

March 21, 2005

Senator Elaine Alquist
Chair, Senate Public Safety Committee
State Capitol, 2031
Sacramento, California 95814

RE:	SB 803 (Ducheny)
Position:	Oppose

Dear Senator Alquist:

On behalf of the Drug Policy Alliance Network (DPAN), a national advocate for policies to curb the excesses of the drug war and to further drug policies grounded in science, compassion, health and human rights, I am writing in strong opposition to SB 803 (Ducheny).

DPAN worked with Campaign for New Drug Policies to pass Proposition 36 (Prop 36), and has worked with key stakeholders across the state on its implementation. We have a detailed knowledge of the research related to Prop 36 and drug courts, and information from on-going discussion and independent research of what is working well in Prop 36, and what needs to be improved. Opponents of the original initiative, who seek to overturn the decision of the people of California, wrote SB 803. The proposed legislation does not enhance public safety, nor does it improve upon the treatment-probation model of the Substance Abuse and Crime Prevention Act of 2000.

Prop 36, the Substance Abuse and Crime Prevention Act of 2000 ("SACPA"), was enacted by voters in November 2000 with 61% support statewide. Several provisions in SB 803 run directly counter to the intent of the initiative. Specifically, SB 803 limits the number of families that will benefit from treatment, drives up costs to the state and counties for incarcerating those excluded from treatment, adds cruel and costly incarceration to the SACPA treatment-probation model, and contributes to overcrowding in the jails and prisons, which leads to early release of more dangerous offenders. Among its most objectionable provisions, SB 803:

- By requiring a court to make two findings before allowing a defendant to benefit from drug treatment, this bill will exclude a large number of nonviolent drug offenders now eligible for treatment, sending them to jail or prison [proposed changes to Sections 1210.1(b)(1), (2), and (4)].
- Eliminates SACPA's requirement that treatment occur in community-based programs, substituting more costly jail-based treatment [proposed Sections 1210(b) and 1210.1(a)].
- Creates new penalties for drug related violations of probation despite the Act's clear ban on incarceration early in the treatment and recovery process. This bill will allow courts to jail defendants for up to 21 days for early signs of relapse [proposed Section 1210.1(e)(3)].
- Impedes access to employment for people who successfully complete treatment, using vague language requiring disclosure of a conviction even after successful treatment completion and dismissal by the court [proposed Section 1210.1(d)(1) and (3)].

None of these changes further the purposes of SACPA, the legal and constitutional standard that must be met to amend this Act.

Underlying these changes, as explained in the new “purposes” language, is the erroneous claim that California’s drug courts are more successful than Prop 36. DPAN supports drug courts as a part of a continuum of care for nonviolent, addicted offenders. Drug courts are an appropriate response to working with some drug offenders, but DPAN challenges the premise that drug courts are more cost-effective than SACPA in working with the nonviolent possession offenders currently served by the Act. In fact, as described below, drug courts and SACPA generate comparable treatment success rates, despite the fact that drug court clients are selected individually for inclusion in the program, while SACPA is universal for all qualifying drug offenders.

The remainder of this letter discusses SACPA’s impressive treatment successes and fiscal savings, describes SACPA’s and drug court’s comparable completion rates for clients in treatment, and explains why SB 803, if enacted, would impose substantial fiscal burdens on counties and would require counties to release other offenders from jails to make room for non-violent drug offenders. Lastly, this letter summarizes why, from a legal standpoint, SB 803 is unconstitutional under state law.

Independent Evaluations of SACPA Show Promising Results

Prop 36 mandates an independent evaluation of the implementation and outcome of the Act. Drafters of the initiative were confident that the data generated by an impartial panel of researchers would be of interest to the legislature and to the electorate. The Department of Alcohol and Drug Programs (DADP) awarded the contract for evaluation to UCLA’s Integrated Substance Abuse Program (ISAP). Based on an analysis of statewide data from the first two years of implementation of Prop 36, ISAP has found that:

- SACPA treatment adherence and completion rates compare well to other criminal justice-linked treatment, including drug courts. Data on first-year clients show that 34.4% completed treatment as ordered, comparable to the 36% rate of completion for other criminal justice treatment clients, including drug courts.¹
- Prop 36 defendants stayed in treatment 21% longer than other criminal justice referrals.^{2,3}
- SACPA serves a high-need population: 57% of SACPA participants report having used drugs for 11 years or more; 55.2% said they had never been in treatment; and 53% identified methamphetamine as their primary drug of choice.¹
- Under SACPA, 30,469 persons entered drug treatment in the Act’s first full year, and 35,947 in its second. Second year completion data is currently unavailable, but in the first year, 54.9%

¹ Longshore, Douglas, et al, (2004) *Evaluation of the Substance Abuse and Crime Prevention Act: 2003 Report*, UCLA Integrated Substance Abuse Programs. P 73.

² Longshore, et al, pp. 80-81.

³ A study published in *Criminology and Public Policy*, based on data from the first six months of implementation in a sample of counties found that SACPA participants stayed in treatment 13% longer than comparison groups referred to treatment by drug courts and other criminal justice programs. That study also found a higher rate of drug arrest post-treatment for SACPA participants than others referred to drug treatment through criminal justice, which the authors attributed to poor matching of highly addicted offenders to appropriate treatment.

received 90 or more days of drug treatment – a threshold period that research has found results in long-term benefits, including reduced drug use.

Based on retention and completion rates, in its first two years, SACPA was responsible for nearly 48,000 persons getting a significant exposure to treatment, and a full 20,000 to 23,000 persons completing treatment as ordered.⁴ Based on decades of research that finds that drug treatment reduces crime and drug use, it is highly probable that SACPA will have a substantial positive impact on public safety. The prior decades of jailing drug users provided no such benefit to the people of California.

Beneficial Fiscal Impact of SACPA

UCLA's ISAP will publish cost-offset estimates for the first time in the summer of 2005. Already, however, there are several indicators that SACPA has resulted in significant savings from the State General Fund and to county coffers, even after allocating \$120 million each year to implement the programs.

- Since implementation of Prop 36, there has been a dramatic 36% drop in the number of drug possession offenders in California Department of Corrections institutions – 7,337 fewer in June 2004 than in June 2000.⁵ Anecdotally, several counties report a drop in jail utilization for drug possession offenders.
- In February 2003, the Northern California Women's Facility was closed. A spokesperson for the California Department of Corrections said, "There are a lot of reasons the population is down ... but we think the biggest factor with the women's numbers is Prop 36."⁶
- The annual cost to incarcerate a prisoner in the California Department of Corrections is approximately \$31,000, whereas the total state cost per participant in drug treatment under SACPA – including treatment, probation, and administrative costs -- was only about \$3,330 in its second year.⁷

In 1999, the Legislative Analyst's Office and Department of Finance estimated that SACPA would yield savings of \$1.5 billion dollars over a five-year period.⁸ There is nothing to suggest that their analysis was incorrect.

Completion Rates in Drug Courts Similar to SACPA

Direct comparisons between SACPA and drug court are difficult, and probably should be avoided. Nonetheless, SB 803 specifically claims in its purposes language that SACPA clients would be "far more likely" to complete treatment if subjected to the drug court model for treatment, instead of the model

⁴ Using a total two-year population of 66,416 and a figure of 72.2% for SACPA clients who either completed treatment, made satisfactory progress, or remained in treatment as long as SACPA clients who did complete treatment successfully, according to the UCLA 2nd-year evaluation (Longshore et al, p. 74). Completion rate is estimated at 30-34.4% over two years.

⁵ Department of Corrections, Offender Information Branch, Data Analysis Unit, Prison Census Data, June 30, 2004.

⁶ *San Francisco Chronicle*, April 21, 2002.

⁷ The \$3,330 estimate is for the apx. 36,000 who went to treatment in 2002. The figure would be much lower if we calculated the cost per diversion.

⁸ http://www.lao.ca.gov/ballot/1999/990758_INT.pdf

voters approved as Prop 36. Data do not support this assertion. Indeed, available data suggests that completion rates for both programs are comparable, despite significant differences in the populations that these programs treat.

When looking at data about SACPA and drug courts it is important to note the following: Before Prop 36 was approved by voters, only 3 to 5 percent of adult drug offenders in California had access to drug treatment through drug courts. Potential clients for drug court were screened by prosecutors, judges and a whole drug court team for factors such as prior drug history and “motivation” to succeed in treatment. Counties varied widely in the target populations for which they set up their drug courts, with some focusing on more naïve, low-level drug users, and others focusing exclusively on hard-core addicts.

By contrast, SACPA is a universal program available to anyone meeting a few basic criteria. Over 54,000 people were found eligible for SACPA in its second year; almost 36,000 entered treatment. Moreover, about 10 percent of SACPA treatment clients are parole violators.

SACPA completion data come from a single, credible statewide source. By contrast, drug court studies vary amongst themselves in that they employ differing research methodologies, often rely upon self-evaluations rather than independent objective numbers, and rarely examine the whole system, from offender referral and eligibility through completion, and instead tend to evaluate only recidivist and drug use histories of persons who complete the drug court programs (the A-plus students, so to speak).

The State Department of Alcohol and Drug Programs has published two detailed reports on drug courts recently (2002 and 2004).⁹ Neither report provides a graduation rate for any county or a statewide average completion rate for drug courts. Nonetheless, some reliable data on completion rates are available:

- A U.S. Government Accountability Office report issued in March 2005 studied drug court evaluations nationwide; only two studies covering California drug courts were deemed sufficiently rigorous to merit reference in the report. One study showed that Bakersfield's drug court had a completion rate of 36%, while another showed Orange County's drug court had a 43% completion rate.¹⁰ The latter figure was an improvement; an earlier (1999) study of Orange County's drug court by the same research team had shown a 31% completion rate.¹¹
- A peer-reviewed, published analysis of ten separate studies of California drug courts before 2000 compiled graduation data. Graduation rates ranged from 11% to 61%. Six of 10 counties reported graduation rates of 38% or lower; three were at 23% or lower.¹²
- Data reported in 2001, just before SACPA took effect, show that 58 California drug courts serving adult felons had an average statewide graduation rate of 41.8% since the inception of such programs.¹³

⁹ The two ADP reports are: *Comprehensive Drug Court Implementation Act (CDCI) of 1999 – Interim Report to the Legislature*, published March 2004 by Department of Alcohol & Drug Programs; and *Drug Court Partnership Act of 1998 – Final Report*, published March 2002 by California Dept. of Alcohol & Drug Programs and Judicial Council of California, Administrative Office of the Courts.

¹⁰ U.S. Government Accountability Office, *Adults Drug Courts: Evidence Indicates Recidivism Reductions and Mixed Results for Other Outcomes*, February 2005.

¹¹ Deschenes, E.P.; Imam, I; Foster, T.L.; Diaz, L.; Moreno, V; Patascil, L.; Ward, D. & Condon, C. (1999), *Evaluation of Orange County Drug Courts for Orange County Superior Courts*, Richmond, California: Center for Applied Local Research.

¹² Guldish, Joseph et al, "Drug Court Effectiveness: A Review of California Evaluation Reports, 1995-1999," *Journal of Psychoactive Drugs*, Vol. 33(4), Oct-Dec. 2001, p. 374.

The completion data from drug courts do not provide a marked contrast from SACPA's first-year completion rate. Whether or not one takes into account the differences in populations served between the two programs, the divergent data sets relied upon by evaluators assessing the two programs, and the different definitions of "success" and "failure" employed by the two programs, it cannot be credibly claimed offenders are "far more likely" to complete drug treatment in drug courts than in SACPA. Indeed, researchers have found so far that only 20% of second-year SACPA probationers had their probation revoked – a fraction compared to the 58.2% of drug court clients who were terminated from their programs.¹⁴

The successes of drug courts should not be diminished. If drug courts chose to serve very difficult populations of hard-core addicts in one jurisdiction, and suffered a lower graduation rate as a result, the net effect of the court would still be positive. By the same token, SACPA's successes should not be trivialized. And in no event, is it appropriate or meaningful to reduce the efficacy of drug courts or SACPA to single statistics and then compare those statistics to declare one program superior to the other.

Cost of Incarceration Alone in County Jails Shown to Exceed Total Per Capita SACPA Cost

A 1998 study of the Santa Clara drug court found that incarceration was a very substantial cost in that program. Among those who completed one year of drug court supervision and had their charges dismissed (the most successful participants), the average number of jail days served in a 12-month period was 51 days per person.¹⁵

The cost of incarceration for these most successful drug court clients in Santa Clara was, on average, \$3,417 above and beyond the cost of treatment, probation, court supervision, prosecutor and defenders costs, and administration. This cost of custody exceeds the current total, comprehensive per-person cost of serving SACPA diverted offenders.

By opening the door to in-custody treatment and the use of jail time as a "sanction" during treatment, SB 803 could force counties to spend similar amounts of money on both successful and unsuccessful SACPA clients. If jail time had been an option for second-year SACPA clients, and across the board they averaged just 14 days in custody, counties would have spent \$29.5 million on custody time alone.¹⁶

Who Will Be Freed to Make Room for Over 500,000 Jail Days for SACPA Participants?

Seventeen counties, including Los Angeles, have implemented policies of early release of jail inmates because they do not have the resources to incarcerate them. For every new admission to the jail, they are forced to release another prisoner.

¹³ American University, Office of Justice Programs, Drug Court Clearinghouse and Technical Assistance Project (2001) *Summary Information on All Programs and Detailed Information on Adult Drug Courts*, June 25, 2001. Graduation rate calculations by Drug Policy Alliance for all 58 adult felon drug courts providing complete data.

¹⁴ Longshore, p. 24. The researchers note that the probation-revocation rate for SACPA offenders is likely to increase over time, since probation periods are generally longer than the period studied.

¹⁵ Santa Clara County, California. *Santa Clara County Drug Treatment Court: Two Year Progress Report and Outcome Comparisons (March 1, 1996—March 31, 1998)*.

¹⁶ Calculation uses second-year SACPA population of 35,947 and per-day statewide average cost for jail days of \$58.59, found in report by California Board of Corrections, *Local Corrections in California – 2002 Legislative Report*, p. 10.

SACPA treats almost 36,000 persons each year. Adding an average of 14 days of jail time for them would require 503,258 jail days statewide. Who would be released to make room for these non-violent drug offenders? These same offenders who are attending treatment, probation and court appointments, but struggling with addiction and relapse?

To give property or violent offenders over 500,000 free days on the street to make room for nonviolent drug possession offenders is an untenable tradeoff, and would constitute a threat to public safety.

SB 803 is Unconstitutional

SB 803 is unconstitutional as drafted because it does not further the purposes of Prop 36, a requirement of any legislation that seeks to amend Prop 36. To the contrary, SB 803 guts a core principle of Prop 36 by deleting an entire passage of the law and replacing it with a provision directly contradicting both the law's plain language and the will of the voters.

The declarations of purpose and intent in Section 3 of the initiative, and the findings of the voters in Section 2 of the initiative, make clear that SACPA was meant to divert most drug offenders away from incarceration (in order to free up jail cells and save money), and to place most offenders into effective community-based drug treatment programs in order to improve their lives and enhance community safety.

Section 1210.1(a) is one of the critical provisions of SACPA that advances the express purpose and intent of the initiative. That section provides that courts “may *not impose incarceration* as an additional condition of probation.” Section 1210.1(a) is not an ancillary clause: it is central to the law's structure. Indeed, the official Title and Summary of Prop 36, prepared by the Attorney General, made express note of this provision and informed the voters that SACPA did not permit incarceration as a condition of probation.

Nor was the importance of this clause lost on SACPA's opponents. During the lead-up to the November 2000 election, opponents attacked this provision and urged the public to vote against the law chiefly on the grounds that SACPA's policy of non-incarceration was misguided. Those objections were published widely, including in the voter pamphlet, and ultimately rejected by the electorate, which enacted Prop 36 with 61% of the vote.

After SACPA's passage, the law's opponents attempted to argue that Section 1210.1(a) did not mean what it said, and urged the state's courts to declare that SACPA did not prevent courts from incarcerating non-violent drug offenders sentenced to probation under its terms. The courts, however, understood the plain language of Section 1210.1(a) as prohibiting any imposition of a jail sentence. *See, e.g., Peo. v. Murillo* (2002) 102 Cal.App. 4th 1414, 1418; *In re Mehdizadeh* (2003) 105 Cal.App.4th 995, 1003-1005; *In re Taylor* (2003) Cal.App.4th 1394, 1397-98.

SB 803 does not merely disregard the pivotal role Section 1210.1(a) plays in the overall workings of Prop 36; it wholly nullifies that provision and substitutes its antithesis. In so doing, SB 803 not only fails to further the purpose of Prop 36, it flagrantly contradicts it. For this reason, among others, the courts would in all likelihood deem SB 803's enactment unconstitutional.¹⁷

¹⁷ It should be noted that several other provisions of SB 803 also countermand the stated purpose of Prop 36 and additionally serve to render the bill unconstitutional. This letter focuses on the most obvious problem.

SACPA Can Be Improved—By Ensuring That Individuals Receive Needed Treatment

DPAN supports efforts to strengthen SACPA by ensuring that participants get the type of treatment and duration of treatment that is recommended by drug treatment professionals (see Senate Bill 556 – Migden, current session). We support more money being spent per client to ensure the availability of residential drug treatment or other treatments needed to support recovery from addiction.

Conclusion

While we have tremendous respect for the author, Drug Policy Alliance Network has no choice but to oppose the wholesale gutting of the initiative, written and supported by those groups that opposed SACPA in 2000. There is no evidence that SB 803, the product of the work of lobbyists for prosecutors and narcotics officers will improve public health or public safety.

In sum, SB 803 marks a fundamental departure from the community-based substance abuse treatment model enacted by the voters. DPAN opposes SB 803 because it is unconstitutional; because the revisions suggested are neither needed nor substantiated; and because it wholly fails to address the one aspect of SACPA which all observers and stakeholders agree needs improving: the matching of treatment services to offenders' assessed treatment needs.^{1,4}

Respectfully,

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Director, California Capital Office
Drug Policy Alliance Network

cc: Senator Denise Ducheny
Members of the Senate Public Safety Committee