

## **Prop 36**

### **Substance Abuse and Crime Prevention Act of 2000**

The Substance Abuse and Crime Prevention Act of 2000, commonly referred to as Prop 36, was approved by California voters in November 2000, and took effect on July 1, 2001. The purpose and intent of the act is to divert nonviolent defendants, probationers and parolees charged with simple drug possession or drug use offenses from incarceration into community based substance abuse treatment programs.

The Board of Prison Terms (BPT) is the California parole authority. The BPT adjudicates cases in which eligible parolees have been charged with offenses that qualify them for placement in community based drug treatment programs. The BPT also conducts hearings to monitor their treatment.

The BPT has instituted a pilot program utilizing temporary operational guidelines for the implementation of Prop 36. The pilot will run for approximately 90 days and during that period, will operate under the temporary operational guidelines set forth below. Once the pilot program has concluded, the temporary operational guidelines will be modified to incorporate information obtained through the pilot, and revised into regulation format for submission to the Office of Administrative Law as proposed regulations.

### **OPERATIONAL GUIDELINES**

#### **Board of Prison Terms**

#### **Proposition 36**

### **PAROLE PROCEEDINGS PURSUANT TO THE SUBSTANCE ABUSE AND CRIME PREVENTION ACT OF 2000 (PC 3063.1)**

#### **I. Scope**

(a) Except as limited within these guidelines, parole shall not be suspended or revoked for the commission on or after July 1, 2001, of a non-violent drug possession offense or for violating any drug-related condition of parole.

(b) Drug treatment services ordered as a condition of parole under PC 3063.1 shall not exceed 12 months. A hearing panel may order additional aftercare as a condition of parole for an additional six months based on a recommendation from the treatment provider or Parole Agent of Record. In a proceeding pursuant to these guidelines, a hearing panel shall also consider the need for special conditions of parole requiring participation in vocational training, family counseling or literacy training. Such special conditions may be ordered when sufficiently documented in the parolee's case records or when recommended by the treatment provider.

(c) PC 3063.1 does not apply to:

(1) a parolee who has ever been convicted of one or more serious or violent felonies in violation of Penal Code sections 1192.7 or 667.5(c) or convicted in any other court, including any state, federal, or military court, of any offense that includes the elements of a serious or violent felony.

(2) a parolee who committed one or more nonviolent drug possession offenses and is found to have concurrently committed a misdemeanor not related to the use of drugs or any felony.

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

(d) The procedures set forth at Section V are applicable to persons paroled on or after July 1, 2001. The procedures set forth at Section VI are applicable to persons already on parole on July 1, 2001.

## II. Definitions

(a) **The Act** means the Substance Abuse and Crime Prevention Act of 2000.

(b) **Nonviolent drug possession offense** means the unlawful possession, use or transportation for personal use of any controlled substance identified in Sections 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code, or being under the influence of a controlled substance in violation of Section 11550 of the Health and Safety Code. The term "nonviolent drug possession offense" includes the commission of one these specified crimes, even in the absence of an arrest or conviction. The term "non-violent drug possession offense" shall not include possession for sale, production, or manufacturing of any controlled substance and does not include violations of Sections 4573.6 or 4573.8 of the Penal Code relating to possession of drugs or paraphernalia in prison or jail.

(c) **Violating any drug-related condition of parole** means committing any of the following offenses:

CHARGE
Failure to participate in testing-for the presence any controlled substance, including marijuana
Violation of special conditions of parole relating to drugs
Failure to follow instructions from P&CSD relating to drug use
Failure to inform P&CSD of criminal arrests if the arrest is for a Proposition 36 eligible violation only
Possession of any controlled substance, including marijuana
Use of any controlled substance, including marijuana
Possession of controlled substance paraphernalia
Presence in a place where a controlled substance is used, sold or given away

Other violations of law relating to drug use
Failure to register pursuant to Health and Safety Code section 11590

**(d) Misdemeanor not related to the use of drugs** means a misdemeanor that does not involve possession of drugs for personal use, use of drugs, possession of drug paraphernalia, presence where drugs are used, or failure to register as a drug offender.

**(c) Danger to safety of others** means the parolee presently poses such a danger. Evidence must be presented that the parolee attempted, inflicted, or threatened physical harm to another person. A finding of dangerousness may be made if the hearing officer finds it is warranted by the circumstances and gravity of the behavior. The parolee's present dangerousness shall be assessed in conjunction with the commitment offense, previous convictions, present parole adjustment and other reliably documented criminal conduct.

The existence of two or more instances of any of the following factors tend to support a finding of present dangerousness:

- (1) Court conviction or BPT good cause finding of active association or participation in any prison gang, disruptive group, or criminal street gang as defined in PC 186.22(e)
- (2) BPT good cause finding on parole revocation or revocation extension charges for conduct described in PC 667.5(c) or 1192.7(c), or that could be prosecuted under PC 667.5(c) or 1192.7(c)
- (3) A guilty finding on a CDC Rules Violation Report for conduct described in PC 667.5(c) or 1192.7(c), or that could be prosecuted under PC 667.5(c) or 1192.7(c)
- (4) Court conviction or BPT good cause finding on parole revocation charges for Driving Under the Influence
- (5) Court conviction or BPT good cause finding on parole revocation charges for domestic violence
- (6) Court conviction or BPT good cause finding on parole revocation charges for sex offenses, other assaultive behavior, and/or weapons use or possession

**(f) Eligible for treatment** means the parolee is not disqualified for treatment based upon the factors listed in Section I (c).

**(g) Treatment provider** means a program that is licensed or certified in accordance with Title 9, Section 9505 of the California Code of Regulations. Sections 9500 et seq. of Title 9 of the California Code of Regulations are the regulations promulgated by the Department of Alcohol and Drug Programs for implementation of the Act.

**(h) Parole period** means the period beginning on the date of initial parole (EPRD) and ending when the parolee is either discharged from the custody and supervision of the department or returned to prison with a new commitment.

### **III. Prehearing and Hearing Procedures**

**(a)** The procedures set forth in the California Code of Regulations (CCR) Title 15, Division 2, Chapter 6, Sections 2600 through 2744 shall govern parole revocation proceedings conducted pursuant to the Act where the parolee is eligible for treatment. Prior to ordering a disposition, the hearing panel must determine whether the evidence presented supports a good cause finding that the parolee violated a condition of parole.

**(b)** A parolee may waive a revocation hearing, as described in CCR Title 15, Division 2, Chapter 6, Section 2641. The initial treatment hearing and subsequent treatment hearings described in subdivisions (d) and (g) of Section IV may not be waived.

### **IV. Proceedings For Eligible Parolees Who Are Not Receiving Drug Treatment**

#### **(a) Special Conditions of Parole.**

**(1)** Upon finding good cause to believe that a parolee who is eligible for treatment committed a nonviolent drug possession offense, or violated a drug related condition of parole, the parolee shall be required to indicate willingness to accept drug treatment as a condition of parole, by signing special conditions of parole. These special conditions of parole will include reporting to drug treatment assessment and programs as directed, participating in, successfully completing, and contributing to the cost of (if able) the assigned treatment program, participating in Board hearings related to the purposes of PC 3063.1, and other conditions that the Board may assign pursuant to the purposes of PC 3063.1. These special conditions shall order the parolee to appear for an initial treatment hearing, as described in Section IV (d), regarding placement in a treatment program, to be scheduled approximately seven days from the anticipated date of the parolee's initial appearance at the treatment provider.

Refusal to sign these special conditions of parole will indicate that the parolee refuses drug treatment as a condition of parole, as described in Section I (c)(3). Such parolee will not be eligible for treatment under PC 3063.1. The parolee will be referred to the Revocation Unit for revocation proceedings pursuant to CCR Title 15, Division 2, Chapter 6, Sections 2600 through 2744.

**(2)** Upon completion of the treatment ordered pursuant to PC 3063.1, the Proposition 36 special conditions of parole shall be removed by the BPT.

**(b) Notification of the Treatment Provider.** Within seven days of the good cause finding, the Board shall notify the treatment program designated by the county of the parolee's residence.

**(c) Referral to the Treatment Provider.** The parolee shall be ordered to appear as soon as practical, pursuant to the specific county's procedures, at the program(s) designated by the county of the parolee's residence. This may include assessment of the parolee's needs for treatment and other services, and referral to one or more treatment providers and other agencies, as described in Section I (b).

**(d) Initial Treatment Hearing.** Within seven days of the parolee's ordered appearance at the program(s) designated by the county of the parolee's residence to provide treatment under the Act, at the initial treatment hearing, the hearing panel shall review the assessment and recommendations of the treatment provider. The parolee and the Parole Agent of Record shall be afforded an opportunity to comment on the recommendations of the treatment provider. The hearing panel shall consider all comments before ordering participation in the specific treatment program as a special condition of parole. The special condition shall identify the program, the duration of the program, and the rules for participation. The program may be either residential or non-residential. The hearing panel shall also consider the need for special conditions of parole requiring participation in vocational training, family counseling, or literacy training. Such special conditions may be ordered when sufficiently documented in the parolee's case records. The hearing panel will advise the parolee that subsequent treatment hearings, requiring the parolee's presence, will be scheduled to review and adopt the specific treatment plan proposed by the treatment provider. Further, the hearing panel will advise the parolee that failure to comply with the treatment program, other violations, or a finding that the parolee is unamenable to treatment may result in additional hearings and possible sanctions including revocation. Likewise, the parolee will be advised that additional conditions may be added related to program participation. The Parole Agent of Record is encouraged to attend this hearing to monitor the case and provide input.

**(e) Treatment Plan.** Within 30 days of the parolee's referral to the treatment provider, the treatment provider will, as provided in the Act, prepare a treatment plan and forward it to the Board. The Board will forward a copy of the treatment plan to the Parole Agent of Record.

**(f) Progress Reports.** The treatment provider will, as provided in the Act, provide progress reports on a quarterly basis to the Board and the P&CSD until all treatment ordered pursuant to PC 3063.1 is terminated.

**(g) Subsequent Treatment Hearings.** Subsequent treatment hearings will be ordered to assess the parolee's progress in the treatment program. The parole agent of record is encouraged to attend these hearings to monitor the case and provide input.

**(1) First Subsequent Treatment Hearing.** The first subsequent treatment hearing will be held as soon as practical after the receipt of the treatment plan described in subsection (e) of this section. This hearing will consider that treatment plan. The parolee and the Parole Agent of Record shall be afforded an opportunity to comment on the treatment plan. The plan may call for either residential or non-residential treatment. The hearing panel shall consider any such comments before ordering compliance with the treatment

plan as a special condition of parole. The hearing panel shall also consider the need for special conditions of parole requiring participation in vocational training, family counseling or literacy training. Such special conditions may be ordered when sufficiently documented in the parolee's case records. The hearing panel will advise the parolee that subsequent treatment hearings, requiring the parolee's presence, may be scheduled to review progress in treatment. Also, the parolee will be advised that additional conditions may be added related to program participation. Further, the hearing panel will advise the parolee that failure to comply with the treatment plan, other violations, or a finding that the parolee is unamenable to treatment may result in additional hearings and possible sanctions including revocation.

**(2) Additional Subsequent Treatment Hearings.** Subsequent hearings may be held at any time during a parolee's participation in treatment ordered under PC 3063.1. Such hearings will be held for the purpose of reviewing the parolee's progress in treatment. A subsequent hearing may be ordered if the treatment provider notifies the Board that the parolee is unamenable to the drug treatment provided but amenable to other drug treatments or related programs. At this subsequent hearing, the hearing panel may act to modify the special conditions of parole to ensure the parolee successfully participates in the alternative drug treatment or program. The special condition of parole shall identify the program, the duration of the program and the rules for participation. A subsequent hearing may be ordered at the request of the Parole Agent of Record based on the parolee's adjustment on parole or requested modification of parole conditions relative to the Act.

**(h) Revocation Based Upon Unamenability to Treatment.** If at any point during the course of drug treatment, the treatment provider notifies the Board that the parolee is unamenable to the drug treatment provided and all other forms of drug treatment, the Board may act to revoke parole for failure to comply with special conditions of parole. In determining whether a parolee is unamenable to drug treatment, the hearing panel may consider, to the extent relevant, whether the parolee (1) has committed a serious violation of rules at the drug treatment program, (2) has repeatedly committed violations of program rules that inhibit the parolee's ability to function in the program, or (3) has continually refused to participate in the program or asked to be removed from the program. Such revocation action will be carried out under the provisions of CCR Title 15, Division 2, Chapter 6. At the revocation hearing, parole may be revoked if it is proved that the parolee is unamenable to all drug treatment provided pursuant to the Act.

## **V. Parole Violations For Parolees Receiving Treatment who Paroled on or After July 1, 2001**

**(a) Non-Drug-Related Parole Violations.** If a parolee who paroled on or after July 1, 2001 receives drug treatment pursuant to PC 3063.1, and during the course of the treatment violates parole by committing an offense other than a nonviolent drug possession offense or by violating a non drug-related condition of parole, the Board may act to revoke parole. Upon a good cause finding at a revocation hearing, the hearing

panel may make any disposition appropriate to the facts of the case including a return to custody.

**(b) Drug-Related Parole Violations.**

**(1) First Violation.** If a parolee who paroled on or after July 1, 2001 receives drug treatment pursuant to PC 3063.1 and during the course of the treatment violates parole either by committing a nonviolent drug possession offense or by violating a drug-related condition of parole, the matter shall be scheduled for a revocation hearing. If the hearing panel determines that there is good cause to believe that the violation occurred and the parolee poses a danger to the safety of others, a return to custody shall be imposed as a disposition for the violation. In all other cases, the conditions of parole may be modified in order to provide more intensified drug treatment. The conditions of parole shall identify the program, the duration of the program and the rules for participation. The hearing panel shall document in writing the reason(s) for all decisions.

**(2) Second Violation.** If a parolee who paroled on or after July 1, 2001 receives drug treatment pursuant to PC 3063.1 and during the course of the treatment for a second time violates parole by either committing a nonviolent drug possession offense or violating a drug-related condition of parole, the matter shall be scheduled for revocation hearing. If the hearing panel determines there is good cause to believe that the violation occurred, the parolee is no longer eligible for treatment under the Act. A return to custody may be imposed where the nature of the violation or the parolee's adjustment in the community warrants incarceration. The hearing panel shall document in writing the reason(s) for all decisions.

**VI. Proceedings For Persons Already On Parole On July 1, 2001**

**(a) First Violation.** If a person already on parole on July 1, 2001, violates parole either by committing a nonviolent drug possession offense or violating a drug-related condition of parole, the matter shall be reported to the BPT, subject to the rules for reportable information in Section II (a)(15). If the hearing panel determines that there is good cause to believe that the violation occurred and the parolee poses a danger to the safety of others, a return to custody shall be imposed as a disposition for the violation. In all other cases, a disposition shall be rendered which modifies the conditions of parole in order to require participation in a drug treatment program. The modification in the conditions of parole shall identify the program, the duration of the program and the rules for participation. The hearing panel shall document in writing the reason(s) for all decisions.

**(b) Second Violation.** If a person already on parole on July 1, 2001, violates parole for a second time by either committing a nonviolent drug possession offense or violating a drug-related condition of parole, the matter shall be scheduled for revocation hearing. If the hearing panel determines that there is good cause to believe that the violation occurred, the parolee is no longer eligible for treatment under the Act. A return to custody may be imposed where the nature of the violation or the parolee's adjustment in

the community warrants incarceration. The hearing panel shall document in writing the reason(s) for all decisions.

## **VII. Reportable Information.**

**(a)** Pursuant to Penal Code section 3063.1, the P&CSD shall report to the Board violations as described below. For the purposes of this paragraph, "eligible violations" means nonviolent drug possession offenses and violations of drug-related conditions of parole, as described in subdivisions (b) and (c) of Section II.

**(1)** For parolees who are not in drug treatment pursuant to Penal Code Section 3063.1, two eligible violations in a 30-day period or three eligible violations in a 90-day period.

**(2)** Any two consecutive positive tests indicating substance abuse. Failure of a parolee to submit to a test within 60 days of a positive test will be considered an eligible violation.

**(3)** Any eligible violation when there is no existing special condition for the parolee to participate in a drug treatment program.

**(4)** A parolee who is involved in substance abuse treatment in the community, other than a program pursuant to Penal Code Section 3063.1, if the parolee discontinues treatment for any period, and commits an eligible violation.

**(5)** Any notification by a treatment provider that the parolee is unamenable to treatment in which the parolee has been placed pursuant to Penal Code Section 3063.1.

**(6)** Any violation committed by a parolee during a period of placement in treatment under Penal Code Section 3063.1.

**(7)** Any eligible violation when the P&CSD alleges that the parolee is a danger to the safety of others.

**(8)** Any eligible violations when criminal charges are filed by a prosecutor—prior to P&CSD disposition of the violation. No Continue on Parole disposition (COP) regarding an eligible violation will be taken by P&CSD Unit Supervisor on a parolee who has been arrested by a law enforcement agency and who is subject to criminal charges unless the prosecutor elects not to file the case.

**(9)** Any eligible violation when a parole hold has been in place for a time exceeding 15 working (business) days.