall sentence the defendant to incarceration in the county jail for not more than one year. If the defendant has committed a new offense that is a misdemeanor not related to the use of drugs or a felony that is not a nonviolent drug possession offense, sentencing is not controlled by this paragraph.* ~~the defendant may be incarcerated pursuant to otherwise applicable law without regard to the provisions of this section. The court may modify or revoke probation if the alleged violation is proved.~~

(2) If a defendant receives probation under subdivision (a), and violates that probation either by committing an offense that is not a nonviolent drug possession offense, or by violating a non-drug-related condition of probation, and the state moves to revoke probation, the court *shall conduct a hearing to determine whether probation shall be revoked. The court may modify or revoke probation, and may impose graduated sanctions and/or jail sanctions prior to reinstatement of probation and treatment, if the alleged violation is proved, provided, however, that no jail sanction shall be imposed on a defendant who is receiving medication-assisted treatment if that treatment is not available to the defendant in jail.* ~~may remand the defendant for a period not exceeding 30 days during which time the court may receive input from treatment, probation, the state, and the defendant, and the court may conduct further hearings as it deems appropriate to determine whether or not probation should be reinstated under this section. If the court reinstates the defendant on probation, the court may modify the treatment plan and any other terms of probation, and continue the defendant in a treatment program under the Substance Abuse and Crime Prevention Act of 2000. If the court reinstates the defendant on probation, the court may, after receiving input from the treatment provider and probation, if available, intensify or alter the treatment plan under subdivision (a), and impose sanctions, including jail sanctions not exceeding 30 days, a tool to enhance treatment compliance.~~

(3) (A) ~~If a defendant receives probation under~~ *After drug treatment commences pursuant to* subdivision (a), ~~and~~ *if there is probable cause to believe that the defendant has violated* ~~violates~~ that probation either by committing a nonviolent drug possession offense, or a misdemeanor for simple possession or use of drugs or drug paraphernalia, ~~being present where drugs are used, or failure to register as a drug offender, or any activity similar to those listed in subdivision (d) of Section 1210,~~ or by violating a drug-related condition of probation, ~~and the state moves to revoke probation,~~ the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation *only* if the alleged probation violation is proved and the state proves by a preponderance of the evidence that the defendant poses a danger to the safety of others. *The court shall not revoke probation under this section for a drug related violation of probation which occurred while the defendant was on a waiting list for a treatment program, was placed in an interim treatment program, or was otherwise waiting to begin appropriate drug treatment.* If the court does not revoke probation, it may intensify or alter the drug treatment plan and in addition, *and impose a graduated sanction.* ~~if the violation does not involve the recent use of drugs as a circumstance of the violation, including, but not limited to, violations relating to failure to appear at treatment or court, noncompliance with treatment, and~~

~~failure to report for drug testing, the court may impose sanctions including jail sanctions that may not exceed 48 hours of continuous custody as a tool to enhance treatment compliance and impose other changes in the terms and conditions of probation. The court shall consider, among other factors, the seriousness of the violation, previous treatment compliance, employment, education, vocational training, medical conditions, medical treatment, including narcotics replacement treatment, and including the opinion of the defendant's licensed and treating physician if immediately available and presented at the hearing, child support obligations, and family responsibilities. The court shall consider additional conditions of probation, which may include, but are not limited to, community service and supervised work programs. If one of the circumstances of the violation involves recent drug use, as well as other circumstances of violation, and the circumstance of recent drug use is demonstrated to the court by satisfactory evidence and a finding made on the record, the court may, after receiving input from treatment and probation, if available, direct the defendant to enter a licensed detoxification or residential treatment facility, and if there is no bed immediately available in such a facility, the court may order that the defendant be confined in a county jail for detoxification purposes only, if the jail offers detoxification services, for a period not to exceed 10 days. The detoxification services must provide narcotic replacement therapy for those defendants presently actually receiving narcotic replacement therapy.~~

(B) If a defendant receives probation under subdivision (a), and for the second *or third* time *there is probable cause to believe that the defendant has violated* ~~violates that~~ probation either by committing a nonviolent drug possession offense, or a misdemeanor for simple possession or use of drugs or drug paraphernalia, ~~being present where drugs are used, or failure to register as a drug offender, or any activity similar to those listed in subdivision (d) of Section 1210~~, or by violating a drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation *only* if the alleged probation violation is proved and the state proves by a preponderance of the evidence either that the defendant poses a danger to the safety of others or is unamenable to drug treatment. In determining whether a defendant is unamenable to drug treatment, the court may consider, to the extent relevant, whether the defendant (i) has committed a serious violation of rules at the drug treatment program, (ii) has repeatedly committed violations of program rules that inhibit the defendant's ability to function in the program, or (iii) has continually refused to participate in the program or asked to be removed from the program. If the court does not revoke probation, it may intensify or alter the drug treatment plan *and impose a graduated sanction.* ~~, and may, in addition, if the violation does not involve the recent use of drugs as a circumstance of the violation, including, but not limited to, violations relating to failure to appear at treatment or court, noncompliance with treatment, and failure to report for drug testing, impose sanctions including jail sanctions that may not exceed 120 hours of continuous custody as a tool to enhance treatment compliance and impose other changes in the terms and conditions of probation. The court shall consider, among other factors, the seriousness of the violation, previous treatment compliance, employment, education, vocational training, medical conditions, medical treatment, including narcotics replacement treatment, and including the opinion of the defendant's licensed and treating physician if immediately available and presented at the hearing, child support obligations, and family responsibilities. The court shall consider additional conditions of probation, which may include, but are not limited to, community service and supervised work programs. If one of the~~

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

(C) If a defendant receives probation under subdivision (a), and ~~for the third or subsequent time violates~~ *on a subsequent occasion there is probable cause to believe that the defendant has violated* that probation either by committing a nonviolent drug possession offense, or by violating a drug-related condition of probation, ~~and the state moves for a third or subsequent time to revoke probation,~~ the court shall conduct a hearing to determine whether probation shall be revoked. If the alleged probation violation is proved, the defendant is not eligible for continued probation under subdivision (a) *unless the court finds, in its discretion, after taking into consideration the opinions and recommendations of the drug treatment provider and the district attorney, that the defendant:*

(1) is not a danger to the community, and

(2) is not unamenable to treatment.

If the court does not revoke probation, it may intensify or alter the drug treatment plan, impose a graduated sanction, and/or impose a jail sanction not to exceed 48 hours upon the first such imposition during the current course of treatment, five days upon the second such imposition during the current course of treatment, and 10 days for any subsequent imposition, provided, however, that no jail sanction shall be imposed on a defendant who is receiving medication-assisted treatment if that treatment is not available to the defendant in jail.

~~unless the court determines that the defendant is not a danger to the community and would benefit from further treatment under subdivision (a). The court may then either intensify or alter the treatment plan under subdivision (a) or transfer the defendant to a highly structured drug court. If the court continues the defendant in treatment under subdivision (a), or drug court, the court may impose appropriate sanctions including jail sanctions as the court deems appropriate.~~

(D) ~~If a~~ *A* defendant *who is* on probation *and enrolled in a drug treatment program pursuant to the former provisions of Section 1210.1* at the effective date of this ~~act~~ *Act shall be subject to the revised provisions of the section for any future probation violation or for any new offense. Where such a probationer has committed one or more drug-related violations of probation prior to the effective date of the revisions, the count of the number probation violations shall not be reset, but shall count forward from the number of violations prior to July 1, 2009, for purposes of establishing the court's response to such violations.* ~~for a nonviolent drug possession offense violates that probation either by committing a nonviolent drug possession offense, or a misdemeanor for simple possession or use of drugs or drug paraphernalia, being present where~~

drugs are used, or failure to register as a drug offender, or any activity similar to those listed in subdivision (d) of Section 1210, or by violating a drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence that the defendant poses a danger to the safety of others. If the court does not revoke probation, it may modify or alter the treatment plan, and in addition, if the violation does not involve the recent use of drugs as a circumstance of the violation, including, but not limited to, violations relating to failure to appear at treatment or court, noncompliance with treatment, and failure to report for drug testing, the court may impose sanctions including jail sanctions that may not exceed 48 hours of continuous custody as a tool to enhance treatment compliance and impose other changes in the terms and conditions of probation. The court shall consider, among other factors, the seriousness of the violation, previous treatment compliance, employment, education, vocational training, medical conditions, medical treatment, including narcotics replacement treatment, and including the opinion of the defendant's licensed and treating physician if immediately available and presented at the hearing, child support obligations, and family responsibilities. The court shall consider additional conditions of probation, which may include, but are not limited to, community service and supervised work programs. If one of the circumstances of the violation involves recent drug use, as well as other circumstances of violation, and the circumstance of recent drug use is demonstrated to the court by satisfactory evidence and a finding made on the record, the court may, after receiving input from treatment and probation, if available, direct the defendant to enter a licensed detoxification or residential treatment facility, and if there is no bed immediately available in such a facility, the court may order that the defendant be confined in a county jail for detoxification purposes only, if the jail offers detoxification services, for a period not to exceed 10 days. The detoxification services must provide narcotic replacement therapy for those defendants presently actually receiving narcotic replacement therapy.

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

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

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

~~(g) The term "drug-related condition of probation" shall include a probationer's specific drug treatment regimen, employment, vocational training, educational programs, psychological counseling, and family counseling.~~

SECTION 18. Section 1210.2 is added to the Penal Code to read:

1210.2 Track III. Treatment Diversion After a Conviction For Possession Of Controlled Substances; Other Nonviolent Offenses; Judicial Discretion.

(a) Notwithstanding any other provision of law, an offender is eligible to be placed into Track III treatment diversion programs if the defendant has:

(1) participated unsuccessfully in Track II treatment diversion;

(2) committed a nonviolent drug possession offense or offenses, but is not eligible for Track II treatment diversion; or

(3) committed a nonviolent offense or offenses, and the defendant appears to have a problem with substance abuse or addiction.

(b) The court must find that placement of the defendant in Track III treatment diversion pursuant to subdivision (a) is in the furtherance of justice. In the case of a defendant who has committed a

nonviolent offense that is not a nonviolent drug possession offense, the court may require the defendant to provide restitution, participate in a restorative justice program, and/or complete a portion of a sentence for the offense prior to placement in Track III treatment diversion, with the remainder of the sentence suspended during participation.

(c) Notwithstanding any other provision of law, an offender shall be placed into Track III treatment diversion programs if the defendant is otherwise eligible for Track II treatment diversion, but for the fact that, in the 30 months prior to the current conviction, the defendant has five or more convictions for any offense or combination of offenses, including nonviolent drug possession offenses, and not including infractions.

(d) A defendant is not eligible for Track III treatment diversion under this section if the defendant:

(1) has ever committed a serious felony, as defined in subdivision (c) of Section 1192.7, or a violent felony, as defined in subdivision (c) of Section 667.5, unless the district attorney seeks to place the defendant in Track III treatment diversion;

(2) is eligible for Track I or Track II treatment diversion and has not been afforded any opportunity to participate in such programs; or

(3) refuses placement in treatment diversion under this section.

(e) A defendant placed into Track III treatment diversion shall be granted probation. As a condition of probation the court shall require participation in and completion of an appropriate drug treatment program. The court shall order the defendant to appear for a clinical assessment and criminal history evaluation, and shall thereafter order the defendant to attend and complete an appropriate treatment program. If the defendant had a clinical assessment performed prior to a determination of eligibility, the court may order a new assessment. The court shall thereafter place the defendant in treatment and set monitoring conditions consistent with the terms and requirements of Section 1210.02.

(f) If a defendant receives probation under this section, and has not yet begun treatment within 30 days of the grant of probation, the court shall conduct a hearing to determine the reason for the defendant's failure to begin treatment. The court shall consider evidence from the parties, probation department and treatment provider. At the hearing, the defendant may refuse treatment.

If the defendant does not refuse treatment, the court may re-refer the defendant to the treatment program and may impose graduated sanctions and/or jail sanctions, or may revoke probation for the defendant's failure to start treatment, provided, however, that sanctions shall not be imposed or probation revoked when the defendant's failure to begin treatment resulted from a county's inability to provide appropriate treatment in a timely manner or from the county's failure to make treatment reasonably accessible, such as the failure to offer child care for a parenting defendant or failure to provide transportation if needed.

The court shall collect and report all data relevant to a defendant's failure to begin treatment within 30 days, the reasons therefore, and the court's responses, in any form required by the Oversight Commission. Such data regarding treatment show rates shall be published by the Department, or researchers designated by the Oversight Commission, on a county-by-county and statewide basis, not less than once per year.

(g) Drug treatment services provided by subdivision (e) as a required condition of probation may not exceed 18 months, unless the court makes a finding that the continuation of treatment services beyond 18 months is necessary for drug treatment to be successful. If such a finding is made, the court may order up to two three-month extensions of treatment services. The provision of treatment services under this section shall not exceed 24 months.

(h) To the greatest extent possible, any person who is placed on probation pursuant to this section shall be monitored by the court through the use of a dedicated court calendar and the incorporation of a collaborative court model of oversight that includes close collaboration with treatment providers and probation, urinalysis consistent with treatment needs, and supervision of progress through review hearings.

(i) During periodic review hearings to evaluate a defendant's progress, the court shall consider the use of incentives and rewards to encourage continued progress, and may impose graduated sanctions or jail sanctions in response to problems reported by the treatment provider or probation department, or in the court's discretion, with or without a finding that a violation of probation has occurred. A jail sanction shall not exceed 48 hours upon the first such imposition during the current course of treatment, five days upon the second such imposition during the current course of treatment, and 10 days for any subsequent imposition, provided, however, that no jail sanction shall be imposed on a defendant who is receiving medication-assisted treatment if that treatment is not available to the defendant in jail.

(j) Aside from the limitations imposed in this subdivision, the trial court is not otherwise limited in its authority to process and respond to probation violations. The court may terminate treatment and probation at any time in response to the defendant's behavior. If probation is terminated, the defendant may be sentenced without regard to any provision of this section.

(k) Upon successful completion of treatment as required under this section, the court may require continued probation. At any time after completion of drug treatment and the terms of probation, the court shall conduct a hearing to determine the appropriate final disposition of the case, which may include dismissal of the conviction, indictment, complaint and information against the defendant, and the sealing of case records and files, including any record of arrest, detention and conviction. The defendant may, additionally, petition the court for a dismissal of charges at any time after completion of treatment. Any time a dismissal is ordered, the court shall set appropriate limitations for the defendant regarding the dismissed charges.

SECTION 19. Section 2933 of the Penal Code is hereby amended to read:

(a) It is the intent of the Legislature that persons convicted of a crime and sentenced to the state prison under Section 1170 serve the entire sentence imposed by the court, except for a reduction

in the time served in the custody of the ~~Director of Corrections~~ *Department of Corrections and Rehabilitation* for performance in work, training, or education programs established by the *Department of Corrections and Rehabilitation* ~~Director of Corrections~~. Worktime credits shall apply for performance in work assignments and performance in elementary, high school, or vocational education programs. Enrollment in a two-or four-year college program leading to a degree shall result in the application of time credits equal to that provided in Section 2931. For every six months of full-time performance in a credit qualifying program, as designated by the *Department,* ~~director,~~ a prisoner shall be awarded worktime credit reductions from his or her term of confinement of six months. A lesser amount of credit based on this ratio shall be awarded for any lesser period of continuous performance. Less than maximum credit should be awarded pursuant to regulations adopted by the ~~director~~ *Department* for prisoners not assigned to a full-time credit qualifying program. Every prisoner who refuses to accept a full-time credit qualifying assignment or who is denied the opportunity to earn worktime credits pursuant to subdivision (a) of Section 2932 shall be awarded no worktime credit reduction. Every prisoner who voluntarily accepts a half-time credit qualifying assignment in lieu of a full-time assignment shall be awarded worktime credit reductions from his or her term of confinement of three months for each six-month period of continued performance. Except as provided in subdivision (a) of Section 2932, every prisoner willing to participate in a full-time credit qualifying assignment but who is either not assigned to a full-time assignment or is assigned to a program for less than full time, shall receive no less credit than is provided under Section 2931. Under no circumstances shall any prisoner receive more than six months' credit reduction for any six-month period under this *subdivision* ~~section~~.

(b) It is the intent of the People that persons convicted of a crime defined in subparagraph (1) of subdivision (b) of Section 3000 and sentenced to the state prison under Section 1170 serve the entire sentence imposed by the court, except for a reduction in the time served in the custody of the Department of Corrections and Rehabilitation for good behavior and performance in rehabilitation programs approved by the Department. Credits shall apply for good behavior and performance in rehabilitation programs. For every two months of good behavior, a prisoner shall be awarded a good time credit reduction to his or her term of confinement of no less than one month. For every two months of performance in a credit qualifying rehabilitation program, as designated by the Secretary of Rehabilitation, a prisoner shall be awarded a program time reduction to his or her term of confinement of no less than one month. As to both good time and program time reductions, a lesser amount of credit based on this ratio shall be awarded for any lesser period of good behavior or performance. The Department of Corrections and Rehabilitation may award more than the minimum credit amounts provided for in this section pursuant to regulations approved by the Parole Reform Oversight and Accountability Board. Credits awarded pursuant to this subdivision shall not be used to reduce the term for any inmate who has ever been convicted of a serious or violent felony within the meaning of Penal Code sections 667.5 or 1192.7, or who has ever been convicted of a section 290 registration offense. Inmates may earn the credits provided in this subdivision whether serving time for their original commitment offense or serving time after having been returned to state prison from parole.

(c) Nothing in this section shall be interpreted to limit the awarding of credits to any inmates pursuant to any law or regulation existing prior to the effective date of this Act.

(d) Inmates who qualify for credits under subdivisions (a) and (b) of this section may earn credit under both subdivisions provided, however, that the combined total of all credits shall not exceed one-half of the term of imprisonment imposed by the court, unless the inmate successfully completes a rehabilitation program as defined in section 3000, subdivision (b)(3). The maximum amount of credit for inmates who successfully complete rehabilitation programs shall be designated in regulations approved by the Parole Reform Oversight and Accountability Board.

~~(b)~~ *(e)* ~~Worktime credit~~ *Earning credits* is a privilege, not a right. ~~Worktime credit~~ *Credits* must be earned and may be forfeited pursuant to the provisions of Section 2932. The application of credit to reduce the sentence of a prisoner who committed a crime on or after January 1, 1997, is subject to the provisions of Section 3067. Except as provided in subdivision (a) of Section 2932, every prisoner shall have a reasonable opportunity to participate in a ~~full-time~~ credit qualifying *program or service or* assignment in a manner consistent with institutional security and available resources.

~~(c)~~ *(f)* Under regulations adopted by the Department of Corrections *and Rehabilitation*, which shall require a period of not more than one year free of disciplinary infractions, ~~worktime~~ credit which has been previously forfeited may be restored by the *Department* ~~director~~. The regulations shall provide for separate classifications of serious disciplinary infractions as they relate to restoration of credits, the time period required before forfeited credits or a portion thereof may be restored, and the percentage of forfeited credits that may be restored for these time periods. For credits forfeited for commission of a felony specified in paragraph (1) of subdivision (a) of Section 2932, the Department of Corrections *and Rehabilitation* may provide that up to 180 days of lost credit shall not be restored and up to 90 days of credit shall not be restored for a forfeiture resulting from conspiracy or attempts to commit one of those acts. No credits may be restored if they were forfeited for a serious disciplinary infraction in which the victim died or was permanently disabled. Upon application of the prisoner and following completion of the required time period free of disciplinary offenses, forfeited credits eligible for restoration under the regulations for disciplinary offenses other than serious disciplinary infractions punishable by a credit loss of more than 90 days shall be restored unless, at a hearing, it is found that the prisoner refused to accept or failed to perform in a credit qualifying assignment, or extraordinary circumstances are present that require that credits not be restored. "Extraordinary circumstances" shall be defined in the regulations adopted by the director. However, in any case in which worktime credit was forfeited for a serious disciplinary infraction punishable by a credit loss of more than 90 days, restoration of credit shall be at the discretion of the director. The prisoner may appeal the finding through the Department of Corrections *and Rehabilitation* review procedure, which shall include a review by an individual independent of the institution who has supervisorial authority over the institution.

~~(d)~~ *(g)* The provisions of subdivision ~~(c)~~ *(f)* shall also apply in cases of credit forfeited under Section 2931 for offenses and serious disciplinary infractions occurring on or after January 1, 1983.

SECTION 20. Section 3000 of the Penal Code is hereby amended to read:

(a) (1) The ~~Legislature~~ *People* finds and declares that the period*s* immediately ~~following~~ *before and after the end of* incarceration ~~is~~ *are* critical to successful reintegration of the offender into society and to positive citizenship. It is in the interest of public safety for the state to *prepare inmates who are leaving prison for reintegration into society, and* provide for *appropriate* ~~the~~ supervision ~~of~~ and surveillance of parolees, including the judicious use of revocation actions, and to provide *appropriate* educational, vocational, family and personal counseling *and restorative justice programming* necessary to assist *inmates and* parolees in the transition between imprisonment and discharge. A sentence pursuant to Section 1168 or 1170 shall include a period of parole, unless waived, as provided in this section.

(2) The ~~Legislature~~ People finds and declares that it is not the intent of this section to diminish resources allocated to the Department of Corrections and Rehabilitation for parole functions for which the department is responsible. It is also not the intent of this section to diminish the resources allocated to the Board of Parole Hearings to execute its duties with respect to parole functions for which the board is responsible.

(3) The ~~Legislature~~ People finds and declares that diligent effort must be made to ensure that parolees are held accountable for their criminal behavior, including, but not limited to, the satisfaction of restitution fines and orders *and participation in restorative justice programs, where appropriate, and equally diligent efforts must be made to prevent such criminal behavior by provision of appropriate services, programs and counseling before parolees leave prison and after they are released, with the goal of successful reintegration of the parolee into society.*

(4) The parole period of any person found to be a sexually violent predator shall be tolled until that person is found to no longer be a sexually violent predator, at which time the period of parole, or any remaining portion thereof, shall begin to run.

(b) *For purposes of this section, and section 2933, subdivision (b), the following definitions apply:*

(1) The term "qualifying commitment offense" means that the current offense from which the inmate is being paroled is a controlled substance offense, a nonviolent property offense, or any other offense added by the Legislature by majority vote. A controlled substance offense is any offense involving possession or use of any controlled substance defined in Health and Safety Code sections 11054, 11055, 11056, 11057 or 11058, or the sale or distribution of any such substance in an amount less than one kilogram, provided that the conviction did not involve a finding of sale or distribution to a minor. A nonviolent property offense is a crime against property in which no one is physically injured and which did not involve either the use or attempted use of force or violence or the express or implied threat to use force or violence. The Parole Reform Oversight and Accountability Board shall create an advisory list of qualifying commitment offenses which meet the criteria identified in this subdivision.

(2) The term "section 290 registration offense" means an offense for which registration is required pursuant to Penal Code section 290.

(3) The term "rehabilitation programs" refers to training and counseling programs paid for by the California Department of Corrections and Rehabilitation designed to assist prison inmates and parolees in a successful reintegration into the community upon release. Such programs and services include, but are not limited to, drug treatment programs, mental health services, alcohol abuse treatment, re-entry services, cognitive skills development, housing assistance, education, literacy training, life skills, job skills, vocational training, victim impact awareness, restorative justice programs, anger management, family and relationship counseling, and provision of information involving publicly funded health, social security and other benefits. Rehabilitation programs may include services provided in prison or after release from prison. When rehabilitation services are provided after release from prison, transportation to and from the services shall be provided by the Department.

(4)The terms "drug treatment program" or "drug treatment" mean a drug treatment program which may include one or more of the following: science-based drug education, outpatient services, residential services, opioid agonist treatment, medication-assisted treatment, and aftercare services or continuing care. The terms "drug treatment program" or "drug treatment" includes a drug treatment program operated under the direction of the Veterans Health Administration of the Department of Veterans Affairs or a program specified in Section 8001; such a program shall be eligible to provide drug treatment services without regard to the licensing or certification provisions required by this subdivision.

(5) The term "minimum supervision" means a level of parole where the requirements of the parolee are to report to his or her parole officer no more than once every ninety days and to be subject to search.

~~(b)~~*(c)* Notwithstanding any provision to the contrary in Article 3 (commencing with Section 3040) of this chapter, the following shall apply:

~~(1) At the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170 or at the expiration of a term reduced pursuant to Section 2931 or 2933, if applicable, the inmate shall be released on parole for a period not exceeding three years, except that any inmate sentenced for an offense specified in paragraph (3), (4), (5), (6), (11), (16), or (18) of subdivision (c) of Section 667.5 shall be released on parole for a period not exceeding five years, unless in either case the parole authority for good cause waives parole and discharges the inmate from the custody of the department~~.

(1) As to all inmates sentenced to state prison under section 1170 and scheduled to be released (including inmates returned to state prison for a parole violation), the Department of Corrections and Rehabilitation shall provide rehabilitation programs beginning no fewer than 90 days prior to their scheduled release. Prior to providing an inmate with rehabilitation programs, the Department shall conduct a case assessment to determine the inmate's needs and which programs are most likely to result in the successful reintegration of the inmate upon release. If a parolee is returned to state prison for less than 90 days, the Department shall nevertheless provide rehabilitation programs.

(2) As to all inmates released from state prison and on parole, the Department of Corrections and Rehabilitation shall provide rehabilitation programs tailored to the parolee's needs as defined by the case assessment.

(3) At the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170 or at the expiration of a term reduced pursuant to Section 2931 or 2933, if applicable, and unless the parole authority for good cause waives parole and discharges the inmate from the custody of the Department, an inmate shall be released from custody on parole supervision for a period not exceeding six months if all the following conditions have been satisfied:

(A) The offense from which the inmate is being paroled is a qualifying commitment offense;

(B) The inmate has never been convicted or suffered a juvenile adjudication of either a serious or violent felony within the meaning of Penal Code sections 667.5 or 1192.7 or a section 290 registration offense; and

(C) The inmate has never been convicted or suffered a juvenile adjudication of participating in a criminal street gang in violation of Penal Code section 186.22, subdivision (a), or convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang in violation of Penal Code section 186.22, subdivision (b).

The six-month supervision period may be extended only to account for time that the parolee is incarcerated due to parole violations or for time in which the parolee is absent from supervision. At the end of the supervision period, the parolee shall be discharged from further parole supervision. The parole authority may, however, assign a parolee to minimum supervision for a period not exceeding six months where the parolee has failed to complete an appropriate rehabilitation program which was offered. As to parolees retained on minimum supervision, final discharge from parole shall occur at the expiration of this six-month period or upon completion of an appropriate rehabilitation program, whichever is earlier.

Except as provided in subdivisions (4), (5) and (6), all other inmates shall be released on parole for a period not exceeding three years, unless the parole authority for good cause waives parole and discharges the inmate from the custody of the Department.

(4) At the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170 or at the expiration of a term reduced pursuant to Section 2931 or 2933, if applicable, any inmate sentenced for an offense which is either a serious or violent felony as defined in sections 667.5 or 1192.7 shall be released on parole for a period of up to five years, unless the parole authority for good cause waives parole and discharges the inmate from the custody of the department.

(5)~~(2)~~ In the case of any inmate sentenced under Section 1168, the period of parole shall not exceed five years in the case of an inmate imprisoned for any offense other than first or second degree murder for which the inmate has received a life sentence, and shall not exceed three years in the case of any other inmate, unless in either case the parole authority for good cause waives

parole and discharges the inmate from custody of the department. This subdivision shall also be applicable to inmates who committed crimes prior to July 1, 1977, to the extent specified in Section 1170.2.

(6)~~(3)~~ Notwithstanding paragraphs (1) ~~and (2)~~*, (3), (4), and (5),* in the case of any offense for which the inmate has received a life sentence pursuant to Section 667.61 or 667.71, the period of parole shall be 10 years.

(7)~~(4)~~ The parole authority shall consider the request of any inmate regarding the length of his or her parole and the conditions thereof.

(8)~~(5)~~ Upon successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under paragraph (1),~~ (2) or (3)~~ *(3), (4), (5), or (6)* as the case may be, whichever is earlier, the inmate shall be discharged from custody. The date of the maximum statutory period of parole under this subdivision and paragraphs (1), ~~(2) and (3) and~~ *(3), (4), (5) and (6)* shall be computed from the date of initial parole and shall be a period chronologically determined. Time during which parole is suspended because the prisoner has absconded or has been returned to custody as a parole violator shall not be credited toward any period of parole unless the prisoner is found not guilty of the parole violation. However, the period of parole is subject to the following:

(A) Except as provided in Section 3064, in no case may a prisoner subject to three years on parole be retained under parole supervision or in custody for a period longer than four years from the date of his or her initial parole.

(B) Except as provided in Section 3064, in no case may a prisoner subject to five years on parole be retained under parole supervision or in custody for a period longer than seven years from the date of his or her initial parole.

(C) Except as provided in Section 3064, in no case may a prisoner subject to 10 years on parole be retained under parole supervision or in custody for a period longer than 15 years from the date of his or her initial parole.

(9)~~(6)~~ The Department of Corrections and Rehabilitation shall meet with each inmate at least 30 days prior to his or her good time release date and shall provide, under guidelines specified by the parole authority, the conditions of parole and the length of parole up to the maximum period of time provided by law. The inmate has the right to reconsideration of the length of parole and conditions thereof by the parole authority. The Department of Corrections and Rehabilitation or the Board of Parole Hearings may impose as a condition of parole that a prisoner make payments on the prisoner's outstanding restitution fines or orders imposed pursuant to subdivision (a) or (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) or (f) of Section 1202.4.

(10)~~(7)~~ For purposes of this chapter, the Board of Parole Hearings shall be considered the parole authority.

(11)~~(8)~~ The sole authority to issue warrants for the return to actual custody of any state prisoner released on parole rests with the Board of Parole Hearings, except for any escaped state prisoner or any state prisoner released prior to his or her scheduled release date who should be returned to custody, and Section 3060 shall apply.

(12)~~(9)~~ It is the intent of the Legislature that efforts be made with respect to persons who are subject to Section 290.011 who are on parole to engage them in treatment.

(d) As to all inmates released from state prison and discharged from parole, the Department of Corrections and Rehabilitation shall provide rehabilitation programs upon request of the former inmate made within one year of discharge from parole. The services shall be provided through the inmate's county probation department and shall last no more than 12 months from the date they are first provided. All operational costs of such services shall be reimbursed by the Department of Corrections and Rehabilitation.

SECTION 21. Section 3063.01 is added to the Penal Code to read:

(a) A parolee who commits a nonviolent drug possession offense as defined in Penal Code section 1210, subdivision (a), or who tests positive for or is under the influence of controlled substances, and is eligible for drug treatment services pursuant to section 3063.1, shall receive such services at the expense of the Department of Corrections and Rehabilitation regardless of whether the services and supervision are provided by the county or the parole authority. The response to any further violations shall be governed by Penal Code section 3063.1 for as long as the parolee remains eligible for continued treatment under that section. Parolees who are no longer eligible for drug treatment pursuant to the terms of section 3063.1(d)(3)(A) or (B), and who violate the terms of their parole, shall be governed by subdivisions (c), (d) and (e) of this section.

(b) A parolee who accepts an assignment or referral to a program described in Penal Code sections 3060.9, 3069 or 3069.5, shall, in writing, voluntarily and specifically waive application of the rights he or she might otherwise have pursuant to this section or Penal Code section 3063.1.

(c) Except for parolees covered by section 3060.7, and parolees who have ever been convicted of a serious or violent felony pursuant to Penal Code sections 667.5, subdivision (c) or 1192.7, subdivision (c), parole shall not be suspended or revoked, and a prisoner returned to custody in state prison, for a technical violation of parole. For purposes of this section, the term technical violation of parole refers to conduct which although it may violate a parole condition does not constitute either a misdemeanor or felony in and of itself. Where a technical violation of absconding from parole supervision has been found, the parolee may be incarcerated in local jail for up to 30 days or non-incarceration options and sanctions may be imposed, including modification of the conditions of parole, performing a case assessment to determine needs, and provision of local rehabilitation programs as defined in section 3000, subdivision (b)(3). Where any other technical violation has been found, non-incarceration options and sanctions may be imposed. Upon the second technical violation other than absconding, the revised conditions of parole may include non-incarceration sanctions and options and/or incarceration in local jail

for up to seven days. For subsequent technical violations other than absconding, the revised conditions of parole may include non-incarceration options and sanctions as well as incarceration in local jail for up to 14 days. The operational costs of such local custody, and any assessments or rehabilitation programs, shall be reimbursed by the Department of Corrections and Rehabilitation. Nothing in this section is intended to overrule the provisions of section 3063.1.

(d) Except for parolees covered by section 3060.7, and parolees who have ever been convicted of a serious or violent felony pursuant to Penal Code sections 667.5, subdivision (c) or 1192.7, subdivision (c), parole shall not be suspended or revoked, and a prisoner returned to custody in state prison, for a misdemeanor violation of parole. For purposes of this section, the term misdemeanor violation of parole refers to conduct which although it may violate a parole condition does not necessarily constitute a felony in and of itself. Where a misdemeanor violation has been found, non-incarceration options and sanctions may be imposed, including modification of the conditions of parole, performing a case assessment to determine needs, and provision of local rehabilitation programs as defined in section 3000, subdivision (b)(3). Alternatively, where a misdemeanor violation has been found, parole may be revoked and the parolee may be returned to custody in local jail for up to six months. The operational costs of such local custody, and any assessments or rehabilitation programs, shall be reimbursed by the Department of Corrections and Rehabilitation. Nothing in this section is intended to overrule the provisions of section 3063.1.

(e) Notwithstanding any other provision of law, parole may be suspended or revoked, and any prisoner may be returned to custody in state prison, for a felony violation of parole. For purposes of this section, the term felony violation of parole refers to conduct which constitutes a felony in and of itself. Where a felony violation has been found, non-incarceration options and sanctions may be imposed, including modification of the conditions of parole, performing a case assessment to determine needs, and provision of local rehabilitation programs as defined in section 3000, subdivision (b)(3). Alternatively, where a felony violation has been found, parole may be revoked and the prisoner may be returned to custody in local jail or state prison. The operational costs of such local custody, and any assessments or rehabilitation programs, shall be reimbursed by the Department of Corrections and Rehabilitation. Nothing in this section is intended to overrule the provisions of section 3063.1.

(f) In addition to any other procedures and rights provided by law, a parolee alleged to have committed a violation of parole shall receive notice of the alleged violation at a hearing held before a deputy commissioner of the Board of Parole Hearings within three business days of being taken into custody. The parolee shall have the right to counsel at this hearing.

(g) The parole authority shall collect and report data regarding all alleged parole violations, regardless of whether they are sustained or result in either modification or revocation of parole. The data shall be collected in the form recommended by the Parole Reform Oversight and Accountability Board and shall include information about the nature of the violation and the demographics of the alleged violator. The Department of Corrections and Rehabilitation shall publish this data electronically at least twice yearly on its website.

SECTION 22. Section 3063.02 is hereby added to the Penal Code to read:

From the funds appropriated to the California Department of Corrections and Rehabilitation in the annual budget act or other statute appropriating funds to the Department, and subject to the limitations contained therein, the Department shall allocate funds for five years, beginning July 1, 2009, for a pilot project in at least five regions spanning urban and rural areas to implement the programs described in Penal Code sections 3060.9, 3069 and 3069.5.

SECTION 23. Section 3063.03 is hereby added to the Penal Code to read:

(a) There is hereby created the Parole Reform Oversight and Accountability Board which shall review, direct and approve the implementation, by the Department of Corrections and Rehabilitation, of the programs and policies provided for under this Act. Regulations of general applicability promulgated by the Department that pertain to parole policies and rehabilitation programs for inmates and parolees shall not take effect without approval by a majority vote of the Board. Regulations subject to Board approval shall not be subject to the Administrative Procedures Act or to review and approval by the Office of Administrative Law. The Board shall have no role in determining release dates or the specific response to any alleged parole violation for any specific inmate or parolee. The Board shall do the following:

(1) Review and approve by a majority vote all regulations governing parole policy and rehabilitation programs;

(2) Review all proposed funding allocations for rehabilitation programs, and actual spending in prior years, and publish its comments on those allocations and spending;

(3) Review and approve by majority vote regulations specifying any amount of credit to be awarded for good behavior and program participation beyond the minimum amounts specified in section 2933, subdivision (b), based on such factors as progress benchmarks, including program completion. The regulations shall address whether parolees returned to state prison should be treated the same as other inmates with respect to credits;

(4) Create and approve by a majority vote an advisory list of qualifying commitment offenses to be employed in applying sections 2933(b), 3000(b)(1) and 3000(c)(3);

(5) Require the Department of Corrections and Rehabilitation to provide specific data on the parole system, and examine that data to assess current laws regulating all aspects of the parole system;

(6) Require the Department of Corrections and Rehabilitation to provide specific data on rehabilitation programs to be collected by the Division of Research for Recovery and Re-Entry Matters, and examine that data to assess current rehabilitation programs and policies;

(7) Determine and approve by a majority vote the appropriate form of data collection for purposes of section 3063.01, subdivision (e), regarding parole violations;

(8) Order research on parole policy and practices, inside and outside California, to be paid for, upon a majority vote of the Board, from the funds appropriated to the Department of Corrections and Rehabilitation in the annual budget act, and subject to the limitations contained therein. Such research shall be conducted by a public university in California;

(9) Monitor the development and implementation, by the Department of Corrections and Rehabilitation, of a system of incentives and rewards to encourage compliance with the terms of parole by all former inmates under parole supervision;

(10) Provide a balanced forum for statewide policy development, information development, research and planning concerning the parole process;

(11) Assemble and draw upon sources of knowledge, experience and community values from all sectors of the criminal justice system, from the public at large and from other jurisdictions;

(12) Study the experiences of other jurisdictions in connection with parole;

(13) Make recommendations to the Secretary of Rehabilitation and Parole and the Legislature in a report published at least once every two years;

(14) Ensure that all these efforts take place on a permanent and ongoing basis, with the expectation that the parole system and rehabilitation programs provided by the Department shall strive continually to evaluate themselves, evolve and improve;

(15) Develop and approve, in consultation with the Department of Corrections and Rehabilitation, the program and agenda, invitation list and budget for an annual international conference on the subject of prisoner and parolee rehabilitation;

(16) Identify and promote innovative rehabilitation programs and best practices implemented in prisons and on parole, and publicly honor Department employees who exemplify rehabilitation excellence;

(17) Determine the board's staffing needs sufficient to carry out the Board's responsibilities;

(18) Conduct public meetings and invite and consider public comment. The board shall promulgate regulations that provide for public review and comment on all proposed regulations subject to board approval, provided, however, that the Board need not respond to all comments before giving approval to regulations or taking other actions.

(b) The Board shall be empanelled no later than March 31, 2009. It shall be composed of 19 voting members and two non-voting members. The two non-voting members shall be the Secretary of Rehabilitation and Parole or his or her designee and the Inspector General. Of the 19 voting members, two members shall be academic experts in parole policy appointed by the Speaker of the Assembly. One member shall be a legal scholar with expertise in parole policy, appointed by the Senate Committee on Rules. One member shall be a county sheriff from a county with a population greater than 100,000, appointed by the Governor. One member shall

be a former member of the judiciary appointed by the Governor. One member shall be a person formerly incarcerated in state prison, appointed by the Speaker of the Assembly. One member shall be a sheriff from a county with a population less than 100,000, appointed by the Governor. One member shall be a California district attorney appointed by the Governor. One member shall be a public defender, appointed by the Governor. One member shall be a private criminal defense lawyer with experience litigating parole cases on behalf of inmates, appointed by the Speaker of the Assembly. One member shall be a member of a crime victims group, appointed by the Governor. One member shall be a parole officer with a minimum of five years experience appointed by the Governor. Three members shall be providers of drug treatment, rehabilitation or re-entry services as defined in section 3000(b)(3), with one appointed by the Speaker of the Assembly, one appointed by the Senate Committee on Rules and one appointed by the Governor. One member shall be a provider of community-based services to parolees, appointed by the Senate Committee on Rules. One member shall be a member of an association of county governments, appointed by the Governor. Two members shall be representatives of the two largest bargaining units within the Department, the representative of the largest bargaining unit appointed by the Speaker of the Assembly and the other representative appointed by the Governor.

(c) On January 1, 2012, the terms of the county sheriff from the smaller county, the former member of the judiciary, the parole officer, the district attorney, the county government representative, the representative of the largest bargaining unit within the Department, and the private defense lawyer shall expire. On January 1, 2013, the terms of the crime victim representative, the public defender, the sheriff from the larger county, the representative of the second largest bargaining unit within the Department, and the provider of community-based services shall expire. On January 1, 2014, the terms of the two academic experts, the legal scholar, the formerly incarcerated person and the three reentry service providers shall expire. Successor members shall be appointed in the same manner, and hold office for terms of three years, each term to commence on the expiration date of the predecessor. Any appointment to a vacancy that occurs for any reason other than the expiration of the term shall be for the remainder of the unexpired term. Members are eligible for reappointment.

(d) Members of the Board other than government employees shall receive a per diem to be determined by the Department of Corrections and Rehabilitation, but not less than the usual per diem rate allowed to Department employees during travel out of state. All members shall be reimbursed by the Department for all necessary expenses of travel actually incurred attending meetings of the Board and in the performance of their duties. All expenses shall be paid by the Department, and the Department shall also provide staff for the Board sufficient to support and facilitate its operations. Research ordered by the Board shall be conducted by a public university in California and shall be paid for by the Department from the funds appropriated to the Department in the annual budget act, and subject to the limitations contained therein. For purposes of compensation, attendance at meetings of the Board by a state or local government employee shall be deemed performance of the duties of his state or local government employment.

SECTION 24. Section 3063.2 of the Penal Code is hereby amended to read:

3063.2. In a case where a parolee had been ordered to undergo drug treatment as a condition of parole pursuant to Section 3063.1, any drug testing of the parolee shall be used *solely* as a treatment tool *to tailor the response of the treatment program and of the supervising authority to the parolee's relapse*. In evaluating a parolee's treatment program, results of any drug testing shall be given no greater weight than any other aspects of the parolee's individual treatment program. *Results of such testing shall not be admissible as a basis for any new criminal prosecution or proceeding, nor shall such results be cause, in and of themselves, to find that a violation of parole has occurred. The county or parole authority may consider a test result as positive for purposes of modifying a parolee's conditions of parole only if the laboratory performing such analysis utilized the following procedures and standards: validity testing, initial and confirmation testing, cutoff concentrations, dilution and adulteration criteria, and split specimen procedures.*

SECTION 25. Section 5050 of the Penal Code is hereby amended to read:

5050. *References to Secretary of the Department of Corrections and Director of Corrections; creation of Secretary of Rehabilitation and Parole.* ~~References to Director of Corrections; abolishment of office.~~

Commencing July 1, 2009, any reference to the Secretary of the Department of Corrections and Rehabilitation or the Director of Corrections refers to the Secretary of Rehabilitation and Parole or the Secretary of Corrections as specified by statute or the subject matter of the provision. ~~Commencing July 1, 2005, any reference to the Director of Corrections in this or any other code refers to the Secretary of the Department of Corrections and Rehabilitation. As of that date, the office of the Director of Corrections is abolished~~.

SECTION 26. Section 6026.01 is hereby added to the Penal Code to read:

The Corrections Standards Authority shall annually publish a report detailing the number of persons in institutions in each calendar year with a primary commitment offense that is a controlled substance offense. The report shall clearly delineate the numbers entering institutions during the most recent year due to new sentences from the courts and due to parole violations. For all persons entering institutions for simple possession of controlled substances, the report shall, to the greatest extent possible, provide detail regarding the prior records of such persons, the controlled substance involved, the reasons for referral to institutions, the range of sentence lengths and the average sentence lengths imposed on such persons. The report shall include a statement or projection of the annual cost of incarcerating all of these persons for controlled substance offenses. The first such annual report shall be issued no later than July 1, 2010.

SECTION 27. Section 6026.02 is hereby added to the Penal Code to read:

The Corrections Standards Authority shall annually publish a report regarding the parole population, parolee program participation, parole violations and the responses to such violations. Each report shall cover a calendar year and shall detail the number of persons placed onto parole supervision and the levels of supervision; the number of parolees participating in rehabilitation programs and the specific types of programs in which those

parolees were enrolled; the number of alleged parole violations and the number of parole violations found to have occurred; the response to parole violations including parole modifications, sanctions, program referrals and revocations; and the number of jail or prison days served by parole violators. Each report shall contain a section with data on treatment provided pursuant to section 3063.1, and including data related to eligibility, participation and completion. Each report shall provide information on the sex, race or ethnicity, and county of commitment of all parolees, to the extent such information is available, for each category of information required for the report. The first such annual report shall be issued no later than July 1, 2011.

SECTION 28. Section 6032 is hereby added to the Penal Code to read:

The Department of Corrections and Rehabilitation shall annually host an international conference on the subject of prisoner and parolee rehabilitation with the purpose of examining California's rehabilitation programs and data and comparing California's efforts with the best practices and innovations of other jurisdictions. The conference shall include representatives from the corrections and rehabilitation departments of other states and other nations. The complete program and agenda, invitation list and budget shall be developed by the Department of Corrections and Rehabilitation in consultation with, and subject to the final approval of, the Parole Reform Oversight and Accountability Board. Conference expenses consistent with a budget approved by the Parole Reform Oversight and Accountability Board shall be paid for by the Department from the funds appropriated to the Department in the annual budget act, subject to the limitations contained therein. The first such conference shall occur no later than July 1, 2010.

SECTION 29. Section 6050.1 is hereby added to the Penal Code to read:

(a) The Governor, upon the recommendation of the Secretary of Rehabilitation and Parole, shall appoint a Chief Deputy Warden for Rehabilitation to serve at each of the state prisons, and, as appropriate, at additional Department facilities such as re-entry centers, who shall be known as the Rehabilitation Warden. The Rehabilitation Warden shall be responsible for implementing and overseeing rehabilitation programs at each state prison and/or facility and providing data to the Secretary of Rehabilitation and Parole on the types of in-custody programs being offered, the demographics of prisoners attending the programs, and the effectiveness of, and barriers to, such programs at each prison and/or facility, and any additional data required by the Secretary of Rehabilitation and Parole and the Parole Reform Oversight and Accountability Board . This data is to be provided to the Secretary through the Division of Research for Recovery and Re-Entry Matters no less than once a year. Each Rehabilitation Warden shall be subject to removal by the Secretary. If the Secretary removes him or her, the action shall be final.

(b) The Department of Personnel Administration shall fix the compensation of the Rehabilitation Wardens at a level equal to that of the other chief deputy wardens in the prison system.

SECTION 30. Section 6126.01 is hereby added to the Penal Code to read:

The Inspector General shall annually publish a report detailing the prevalence and types of rehabilitation programs available at each California prison, and each facility managed by or contracted by the Department of Corrections and Rehabilitation. The report shall rank and rate the prisons and facilities in terms of program availability relative to need, utilization rates and performance measures, examining both the degree of success by each prison or facility in implementing such programs and the degree of success by prisoner participants. The report shall use a letter-grade system, and shall make specific recommendations for improvement. A preliminary report shall be issued no later than October 1, 2009. All subsequent annual reports shall be issued by October 1 of each year.

SECTION 31. Marijuana. Diversion for Persons Under Age 18. Fines.

Section 11357 of the Health and Safety Code is hereby amended to read:

(a) Except as authorized by law, every person who possesses any concentrated cannabis shall be punished by imprisonment in the county jail for a period of not more than one year or by a fine of not more than five hundred dollars ($500), or by both such fine and imprisonment, or shall be punished by imprisonment in the state prison.

(b) *Except as authorized by law, every person 18 years of age or older who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of an infraction and shall be punished by a fine of not more than one hundred dollars ($100). Additional fees of any kind, including assessments, fees, and penalties, shall not exceed the amount of the fine imposed. Every person under 18 years of age who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of an infraction and shall be required to complete a science-based drug education program certified by the county alcohol and drug program administrator.* ~~Except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars ($100). Notwithstanding other provisions of law, if such person has been previously convicted three or more times of an offense described in this subdivision during the two-year period immediately preceding the date of commission of the violation to be charged, the previous convictions shall also be charged in the accusatory pleading and, if found to be true by the jury upon a jury trial or by the court upon a court trial or if admitted by the person, the provisions of Sections 1000.1and 1000.2 of the Penal Code shall be applicable to him, and the court shall divert and refer him for education, treatment, or rehabilitation, without a court hearing or determination or the concurrence of the district attorney, to an appropriate community program which will accept him. If the person is so diverted and referred he shall not be subject to the fine specified in this subdivision. If no community program will accept him, the person shall be subject to the fine specified in this subdivision. In any case in which a person is arrested for a violation of this subdivision and does not demand to be taken before a magistrate, such person shall be released by the arresting officer upon presentation of satisfactory evidence of identity and giving his written promise to appear in court, as provided in Section 853.6 of the Penal Code, and shall not be subjected to booking.~~

(c) Except as authorized by law, every person who possesses more than 28.5 grams of marijuana, other than concentrated cannabis, shall be punished by imprisonment in the county jail for a

period of not more than six months or by a fine of not more than five hundred dollars ($500), or by both such fine and imprisonment.

(d) Except as authorized by law, every person 18 years of age or over who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars ($500), or by imprisonment in the county jail for a period of not more than 10 days, or both.

(e) Except as authorized by law, every person under the age of 18 who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be subject to the following dispositions:

(1) A fine of not more than two hundred fifty dollars ($250), upon a finding that a first offense has been committed~~.~~, *and required completion of a science-based drug education program certified by the county alcohol and drug program administrator.*

(2) A fine of not more than five hundred dollars ($500), or commitment to a juvenile hall, ranch, camp, forestry camp, or secure juvenile home for a period of not more than 10 days, or both, upon a finding that a second or subsequent offense has been committed.

(f) The fines collected pursuant to this section shall be deposited into the county's trust fund designated for youth programs established pursuant to subdivision (b) of Health and Safety Code Section 11999.6.2.

SECTION 32. Oversight of Drug Court Programs for Adult Felons in Track III Diversion

Section 11970.1 of the Health and Safety Code is hereby amended to read:

11970.1. (a) This article shall be known and may be cited as the Comprehensive Drug Court Implementation Act of 1999.

(b) The People intend that all adult felons who qualify for Track III treatment diversion programs after July 1, 2009, shall be enrolled in those programs, and that all drug courts working with defendants who qualify for Track III shall be controlled and governed by the Track III statute, Penal Code 1210.2, and Health and Safety Code sections 11999.5 through 11999.13, inclusive. To the greatest extent possible, defendants participating in drug courts before July 1, 2009, and who are eligible for Track III, shall be transferred to Track III programs.

~~(b)~~*(c)* This article shall be administered by the State Department of Alcohol and Drug Programs, *with all regulations related to programs for adult felons enrolled in Track III treatment diversion programs being subject to review and approval by the Oversight Commission, as described in Section 11999.5.2.*

~~(c)~~*(d)* The department and the Judicial Council shall design and implement this article through the Drug Court Partnership Executive Steering Committee established under the Drug Court Partnership Act of 1998 pursuant to Section 11970, for the purpose of funding cost-effective local drug court systems for adults, juveniles, and parents of children who are detained by, or are dependents of, the juvenile court.

SECTION 33. Evaluation of Drug Court Programs for Adult Felons

Section 11970.2.1 is hereby added to the Health and Safety Code to read:

11970.2.1 Notwithstanding the provisions of subdivision (d) of Section 11970.2, evaluation of all programs for adult felons provided pursuant to Sections 11970.1 through 11970.35, inclusive, shall be integrated with the program evaluations required pursuant to Section 11999.10. The Department of Alcohol and Drug Programs shall not publish additional reports regarding adult felons using any design established prior to October 31, 2007, however, all data and information collected by the department related to drug court programs for adult felons shall be public information, subject to redaction only as required by federal law or the California Constitution. The department, in collaboration with the Judicial Council, may create an evaluation design for the Comprehensive Drug Court Implementation Act of 1999 to separately assess the effectiveness of programs for persons who are not adult felons.

SECTION 34. Funding of Drug Court Programs for Qualifying Adult Felons Through Track III

Section 11970.3 of the Health and Safety Code is hereby amended to read:

11970.3. (a) It is the intent of the ~~Legislature~~ *People* that *all programs for adult felons who qualify for Track III treatment diversion, including those programs which may have functioned before enactment of Penal Code Section 1210.2, shall, beginning July 1, 2009,* ~~this chapter~~ be funded *principally* by *the annual appropriation for Track III diversion programs described in subdivision (c) of Section 11999.6 of the Health and Safety Code, with all other programs for persons who do not qualify for Track III treatment diversion to be funded by* ~~an~~ appropriations in the annual Budget Act.

(b) Up to 5 percent of the amount appropriated by the annual Budget Act *for programs authorized in this section, and not serving adult felons who qualify for Track III diversion programs,* is available to the department and the Judicial Council to administer the program, including technical assistance to counties and development of an evaluation component.

SECTION 35. Repeal of Substance Abuse Offender Treatment Program

Section 11999.30 of the Health & Safety Code is amended to read:

11999.30. (a) *The people find that it is duplicative and unnecessary to maintain separate funding streams for the same group of drug offenders eligible for treatment. This section is hereby repealed, effective July 1, 2009. Any funds appropriated or allocated pursuant to this section may be distributed and used as provided by its terms, however, any such funds held by the state*

or by a county after January 1, 2010, shall be transferred to the county's fund for youth programs established pursuant to subdivision (b) of Health and Safety Code Section 11999.6.2.
~~This division shall be known as the Substance Abuse Offender Treatment Program. Funds distributed under this division shall be used to serve offenders who qualify for services under the Substance Abuse and Crime Prevention Act of 2000, including any amendments thereto. Implementation of this division is subject to an appropriation in the annual Budget Act.~~
~~(b) The department shall distribute funds for the Substance Abuse Offender Treatment Program to counties that demonstrate eligibility for the program, including a commitment of county general funds or funds from a source other than the state, which demonstrates eligibility for the program. The department shall establish a methodology for allocating funds under the program, based on the following factors:~~
~~(1) The percentage of offenders ordered to drug treatment that actually begin treatment.~~
~~(2) The percentage of offenders ordered to treatment that completed the prescribed course of treatment.~~
~~(3) Any other factor determined by the department.~~
~~(c) The distribution of funds for this program to each eligible county shall be at a ratio of nine dollars ($9) for every one dollar ($1) of eligible county matching funds.~~
~~(d) County eligibility for funds under this division shall be determined by the department according to specified criteria, including, but not limited to, all of the following:~~
~~(1) The establishment and maintenance of dedicated court calendars with regularly scheduled reviews of treatment progress for persons ordered to drug treatment.~~
~~(2) The existence or establishment of a drug court, or a similar approach, and willingness to accept defendants who are likely to be committed to state prison.~~
~~(3) The establishment and maintenance of protocols for the use of drug testing to monitor offenders' progress in treatment.~~
~~(4) The establishment and maintenance of protocols for assessing offenders' treatment needs and the placement of offenders at the appropriate level of treatment.~~
~~(5) The establishment and maintenance of protocols for effective supervision of offenders on probation.~~
~~(6) The establishment and maintenance of protocols for enhancing the overall effectiveness of services to eligible parolees.~~
~~(e) The department, in its discretion, may limit administrative costs in determining the amount of eligible county match, and may limit the expenditure of funds provided under this division for administrative costs. The department may also require a limitation on the expenditure of funds provided under this division for services other than direct treatment costs, as a condition of receipt of program funds.~~
~~(f) To receive funds under this division, a county shall submit an application to the department documenting all of the following:~~
~~(1) The county's commitment of funds, as required by subdivision (b).~~
~~(2) The county's eligibility, as determined by the criteria set forth in subdivision (d).~~
~~(3) The county's plan and commitment to utilize the funds for the purposes of the program, which may include, but are not limited to, all of the following:~~
~~(A) Enhancing treatment services for offenders assessed to need them, including residential treatment and narcotic replacement therapy.~~

~~(B) Increasing the proportion of sentenced offenders who enter, remain in, and complete treatment, through activities and approaches such as colocation of services, enhanced supervision of offenders, and enhanced services determined necessary through the use of drug test results.~~
~~(C) Reducing delays in the availability of appropriate treatment services.~~
~~(D) Use of a drug court or similar model, including dedicated court calendars with regularly scheduled reviews of treatment progress, and strong collaboration by the courts, probation, and treatment.~~
~~(E) Developing treatment services that are needed but not available.~~
~~(F) Other activities, approaches, and services approved by the department, after consultation with stakeholders.~~
~~(g) The department shall audit county expenditures of funds distributed pursuant to this division. Expenditures not made in accordance with this division shall be repaid to the state.~~
~~(h) The department shall consult with stakeholders and report during annual budget hearings on additional recommendations for improvement of programs and services, allocation and funding mechanisms, including, but not limited to, competitive approaches, performance-based allocations, and sources of data for measurement.~~
~~(i) (1) For the 2006-07 and 2007-08 fiscal years, the department may implement this division by all-county letters or other similar instructions, and need not comply with the rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Commencing with the 2008-09 fiscal year, the department may implement this section by emergency regulations, adopted pursuant to paragraph (2).~~
~~(2) Regulations adopted by the department pursuant to this division shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, including subdivision (e) of Section 11346.1 of the Government Code, any emergency regulations adopted pursuant to this division shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect until revised by the department. Nothing in this paragraph shall be interpreted to prohibit the department from adopting subsequent amendments on a nonemergency basis or as emergency regulations in accordance with the standards set forth in Section 11346.1 of the Government Code.~~

SECTION 36. Section 11999.5 of the Health & Safety Code is hereby amended to read:

11999.5. Funding Appropriation

~~Upon passage of this act, $60,000,000 shall be continuously appropriated from the General Fund to the Substance Abuse Treatment Trust Fund for the 2000-01 fiscal year. There is hereby continuously appropriated from the General Fund to the Substance Abuse Treatment Trust Fund an additional $120,000,000 for the 2001-02 fiscal year, and an additional sum of $120,000,000 for each such subsequent fiscal year concluding with the 2005-06 fiscal year. These funds shall be transferred to the Substance Abuse Treatment Trust Fund on July 1 of each of these specified fiscal years.~~

(a) There is hereby appropriated from the General Fund to the Substance Abuse Treatment Trust Fund the amount of $150,000,000 for the period from January 1, 2009, until June 30, 2009, and the amount of $460,000,000 annually for each full fiscal year thereafter, commencing with fiscal year 2009-10, with annual adjustments for price inflation, and adjustments once every five years for changes in the state population, as specified in subdivision (c).

(b) The Department of Finance shall annually, in the month of May, calculate and publicly announce the adjusted funding level for each upcoming fiscal year. The Controller shall transfer funds in the amount calculated by the Department of Finance from the General Fund to the Substance Abuse Treatment Trust Fund on the first day of each fiscal year.

(c) The Department of Finance shall calculate annual funding levels by making an annual adjustment to the baseline figure appropriated for fiscal year 2009-10 to account for price inflation, with the year 2009 to be used as the baseline year, and by making an adjustment, once every five years, to account for changes in the state population during the previous five years, with the first such adjustment to be made for fiscal year 2016-17.

The adjustment for price inflation shall be made with the Implicit Price Deflator for state and local government purchases, as published by the U.S. Department of Commerce, Bureau of Economic Analysis, or a comparable tool published by a similar or successor agency if that data source is unavailable, and shall be based upon the last data point available before the start of the fiscal year. Adjustments for changes in the state population shall use data published by the United States Census Bureau.

(d) Funds transferred to the Substance Abuse Treatment Trust Fund are not subject to annual appropriation by the Legislature and may be used without a time limit. Nothing in this section precludes additional appropriations by the Legislature to the Substance Abuse Treatment Trust Fund.

SECTION 37. Section 11999.5.1 is hereby added to the Health & Safety Code to read:

11999.5.1. State and local agency oversight. "Department" refers to the California Department of Alcohol and Drug Programs when used in the context of Track I, Track II, Track III, and youth programs, unless otherwise stated, and is designated the agency responsible for distribution of all monies provided pursuant to Sections 11999.4 to 11999.14, inclusive. Each county shall appoint as local lead agency its alcohol and drug programs administrator, unless the Oversight Commission approves a county's request to appoint another local agency.

SECTION 38. Section 11999.5.2 is hereby added to the Health & Safety Code to read:

11999.5.2. Oversight Commission.

(a) There is hereby created the Treatment Diversion Oversight and Accountability Commission ("Oversight Commission"), which shall be convened to review, direct and approve the implementation, by the Department of Alcohol and Drug Programs, of the programs and policies related to Track I, Track II, Track III, and youth programs. Regulations of general applicability

promulgated by the Department that pertain to programs required under Penal Code Sections 1210.01 to 1210.05, inclusive, and Penal Code Sections 1210.1 and 1210.2, and funded pursuant to Health and Safety Code Sections 11999.4 to 11999.14, inclusive, shall not take effect without approval by the Oversight Commission. The Commission shall have the powers and responsibilities specified in subparagraph (b) for regulatory and fiscal matters. Regulations subject to Board approval shall not be subject to the Administrative Procedures Act or to review and approval by the Office of Administrative Law.

(b) The Oversight Commission shall do the following:

(1) Review and approve by a majority vote:

(A) all regulations regarding county-level implementation issues related to programs required under this Act, and the use of funds provided for Track I, Track II, Track III, and youth programs;

(B) a distribution formula for funding provided pursuant to Section 11999.6. The commission may approve a formula for distribution of funding for youth programs that differs substantially from the formula for funding for adults;

(C) any regulation placing contingencies on up to 10 percent of a county's allocation, as provided in subdivision (d) of Section 11999.6;

(D) regulations pertaining to counties' use of funding provided under this Act to provide supportive services other than drug treatment services, as described in Section 11999.6(a);

(E) regulations pertaining to the use of funds for youth programs, including the establishment of guidelines by the Oversight Commission to define target populations of youth under the age of 18 who are nonviolent and at risk of committing future drug offenses;

(F) any county's request to appoint, as lead agency responsible for distribution of monies provided under this Act, an agency other than the county alcohol and drug programs administrator;

(G) any proposal to order researchers to study any issue beyond the scope of studies already approved;

(H) the annual amount proposed by the Department to be set aside for addiction training programs, implementation trainings and conferences;

(I) the annual amount proposed by the Department to be set aside for use for direct contracts with drug treatment service providers in counties where demand for drug treatment services, including opioid agonist treatment, is not adequately met by existing programs;

(J) the annual amount proposed by the Department to be set aside for studies by public universities as provided by Section 11999.10;

(K) regulations pertaining to clinical assessments, including guidelines and requirements for persons performing assessments and the selection of a standardized assessment tool or tools;

(L) all requirements for county plans, including the frequency with which such plans must be submitted, and any limits on the amounts of money to be available for use for incentives and rewards, limits on annual carryover funds or reserves, requirements to address the provision of culturally and linguistically appropriate services that are geographically accessible to the relevant communities, the dissemination of overdose awareness and prevention materials and strategies in county jails, and the provision of training on harm reduction practices and the implementation of harm reduction therapy and services;

(M) all county plans, after review by the Department;

(N) any petition by a county with a population of less than 100,000 to be exempt from regulations regarding treatment and non-treatment costs. Any such approval shall be valid for four years;

(O) any corrective action proposed in lieu of repayment by a county found not to have spent funds in accordance with the requirements of this Act;

(P) the range of data to be collected on each county annual report form;

(Q) the range of data to be required to be collected by courts regarding defendants' failure to begin treatment within 30 days, as provided by subdivision (j) of Section 1210.03, paragraph 1 of subdivision (h) of Section 1210.1 and subdivision (f) of Section 1210.2 ;

(R) the issues and range of data to be addressed in an annual report by the Department regarding programs conducted pursuant to this Act; and

(S) all research plans for outside evaluation pursuant to Section 11999.10.

(2) Require the Department to provide data related to Track I, Track II, Track III, and youth programs;

(3) Require counties to provide data related to Track I, Track II, Track III, and youth programs;

(4) Develop oversight and enforcement mechanisms to ensure the provision of opioid agonist treatment consistent with this Act;

(5) Develop and approve, in consultation with the Department of Alcohol and Drug Programs, the program and agenda, invitation list and budget for an annual statewide conference on drug treatment diversion pursuant to this Act; and

(6) Conduct public meetings and invite and consider public comment, provided, however, that the Oversight Commission need not respond to all comments before giving approval to regulations or taking other actions.

(c) The Oversight Commission shall be empanelled no later than July 1, 2009. It shall consist of the following 23 voting members: Five treatment providers, including three to be appointed by the Speaker of the Assembly, of which at least one shall be a physician specializing in addiction, and at least one person shall be a provider specializing in treatment of youth under the age of 18, and with two such appointments made by the President of the Senate, of which one person shall be a member of a statewide association of treatment providers; Two mental health service providers who work in programs providing services to persons with a dual diagnosis of mental illness and substance abuse, of which one person shall be a member of a statewide association of mental health service providers, with both such appointments made by the Governor; Two county alcohol and drug program administrators, with both appointments made by the President of the Senate; Two drug treatment program counselors, including one who is a member of a statewide association of counselors, with both appointments made by the Governor; Two probation department executives or officers, with both appointments made by the Governor; One person formerly a participant in a treatment program established pursuant to the Substance Abuse and Crime Prevention Act of 2000, or Track I or Track II of this Act, appointed by the Governor; Two criminal defense attorneys, including one public defender and one attorney in private defense practice, with both appointments made by the Speaker of the Assembly; Two public policy researchers from public or private universities in California, with both appointments made by the President of the Senate; Two members of organizations concerned with civil rights, drug laws and/or drug policies, to be appointed by the President of the Senate; Three law enforcement professionals and/or members of the judiciary, who must each be in active service or retired from active service, to be appointed by the Governor and confirmed by the Senate.

(d) On July 1, 2011, the terms of the following members shall expire: the two treatment provider representatives appointed by the Speaker, one treatment provider representative appointed by the President of the Senate, one public policy researcher, one criminal defense attorney, one representative of law enforcement or the judiciary, one county alcohol and drug program administrator, one drug treatment program counselor, one mental health service provider, one person representing organizations concerned with civil rights, drug laws and/or drug policies, one representative of the probation department, executives or officers, and the former participant in a treatment program. On July 1, 2012, the terms of the following members shall expire: one treatment provider representative appointed by the Speaker and one treatment provider representative appointed by the President of the Senate, one drug treatment program counselor, one mental health service provider, one county alcohol and drug program administrator, one representative of the probation department, executives or officers, one criminal defense attorney, one person representing organizations concerned with civil rights, drug laws and/or drug policies, one public policy researcher, and two representatives of law enforcement or the judiciary. For appointments made to the first commission to be empanelled by no later than July 1, 2009, the Speaker, the President of the Senate and the Governor shall indicate on which of the specified dates each term of each individual representative appointed by them shall expire when there is more than one possible date of expiration for that category of appointment. Successor members shall be appointed in the same manner, and hold office for terms of four years, each term to commence on the expiration date of the predecessor. Any appointment of a vacancy that occurs for any reason other than the expiration of the term shall be for the remainder of the unexpired term. Members are eligible for reappointment.

(f) Members of the Oversight Commission other than government employees shall receive a per diem to be determined by the Director of the Department, but not less than the usual per diem rate allowed to Department employees during travel out of state. All members shall be reimbursed by the Department of for all necessary expenses of travel actually incurred attending meetings of the Board and in the performance of their duties. All expenses shall be paid by the Department, and the Department shall also provide staff for the Board sufficient to support and facilitate its operations. For purposes of compensation, attendance at meetings of the Commission by a state or local government employee shall be deemed performance of the duties of his state or local government employment.

SECTION 39. Section 11999.6 of the Health & Safety Code is hereby amended to read:

11999.6. *(a)* Moneys deposited in the Substance Abuse Treatment Trust Fund shall be distributed annually by the Secretary of the Health and Human Services Agency through the State Department of Alcohol and Drug Programs to counties to cover the costs of *youth programs and* placing persons in and providing drug treatment programs under *Track I, Track II and Track III as provided in* this ~~act~~ *Act*, and vocational training, family counseling, *mental health services, harm reduction therapy and services* and literacy training, *and, where permitted by regulations approved by the Oversight Commission, for housing assistance, childcare, and transportation to and from clinical assessment, court appearances, drug treatment, mental health services, and other court mandated services and ancillary services such as vocational training, family counseling, harm reduction therapy and services, and literacy training accessed pursuant to* ~~under~~ this ~~act~~ *Act*. Additional costs that may be reimbursed from the Substance Abuse Treatment Trust Fund include probation department costs, court monitoring costs and any miscellaneous costs made necessary by the provisions of this act, ~~other than~~ *except for* drug testing services of any kind *in youth programs or for defendants participating in Track I or Track II. The Department may use funds appropriated by this Act to prepare and present an annual calculation of the need for funding for drug testing services.* Incarceration costs cannot be reimbursed from the fund.

Those moneys shall be allocated to counties through a fair and equitable distribution formula *established by the Oversight Commission.* ~~that includes, but is not limited to, per capita arrests for controlled substance possession violations and substance abuse treatment caseload, as determined by the department as necessary to carry out the purposes of this act.~~ The department ~~may~~ *shall* reserve a portion of the fund to pay for direct contracts with drug treatment service providers in counties or areas in which the director of the department *or the Oversight Commission* has determined that demand for drug treatment services, *including opioid agonist treatment,* is not adequately met by existing programs. However, nothing in this section shall be interpreted or construed to allow any entity, *including the Department or any county,* to use funds from the Substance Abuse Treatment Trust Fund to supplant funds from any ~~existing~~ *other* fund source or mechanism ~~currently~~ used to provide substance abuse treatment, *except for grants awarded pursuant to the Drug Court Partnership Act or Comprehensive Drug Court Implementation Act, which may be supplanted by Track III funds. Funding provided by the Substance Abuse Treatment Trust Fund shall cover those portions of care that cannot be paid for by other means, such as public or private insurance, mental health services funding from the Mental Health Services Fund, treatment program funding from the Department of Corrections*

and Rehabilitation, an individual defendant's contributions, or other funding sources for which the defendant is eligible. ~~In addition, funds from the Substance Abuse Treatment Trust Fund shall not be used to fund in any way the drug treatment courts established pursuant to Article 2 (commencing with Section 11970.1) or Article 3 (commencing with Section 11970.4) of Chapter 2 of Part 3 of Division 10.5, including drug treatment or probation supervision associated with those drug treatment courts.~~

(b) Prior to calculating the annual allocations for distribution to counties, the Department shall withhold funds, in amounts approved by a majority of the Oversight Commission, from the Substance Abuse Treatment Trust Fund sufficient to:

(1) provide for direct contracts between the Department and drug treatment providers in counties that have been determined, by the director or the Oversight Commission, to provide inadequate access to drug treatment services, including opioid agonist treatment and other medication-assisted treatments;

(2) provide addiction training programs for persons required to receive such training under this Act or for persons authorized to receive such training by the Oversight Commission consistent with this Act;

(3) produce implementation training programs and/or conferences for local stakeholders; and

(4) pay for studies by public universities as provided by Section 11999.10.

(c) Subject to modification as provided in subdivision (d), funds remaining in the Substance Abuse Treatment Trust Fund shall be allocated annually as follows, in subaccounts of the Trust Fund:

(1) Fifteen percent for youth programs, as defined in subdivision (n) of Penal Code Section 1210.

(2) Fifteen percent for treatment and related costs for Track I diversion programs, provided pursuant to Penal Code Section 1210.03.

(3) Sixty percent for treatment and related costs for Track II diversion programs, provided pursuant to Penal Code Section 1210.1.

(4) Ten percent for treatment and related costs for Track III diversion programs, provided pursuant to Penal Code Section 1210.2.

(d) Upon the enactment of regulations promulgated by the Department and approved by the Oversight Commission, distribution of up to 10 percent of the allocation to counties for Track I, Track II and/or Track III programs may be made contingent upon specific requirements to adopt best practices, create innovative programs, and/or establish programs for underserved populations, and may be subject to a county matching requirement. Any regulation making a portion of county allocations contingent in this manner shall specify the disposition of funds not

accessed by counties for failure to meet the specific requirements. Absent any such regulations, the Department shall not place any contingency involving a county matching requirement on the allocations for Track I, Track II or Track III programs.

(e) Notwithstanding the creation of Track III diversion programs in this Act, and the requirement for 10 percent of funding from the Trust Fund to go to such programs, no provision of this Act shall be interpreted to preclude:

(1) the creation or maintenance of innovative programs providing court-supervised treatment to persons or defendants not eligible for treatment under the terms of this Act;

(2) the appropriation, by the Legislature, of separate funding for programs for court-supervised treatment for persons or defendants not eligible for treatment under the terms of this Act; or

(3) the use, by local court-supervised treatment programs, of funds provided by a county, the federal government or private sources.

SECTION 40. Section 11999.6.1 of the Health & Safety Code is hereby amended to read:

11999.6.1 Payment of Treatment Costs for Parolees

Notwithstanding the provisions of Section 11999.6, the costs of drug treatment and related services, including mental health services, for parolees placed into treatment under the terms of this Act shall be paid by the Department of Corrections and Rehabilitation and not by funds from the Substance Abuse and Treatment Trust Fund.

~~(a) Notwithstanding any other provision of law, when the department allocates funds appropriated to the Substance Abuse Treatment Trust Fund, it shall withhold from any allocation to a county the amount of funds previously allocated to that county from the fund that are projected to remain unencumbered, up to the amount that would otherwise be allocated to that county. The department shall allow a county with unencumbered funds to retain a reserve of 5 percent of the amount allocated to that county for the most recent fiscal year in which the county received an allocation from the fund without a reduction pursuant to this subdivision.~~
~~(b) The department shall allocate 75 percent of the amount withheld pursuant to subdivision (a) in accordance with Section 11999.6 and any regulations adopted pursuant to that section, but taking into account any amount withheld pursuant to subdivision (a).~~
~~(c) The department shall reserve 25 percent of the amount withheld pursuant to subdivision (a) until all counties have submitted final actual expenditures for the most recent fiscal year. The department shall then allocate the funds reserved to adjust for actual rather than projected unencumbered funds, to the extent that the amount reserved is adequate to do so. Any balance of funds not reallocated pursuant to this subdivision shall be allocated in accordance with subdivision (e).~~
~~(d) If the department determines from actual expenditures that more funds should have been withheld from any county than were withheld pursuant to subdivision (a), it shall adjust any allocations pursuant to subdivision (e) accordingly, to the extent possible. If one or more counties fails to report actual expenditures in a timely manner, the department may, in its~~

~~discretion, proceed with the available information, and may exclude any nonreporting county from any allocations pursuant to this section.~~
~~(e) If revenues, funds, or other receipts to the Substance Abuse Treatment Trust Fund are sufficient to create additional allocations to counties, through reconsideration of unencumbered funds, audit recoveries, or otherwise, the Director of Finance may authorize expenditures for the department in excess of the amount appropriated no earlier than 30 days after notification in writing of the necessity therefor is provided to the chairpersons of the fiscal committees in each house and the Chairperson of the Joint Legislative Budget Committee, or at an earlier time that the Chairperson of the Joint Legislative Budget Committee, or his or her designee, may in each instance determine.~~
~~(f) The department may implement this section by All-County Lead Agency letters or other similar instructions, and need not comply with the rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code.~~

SECTION 41. Section 11999.6.1 is hereby added to the Health & Safety Code to read:

11999.6.2 County Management of Funds

(a) County plans. Counties shall submit to the Department and the Oversight Commission their plans for implementation and spending for programs funded pursuant to this Act at least once every three years, or more frequently as provided in regulations approved by the Oversight Commission. A county with a population of less than 100,000 may petition the Oversight Commission to create and submit plans jointly with one or more additional counties.

(b) Segregation of Funds. Counties receiving funds pursuant to Section 11999.6 shall establish three separate trust funds: one for Track I and Track II programs, one for Track III programs and one for youth programs. Counties shall segregate all funds received from the state appropriately. Notwithstanding these requirements, a county with a population of less than 100,000 may petition the Oversight Commission for an exemption from these restrictions.

(c) Regulation of Treatment and Non-Treatment Costs. Counties shall spend a minimum of 80 percent of the funds provided pursuant to Section 11999.6 for Track I and Track II treatment diversion programs on the delivery of treatment and support services, with up to 20 percent allowable for non-treatment costs including probation department costs, court monitoring costs, and other costs made necessary by this Act. The Oversight Commission shall approve regulations to categorize costs as treatment costs or non-treatment costs, to specify allowable percentages of non-treatment costs for Track III programs and to describe permissible uses of funds provided for youth programs. Notwithstanding these requirements, a county with a population of less than 100,000 may petition the Oversight Commission for an exemption from these restrictions.

(d) Excess Funds. Youth Treatment. For fiscal years 2008-09, 2009-10, 2010-11 and 2011-12, a county may retain unspent funds received from the Substance Abuse Treatment Trust Fund to use those funds in a future year. Thereafter, all unspent funds shall be subject to regulations approved by the Oversight Commission regarding reserve funds. Other than funds placed in a

reserve in accordance with an approved county plan, any funds allocated to a county which have not been spent for their authorized purpose within three years shall be transferred to the county's fund for youth programs.

(e) Local Research. A county may use a portion of funds provided pursuant to Section 11999.6 to pay for independent research studies, provided that the county has received prior approval to contract for such research from the Department and Oversight Commission.

SECTION 42. Section 11999.8 of the Health & Safety Code is hereby amended to read:

11999.8. Surplus Funds

Any funds remaining in the Substance Abuse Treatment Trust Fund at the end of a fiscal year ~~may~~ *shall* be utilized to pay for *youth programs or* drug treatment programs *provided to defendants in Track I, II or III* ~~to be carried out~~ in the subsequent fiscal years.

SECTION 43. Section 11999.9 of the Health & Safety Code is hereby amended to read:

11999.9. *The department shall annually publish data regarding the programs conducted pursuant to this Act. Publication of annual data shall occur no more than five months after the end of the fiscal year. The Oversight Commission shall establish the range of data to be published in such annual reports, which shall include all caseload and fiscal data required for the reports required of the Office of the Legislative Analyst pursuant to Section 11999.9.1. The reports may be published electronically. The department shall furnish all data to the Office of the Legislative Analyst, upon request, as soon as it is practical to do so.* ~~(a) The department shall conduct three two-year followup studies to evaluate the effectiveness and financial impact of the programs that are funded pursuant to the requirements of this act, and submit those studies to the Legislature no later than January 1, 2009, January 1, 2011, and January 1, 2013, respectively. The evaluation studies shall include, but not be limited to, a study of the implementation process, a review of lower incarcerations costs, reductions in crime, reduced prison and jail construction,~~ reduced welfare costs, ~~the adequacy of funds appropriated, and other impacts or issues the department can identify, in addition to all of the following:~~
~~(1) Criminal justice measures on rearrests, jail and prison days averted, and crime trends.~~
~~(2) A classification, in summary form, of rearrests as having occurred as a result of:~~
~~(A) A parole violation.~~
~~(B) A parole revocation.~~
~~(C) A probation violation.~~
~~(D) A probation revocation.~~
~~(3) A classification, in summary form, of the disposition of crimes committed in terms of whether the person was:~~
~~(A) Retained on probation.~~
~~(B) Sentenced to jail.~~
~~(C) Sentenced to prison.~~
~~(4) Treatment measures on completion rates and quality of life indicators, such as alcohol and drug used, employment, health, mental health, and family and social supports.~~

~~(5) A separate discussion of the information described in paragraphs (1) to (3), inclusive, for offenders whose primary drug of abuse was methamphetamine or who were arrested for possession or use of methamphetamine and, commencing with the report due on or before January 1, 2009, the report shall include a separate analysis of the costs and benefits of treatment specific to these methamphetamine offenders.~~
~~(b) In addition to studies to evaluate the effectiveness and financial impact of the programs that are funded pursuant to the requirements of this act, the department shall produce an annual report detailing the number and characteristics of participants served as a result of this act, and the related costs.~~

SECTION 44. Section 11999.9.1 is hereby added to the Health & Safety Code to read:

11999.9.1 Funding Recommendations

In each of the fiscal years 2010-11, 2012-13 and 2013-14, and periodically thereafter, the Office of the Legislative Analyst shall publish an evaluation of the adequacy of funding provided for programs pursuant to Penal Code Sections 1210.01 to 1210.04, inclusive, and Penal Code Sections 1210.1 and 1210.2, in the prior year. The report shall provide recommendations to the Legislature for any additional funding that might be necessary for drug treatment, support services, or related programs, to the extent such needs can be calculated or estimated, with due consideration of the levels of service recommended for participating defendants by researchers, treatment providers, physicians, county alcohol and drug program administrators and other stakeholders. The report may make separate recommendations for funding that take account of the fiscal condition of the state and of the counties.

SECTION 45. Section 11999.10 of the Health & Safety Code is hereby amended to read:

11999.10. The department shall allocate *at least 1 percent of the fund's total moneys in fiscal years 2009-10 through 2014-15, and* up to ~~0.5~~ *2* percent of the fund's total moneys each year *in subsequent fiscal years, for studies to be conducted by two public universities in California, one in the northern half of the state and one in the southern half of the state, aimed at evaluating the effectiveness and financial impact of Track I, Track II and Track III treatment diversion programs and youth programs. Reports and studies paid for under this section shall be published jointly by the two universities, and shall not be subject to approval by the department.*

One study to be published at least once every three years shall consist of a cost-benefit analysis of state and local drug enforcement and interdiction policies, including perspectives on economics, public health, public policy and the law. This study, in part, must address the impacts of drug law enforcement efforts on individuals, families and communities, and shall examine, through quantitative and qualitative analysis, (a) any disparate impacts based on race, sex and socioeconomic status, (b) the relationship between any disparate impacts and the decisions, strategies and practices of local and state drug enforcement officials, and (c) the collateral consequences of drug laws, policies and enforcement.

The Oversight Commission may order studies of specific additional issues by a majority vote. ~~to fund the costs of the studies required in Section 11999.9 by a public or private university.~~

SECTION 46. Section 11999.11 of the Health & Safety Code is hereby amended to read:

11999.11. County Reports

~~Counties~~ *Each county* shall submit a report annually to the department detailing the numbers and characteristics of clients-participants served as a result of funding provided by this act, *and any other data that may be required.* The department shall promulgate a form, *to be approved by the Oversight Commission,* which shall be used by the counties for the reporting of this information, as well as any other information that may be required ~~by the department~~. *The form shall require counties to report the amount of money spent for drug treatment services and testing for defendants participating in Track III programs, and shall require counties to provide data regarding the adequacy of funding.* The department shall establish a deadline by which the counties shall submit their reports. *The Department shall promptly provide the reports in electronic form for public consumption, provided that the Department shall redact any information of which federal law or the California Constitution prohibits disclosure.*

SECTION 47. Section 11999.12 of the Health & Safety Code is hereby amended to read:

11999.12. The department shall conduct periodic audits of the expenditures made by any county that is funded, in whole or in part, with funds provided by this act. Counties shall repay to the department any funds that are not spent in accordance with the requirements of this act. *With approval by a majority of the Oversight Commission,* ~~The~~*the* department may require a corrective action by the county in the place of repayment~~, as determined by the department~~.

SECTION 48. Section 11999.13 of the Health & Safety Code is hereby amended to read:

11999.13 ~~Excess Funds~~ Treatment Diversity

~~At the end of each fiscal year, a county may retain unspent funds received from the Substance Abuse Treatment Trust Fund and may spend those funds, if approved by the department, on drug treatment programs that further the purposes of this Act.~~ *The Department shall promulgate regulations, with approval by a majority of the Oversight Commission, that require county plans to address the provision of culturally and linguistically appropriate services that are geographically accessible to the relevant communities.*

SECTION 49. Section 11999.14 is hereby added to the Health & Safety Code to read:

11999.14 Drug Overdose Prevention

Any county jail housing probationers or parolees pursuant to Tracks II or III of this Act, or Penal Code 3063.01, must provide drug overdose awareness and prevention materials and strategies to all inmates prior to their release. The materials and strategies shall be developed by each county's Department of Alcohol and Drug Programs in consultation with physicians specializing in addiction and practitioners specializing in harm reduction and must be designed and disseminated in a manner calculated to most effectively reach the jail's inmate populations and shall be described in the county plans. The State Department of Alcohol and Drug

Programs shall review the county overdose materials and strategies for evidence-based best practices.

SECTION 50. Eligibility for Mental Health Services for Persons Dually Diagnosed and in Programs Under Treatment Diversion Tracks I, II and III.

Section 5600.33 is hereby added to the Welfare and Institutions Code to read:

5600.33 For purposes of subdivision (b) of Welfare and Institutions Code Section 5600.3, adults with a serious mental disorder shall include adults who are in drug treatment programs pursuant to the provisions of Penal Code Sections 1210.01 to 1210.05, inclusive, and Penal Code Sections 1210.1 and 1210.2, and who have been diagnosed with a mental illness coincident with a diagnosis of substance abuse or addiction, and who meet the requirements of paragraphs (2) and (3) of subdivision (b) of Section 5600.3. Such adults shall be considered to have a severe mental illness and shall be eligible for services pursuant to Section 5813.5 utilizing funds in accordance with paragraph (5) of subdivision (a) of Section 5892. Furthermore, each update of a county's plan pursuant to Section 5847 shall include provisions documenting the county's efforts to serve qualifying adults in drug treatment programs pursuant to the provisions of Penal Code Sections 1210.01 to 1210.05, inclusive, and Penal Code Sections 1210.1 and 1210.2, and who have been diagnosed with a mental illness coincident with a diagnosis of substance abuse or addiction. However, nothing in this section shall be construed to require payment for mental health services for parolees from the Mental Health Services Fund.

SECTION 51. Inclusion of Drug Treatment Stakeholders in Mental Health Service Planning

Section 5848 of the Welfare and Institutions Code is hereby amended to read:

(a) Each plan and update shall be developed with local stakeholders including adults and seniors with severe mental illness, families of children, adults and seniors with severe mental illness, providers of services, *drug treatment providers, county alcohol and drug program agencies, members of the judiciary,* law enforcement agencies, education, social services agencies and other important interests. A draft plan and update shall be prepared and circulated for review and comment for at least 30 days to representatives of stakeholder interests and any interested party who has requested a copy of such plans.

(b) The mental health board established pursuant to Section 5604 shall conduct a public hearing on the draft plan and annual updates at the close of the 30-day comment period required by subdivision (a). Each adopted plan and update shall include any substantive written recommendations for revisions. The adopted plan or update shall summarize and analyze the recommended revisions. The mental health board shall review the adopted plan or update and make recommendations to the county mental health department for revisions.

(c) The department shall establish requirements for the content of the plans. The plans shall include reports on the achievement of performance outcomes for services pursuant to Part 3 (commencing with Section 5800), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850) of this division funded by the Mental Health Services Fund and

established by the department.

(d) Mental health services provided pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division, shall be included in the review of program performance by the California Mental Health Planning Council required by paragraph (2) of subdivision (c) of Section 5772 and in the local mental health board's review and comment on the performance outcome data required by paragraph (7) of subdivision (a) of Section 5604.2.

SECTION 52. Repeal of Ballot Referral Provision.

The following uncodified language from Section 9 of Senate Bill 1137, Chaptered Bill Text Chapter 63, passed by the Legislature June 27, 2006, approved by the Governor July 12, 2006, and filed with the Secretary of State July 12, 2006, is hereby stricken:

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

SECTION 53. Effective Date

Except as otherwise provided, the provisions of this Act shall become effective July 1, 2009, and its provisions shall be applied prospectively.

SECTION 54. Amendment

Except as otherwise provided herein, this Act may be amended only by a statute approved by the electors, or by a statute that is approved by a four-fifths majority of all members of each house of the Legislature and that furthers the purposes of this Act. However, those portions of the Penal Code and Health and Safety Code enacted as part of the Substance Abuse and Crime Prevention Act of 2000 that are not referenced or modified herein may be modified pursuant to the provisions of that measure.

In any litigation involving the constitutionality of any such legislatively enacted statute, the party or parties contending that the statute is constitutional shall have the burden of proving its compliance with the foregoing requirements.

SECTION 55. Education Funding Guarantee

No provision of this Act shall be construed to alter the calculation of the minimum state obligations under Section 8 of Article XVI of the California Constitution, nor to diminish the actual state and local support for K-14 schools required by law, except as authorized by the Constitution.

SECTION 56. Conflicting Ballot Measures

In the event that this measure relating to protecting our communities by providing rehabilitation programs and drug treatment for youth and nonviolent offenders, and any other criminal justice measure or measures that do not provide rehabilitation to inmates being released into society, are approved by a majority of voters at the same election, and this measure regarding rehabilitation of nonviolent offenders receives a greater number of affirmative votes than any other such measure or measures, this measure shall control in its entirety and conflicting provisions in the other measure or measures shall be void and without legal effect. If this measure regarding rehabilitation of youth and nonviolent offenders is approved but does not receive a greater number of affirmative votes than said other measure or measures, this measure shall take effect to the extent permitted by law.

SECTION 57. Severability

If any provision of this Act or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this initiative which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this initiative are severable.