

June 22, 2005

Honorable Wilma Chan
Chair, Assembly Health Committee
State Capitol
Sacramento, California

RE:	SB 803 (Ducheny)
Position:	Oppose

Dear Chairwoman Wilma Chan:

On behalf of the Drug Policy Alliance Network (DPAN), proponents for Proposition 36, I am writing in strong opposition to SB 803 (Ducheny). Despite evidence that Proposition 36, the Substance Abuse and Crime Prevention Act of 2000 (SACPA), works equally well to drug courts and other probation-treatment models, SB 803 seeks to radically revise the voter-approved initiative according to dictates of District Attorneys, narcotics officers, and others who opposed the passage of the Act in 2000. There are several good provisions in the amended bill, but on the balance, the legislation as drafted contravenes to the letter and spirit of the voter initiative and will result in worse health outcomes for drug addicts, their families and communities. Furthermore, the author is fully aware of separate legal opinions that reach the conclusion that that several of these provisions would most likely be ruled unconstitutional amendments to a voter initiative, if challenged in court.

Specifically, we oppose those sections that:

- **Expand exclusions**, based on prior criminal record, that would limit the number of individuals and families that will benefit from drug treatment, family counseling and literacy training; (page 9, lines 3-20, as amended May 31)
- **Allow for Three Strike sentences** of 25-years-to-life for nonviolent drug possession offenders who currently qualify for SACPA; (Page 9, lines 3-9, as amended May 31)
- **Create new jail penalties** for violations of probation that will interfere with drug treatment, medical treatment, employment and care of family. If enacted, SB 803 would incarcerate nonviolent drug offenders for 2 to 30 days for infractions including missed appointments, or being present where drugs are used; (non-drug related violations page 11, line 25- 40 and page 12, line 1-2; drug related violations page 12, line 3 through page 14 line 10, as amended May 31)
- **Divert treatment trust fund dollars** to newly mandated universal drug testing (funding, page 5, line 9; mandate page 7, line 26-27, as amended May 31). Drug testing is currently paid for with federal block grant moneys.
- **Create tens of millions of dollars in new costs** for counties to incarcerate offenders for minor violations for probation, who under the current system would be sanctioned with community service, increased supervision, or a heightened treatment regime mandated by the court. A conservative estimate of 7 additional days of jail for the approximately 36,000 persons in Prop. 36 would be 252,000 new jail days at an annual cost of nearly \$29 million.
- **Create an unrealistically high standard that does not allow for relapse to addiction symptoms**. Any and all defendants who relapse to drug use, even once, after completion of treatment would not benefit from having their case dismissed and record cleared. This would have a long-term negative impact on employability and family stability (page 10, lines 22-23, as amended May 31)

Health Risks Associated with Incarceration

The exclusions mean sending more persons to prison, where the threat of receivership looms due to the utter failure to provide basic health care to offenders. To cycle persons in and out of prison instead of providing voter-mandated treatment will result in more, not less, drug use and communicable disease in the long-run.

The thought of 2 to 30 days in “jail sanctions” may be seductive to some, but there are severe consequences related to even brief periods of incarceration. Drug users sent to county jail are at elevated risk of:

- Drug overdose: The risk of fatal or nonfatal drug overdose is much higher in the days immediately after release from incarceration.¹ A recent study from UC San Francisco found that recent release from jail, or from a 21-day detoxification program were both related with higher rates of overdose fatality.²
- Suicide³
- Communicable diseases, including HIV, hepatitis, tuberculosis, and meningococcal disease

Those who contract a communicable disease during a brief period of incarceration will then constitute a threat to the health of others upon release. Those who die from drug overdose will leave dependent family members without care and income.

Furthermore, incarceration will not only interrupt drug treatment, but medical and mental health treatments as well, and put dependent family member--including children, disabled or elders--at risk of neglect.

Conclusion

There is no urgent need to over-ride the vote of 2000. Prop 36 is working equally well to drug courts or other probation-treatment partnerships. Drug Policy Alliance Network will happily provide to any legislator or their staff a lengthily analysis of available research on drug court and Prop 36. The fact is, the completion rates are comparable, despite the fact that drug courts serve a far smaller population, spend more money per client, and have a famously big “stick” to threaten defendants with.

DPAN opposes SB 803 because it is unconstitutional, as well as cruel, costly and counterproductive. Furthermore, the revisions suggested are neither needed nor substantiated, and may result in fatal drug overdose and other unintended negative health consequences for the individual, family and community. The bill wholly fails to address the one aspect of Prop 36 which all observers and stakeholders agree needs improving: the matching of treatment services to offenders’ assessed treatment needs.¹

Respectfully,

Glenn Backes, MSW, MPH
Director, California Capital Office
Drug Policy Alliance Network

cc: Senator Denise Ducheny and Members of the Assembly Health Committee

¹ Seaman, S. “The Role of Prison and Jail in Increasing the Risk of Overdose” <http://depts.washington.edu/adai/conf/plenary3.htm>

² Heroin users released from methadone detox or jail may be at higher risk for overdose, according to UCSF researchers (October 2001) <http://pub.ucsf.edu/newsservices/releases/2003123084/>

³ “In California’s county jails, suicides are up sharply” (June 2002) <http://www.namisc.org/News/2002/Summer/JailSuicides.htm>