INTRODUCTION

The California Narcotic Officers Association and the California District Attorneys Association have analyzed the “Substance Abuse and Crime Prevention Act of 2000” in order to provide some insights into its impact on public safety. For reasons we will set forth below, the impact on public safety will be profoundly negative. Further, the initiative has the potential to dramatically increase the number of cases that go to trial, place an extremely heavy burden on district attorneys and the judiciary, and significantly undermine the efficacy of drug treatment as a viable strategy for helping addicts. In addition, the initiative will impact California employers.

These conclusions were reached after an exhaustive analysis of the initiative’s provisions. When we began this exercise, we were hopeful that the initiative would serve as a vehicle to provide needed resources for treatment programs — something we have long supported.

OVERVIEW OF THE INITIATIVE

Section 1 of the initiative declares that the initiative may be cited as the “Substance Abuse and Crime Prevention Act of 2000.” To the extent the initiative addresses crimes involving those that use, possess, transport or are under the influence of controlled substances, the first part of the title is an accurate descriptor of what is to follow. However, the second portion of the title “…Crime Prevention Act of 2000” bears no connection to the actual contents of the initiative and is not an accurate description of the initiative’s substantive provisions.

Section 2 of the initiative contains its “findings and declarations.” The first of those findings declares that “substance abuse treatment is a proven public safety and health measure.” This general statement does not define the type of treatment protocols that constitute a “proven public safety and health measure.” The second finding is essentially a restatement of the first — the promoters of the initiative alleging that “community safety and health are promoted and taxpayer dollars are saved when nonviolent persons
convicted of drug possession or drug use are provided appropriate community-based treatment instead of incarceration.” As we shall see later in our analysis, the substantive provisions of the initiative make little differentiation between “non-violent” persons and those who are “violent,” nor is there any effort to set guidelines as to what constituted “appropriate community-based treatment.” The final finding references the Arizona initiative passed in 1996 — we are assuming the promoters are referring to Proposition 200 passed by Arizona voters that year. The promoters seek to equate their initiative with the Arizona initiative. In fact there are significant differences between their initiative and Arizona’s Proposition 200. The reader of these findings will also note the placing of the quotation marks when the promoters reference the Arizona Supreme Court “Report Card” on the Arizona law. The promoters quote the “report card” as saying the Arizona law’s impact is “resulting in safer communities and more substance abusing probationers in recovery.” As a continuation of that sentence, the promoters go on outside the quotation marks with the unsubstantiated assertion that the Arizona initiative “has already saved state taxpayers millions of dollars, and is helping more than 75% of program participants to remain drug free.” The reader should not confuse the promoters unsupported assertions with the actual comments of the Arizona Supreme Court.

Section 3 of the initiative contains the “Purpose and Intent” clauses of the initiative. The second stated purpose alleges that this initiative will “halt the wasteful expenditure of hundreds of millions of dollars each year on the incarceration — and re-incarceration — of non-violent drug users who would be better served by community-based treatment.” In fact, given the provisions of current law that provide for drug diversion of many persons convicted of drug possession offenses, this stated purpose suggests an intent of the promoters to go well beyond those who are convicted of simple drug possession. Absent from the promoters’ assertion is any evidence suggesting that “hundreds of millions of dollars” are spent annually to incarcerate drug users.

Section 4 of the initiative is the definitional section. This is the first section of the initiative that actually purports to make substantive changes in the law. From this point forward, our analysis will reference the actual proposed code sections contemplated by the initiative.

Proposed Penal Code Section 1210(a) defines a “non-violent drug possession offense” as the “unlawful possession, use, or transportation for personal use of any controlled substance identified in Health and Safety Code sections 11054, 11055, 11056, 11057 or 11058 or the offense of being under the influence of a controlled substance in violation of Health and Safety Code section 11550.”
The massive scope of this definition is ultimately a matter of policy for voters to
decide, but there are some drafting issues with this section that are quite serious.
The concept of “transportation of controlled substances” is codified in Health &
Safety Code sections 11352 and 11379. Neither of these sections has the concept
of transportation “for personal use.” Without saying so directly, the promoters have
severely limited the transportation sections of current law. A defendant charged with
transportation of controlled substances under either of these two sections will now
litigate the issue of whether the transportation was “for personal use.” The unintended
consequence of this section will be to add to the number of trials on this issue.

Proposed Penal Code section 1210(b) defines “drug treatment program” or “drug
treatment” to mean a “licensed and/or certified community drug treatment program
which may include one or more of the following: outpatient treatment, half-way
house treatment, narcotic replacement therapy, drug education or prevention courses
and/or limited inpatient or residential drug treatment as needed to address special
detoxification or relapse situations of severe dependence.”

Two questions are raised by this definition. First, the reference “licensed and/or
certified” invites the question “by whom?” Is the state going to license drug
treatment programs, or is that going to be left to local entities? Since the language also
adds the phrase “and/or certified,” does that suggest that a program might not
be licensed but might be certified? If so, by whom? Would the certification be by
a trade association of programs, or by a governmental entity, or by both, or by either?
Will there be programs that have been denied a license (or had a license revoked),
but have been certified by a trade association of some type? Who will oversee licensing
and certification of these programs? Since the initiative is silent on all of these issues,
it is impossible to gauge the level of licensing accountability, if any, that will be
contemplated by the initiative.

Second, missing from the definitional language is any grounding in treatment
programs that are successful. Instead, the definitional language is so open-ended that
it invites all manner of programs that describe themselves as “treatment programs”
to fit under this definition — including such programs as phone counseling, internet
chat rooms or cassette recordings. If the definition of what constitutes a “treatment
program” is a vague one, the definition of what is not a treatment program is very
specific. The language of section 1210(b) specifically excludes any drug treatment
programs offered in a prison or jail facility. Thus, in-custody programs designed
to assist inmates who have drug problems — and designed to decrease the chances
of their re-offending — are excluded from the definition of treatment programs
and will be denied the funding contemplated by the initiative.
Proposed Penal Code section 1210(c) defines the “successful completion of treatment.” The section states that it “means that a defendant who has had drug treatment imposed as a condition of probation has completed the prescribed course of drug treatment and, as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future.”

This definition appears to exclude from any definition of “successful treatment” all parolees who are entitled to treatment under this initiative. The definition refers to defendants who have had “drug treatment imposed as a condition of probation.” Parolees have conditions of parole, not probation. Thus the initiative purports to set standards for successful treatment by persons convicted of so-called “non-violent drug possession” offenses, but evidently leaves to the discretion of unnamed person or persons as to whether or not a parolee has successfully completed treatment.

Proposed Penal Code section 1210(d) defines a “misdemeanor not related to the use of drugs.” The definitional section states that this phrase 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 (d)(1) above.”

This section is not what it appears to be. Under this section, defense counsel could argue that a defendant who stole some jeans from a department store, led the police on a vehicle pursuit, all for the purpose of selling the jeans to support his drug habit was not committing a “misdemeanor not related to the use of drugs.” Certainly defense counsel’s case would be stronger if it could be shown that the defendant was in actual possession of controlled substances at the time of the crime. This section has the mischievous potential to permit defense counsel to argue that virtually any misdemeanor was a misdemeanor that was related to the use of drugs.

Section 5 of the initiative, after concluding the definitional section, adds a proposed Penal Code section 1210.1 that provides in subdivision (a) that “except as provided by subdivision (b), any person convicted (emphasis added) of a non-violent drug possession offense shall receive probation.”

The reader should note the departure from current law. Under current law, a defendant must generally plead guilty to be eligible to enter a diversion program. However, defendants who are convicted at trial are not eligible for diversion. Current law has the requirement of a guilty plea for the very good reason that it makes therapeutic sense. Professionals in the treatment community have informed us that an essential element of a person’s recovery is for them to admit their conduct. A defendant who has made that admission via a guilty plea is a far better candidate for recovery than is one who remains in denial.
The initiative, however, dispenses with the therapeutic professional’s doctrine that successful treatment is dependent on an admission of conduct. Under the initiative, a defendant who has been arrested for transporting crack onto a schoolyard could go to trial, be convicted, and still be eligible for “an appropriate drug treatment program” even though there is no evidence of any admission of conduct deemed by therapeutic professionals to be so necessary for recovery! Defense counsel would be remiss if they did not advise their clients to go to trial first and attempt to obtain an acquittal, since their client would still be eligible for “an appropriate drug treatment program” if he/she were to be convicted. The increase in the number of drug cases that would go to trial is simply incalculable.

The balance of subdivision (a) of Penal Code section 1210.1 directs the court to “require participation in and completion of an appropriate drug treatment program.” The initiative also says that the court “may” impose conditions of probation participation in vocational training, family counseling, literacy training and/or community service.” The court is expressly prohibited from ordering incarceration as a condition of probation. As the reader will see later in this analysis, vocational training, family counseling and literacy training are all eligible for funds under the funding mechanism contemplated by the initiative.

Subdivision (a) also says that the court “may” require a convicted defendant — who is reasonably able to do so — to “contribute to the cost of their own placement in a drug treatment program.” Here again, the framers of the initiative have given short shrift to the views of therapeutic professionals, who have stated that part of a person’s recovery is to require them to take ownership of their recovery program. This is done by requiring them to pay for the cost of the program — much as is currently required of defendants who are sent to DUI programs. Instead, this initiative permits the court to find that the defendant can afford to pay for treatment, but still excuse him/her from doing so.

Subdivision (b) of proposed Penal Code section 1210.1 purports to enumerate those classes of defendants who are not eligible for the “probation plus treatment” model proposed by the initiative. As the reader will see, however, there are serious drafting problems with this section which effectively make some very problematic characters eligible to take shelter under the initiative.

Subdivision (b)(1) excludes defendants who had been convicted of one or more serious or violent felonies. Well, not really. If the “non-violent drug possession offense” occurred more than five years after the defendant was out of prison, occurred more than five years after the defendant was convicted of any other felony (other than a non-violent drug possession offense that doesn’t count anyway) or occurred more than five years after the defendant was convicted of a misdemeanor that involved physical injury or the threat of physical injury to another person, the
defendant is still able to take shelter under the initiative. In effect, a defendant who had been released from prison on January 21, 1995 after serving time for his/her second violent felony, who subsequently was convicted of transporting crack cocaine onto a schoolyard, would be eligible for “probation plus treatment” pursuant to this initiative. This amounts to a significant weakening of California’s “Three Strikes” law.

**Subdivision (b)(2)** purports to exclude any defendant who, “in addition to one or more non-violent drug possession offenses,” has been convicted of any felony or of a misdemeanor not related to the use of drugs. As the reader will recall, the definition of what constitutes a “misdemeanor not related to the use of drugs” is something that is subject to evasion. Although poorly worded, this section would seem to contemplate a fact situation where the defendant was convicted of the other crimes and the “non-violent drug possession offense” in the same transaction, since under subdivision (b)(1), defendants whose non-violent felony convictions or whose life-threatening misdemeanors are more than five years old are eligible for the protection under the initiative.

**Subdivision (b)(3)** is among the more confusing in the entire initiative. Subsection (b)(3)(A) purports to exclude from the initiative anyone who “while using a firearm, unlawfully possesses any amount of (1) a substance containing either cocaine base, cocaine, heroin, methamphetamine, or (2) a liquid, non-liquid, plant substance, or hand-rolled cigarette, containing phencyclidine. Subsection (b)(3)(B) purports to exclude those who “while using a firearm [are] unlawfully under the influence of cocaine base, cocaine, heroin, methamphetamine or phencyclidine.” Again, this “exclusion” is not as all encompassing as would first appear. A defendant who is “using” a firearm while in possession or under the influence of designer drugs or anabolic steroids cannot be incarcerated; instead, they may obtain the “probation plus treatment” contemplated by the initiative.

**Subdivision (b)(5)** excludes defendants who have two convictions for non-violent drug possession offenses, and have participated in two separate courses of drug treatment pursuant to subdivision (a) and are found by the court by “clear and convincing” evidence, to be unamenable to any and all forms of available drug treatment.” Notwithstanding any other provision of law, the maximum sentence for such a defendant shall be 30 days in jail. The likelihood is that very few will be excluded under this section.

**Subdivision (c)** of proposed Penal Code section 1210.1 provides for the timetable for the drug treatment programs. Within 7 days of the imposition of probation, the probation department is required to notify the drug treatment provider designated to provide the drug treatment. The treatment provider then has 30 days to prepare a treatment plan and forward it to the probation department. The treatment provider is required to provide quarterly progress reports on the defendant to the probation department. It should be noted that these mandated deadlines would place a considerable burden on already overburdened probation departments. It is also noteworthy that,
although mandated deadlines are placed on probation and the treatment providers, the
initiative is silent as to when the convicted defendant is required to report to his/her treat-
ment program.

The initiative says that providers may notify the probation department if they determine
that the defendant is not amenable to treatment in their program, but may be
amenable to treatment in another program. The probation department is then given
authority to move the court to modify the probation terms to send the defendant
to that other program. One wonders who would cause a treatment provider to suggest
that a defendant be transferred from their program to another — and therefore lose
the state stipend for that person. One possibility, of course, is that one provider
is in a collusive arrangement with a second provider, wherein the second provider gives
a “rebate” to the first provider for the referral. Given the level of scandal that has
occurred in the group home industry, this assumption is not an unreasonable one.

This subsection also declares that the provider may inform probation that the defendant
is unamenable to their drug treatment program, and all other forms of drug treatment.
It that case, the department may move to revoke probation — one wonders why they
would not move to revoke under those circumstances, but the initiative does give
them the right to continue a defendant on probation who, in the opinion of professionals,
is unamenable to any type of treatment. The court may revoke probation, unless the
defendant proves by a preponderance of the evidence that there is a drug treatment
program to which he is amenable. In other words, all a defendant need do is show that
somewhere there is a treatment program that might be a “fit” for him — even though
there is no requirement that he then be placed in such a program!

Section 1210.1 (c)(3) states that the drug treatment services pursuant to this initiative
may not exceed twelve months with an additional six-month period of “aftercare”
services that may also be required. We are unaware of any research that suggests that
this type of twelve-month period is the optimum amount of time for a treatment
program to be effective.

Section 1210.1 (d) has the potential for creating severe public safety problems.
Section 1210.1 (d)(1) deals with the manner in which charges against a defendant are
dismissed. The defendant petitions the court for dismissal of the charges. The court
is mandated to set aside the conviction on which the probation was based and dismiss
the indictment or information against the defendant. Additionally, the arrest on which
the conviction was based is deemed never to have occurred. These actions by the court
are predicated on a judicial finding that the defendant has “successfully completed
drug treatment” and “substantially complied with the conditions of probation.”
The reader will recall that, under the definition of “successful treatment of drug
treatment,” the defendant may continue to use drugs, just not abuse them. The
The concept of “substantial compliance” with probation conditions, of course, implies that the defendant’s probation record has specific instances of noncompliance. Under Section 1210.1 (d)(1), however, such noncompliance will not be a bar to setting aside the defendant’s conviction, dismissal of the indictment or information and a finding that the underlying arrest never occurred.

Section 1210.1 (d)(1) then provides that, subject to certain specific provisions enumerated in Sections 1210.1 (d)(2) and (d)(3), the defendant “shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted.”

Section 1210.1 (d)(3) deals with employment, licensing, and other benefits. The first paragraph section provides that after the indictment or information is dismissed, 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 predicate drug offense. The paragraph goes on to say that a record pertaining to an arrest or conviction where there has been “successful completion” of a drug treatment program shall not be used in any way that “could result in the denial of any employment, benefit, license, or certificate.” This paragraph also provides that its guarantees are to be modified by paragraph two of Section 1210.1 (d)(3).

Turning to paragraph two, we find that the arrest and conviction on which the defendant’s probation was based may be recorded by the Department of Justice and disclosed in response to any peace officer application request or to a request by any law enforcement agency. This paragraph also provides that dismissal of the information or indictment under this section does not relieve the defendant of his/her obligation to answer truthfully in response to any direct question contained in any questionnaire or application for “public office, for a position as a peace officer pursuant to Penal Code Section 830, licensure by any state or local agency, for contracting with the California State Lottery, or for purposes of jury service.”

Reading Section 1210.1 (d) in its entirety, it is apparent that the provisions of this section are profound and deeply disturbing. For example, a witness in a trial may answer in the negative when questioned by counsel as to whether or not he/she has been arrested or convicted of a felony — effectively creating the notion of legally permitted perjury. Similarly, applicants for positions such as school bus drivers or airline pilots, surgeons applying for admission privileges at a hospital, persons applying to work in a pharmacy are among the many job applicants who may simply deny that they have any drug arrests or convictions.

Although Section 1210.1 (d) does require that applicants for “public office” and peace officer positions answer truthfully if asked if they have any felony drug arrests or
convictions, disclosure is the only disability placed on those applicants. Indeed, the language of the law releasing the defendant from “all penalties and disabilities resulting from the offense” and the language that says the record relating to the arrest or conviction may not “be used in any way that could result in the denial of any employment, benefit, license, or certificate” is not limited by the disclosure requirement of this section! In effect, employers are prohibited from using these types of felony arrests or convictions to prevent someone from driving a school bus, flying a plane, driving a truck, being a surgeon, becoming a peace officer, or holding any other type of state or local license. In addition to the questionable wisdom of permitting convicted drug users to drive school buses, these provisions act to undercut virtually every employer’s ability to insure a safe workplace. One can only speculate as to the extent workers compensation premiums may rise as a result of Section 1210.1 (d) of the initiative.

Section 1210.1 (e) deals with the issue of violation of probation. Subsection (e)(1) provides that if probation is revoked pursuant to this subdivision, the defendant may be incarcerated pursuant to otherwise applicable law without regard to the provisions of this section.

Subsection (e)(2) indicates that the defendant is subject to having his/her probation revoked if they are arrested for an offense that is not a “non-violent drug possession offense” or if they violate a “non-drug related condition of probation.” Although the initiative defines “non-violent drug possession offense”, it does not define “non-drug related condition of probation.” Definition of this language will have to await the outcome of litigation.

Subsection (e)(3) outlines those circumstances where a defendant would be subject to having probation revoked after being arrested for a “non-violent drug possession offense” or by violating a so-called “drug-related condition of probation.” For the first such offense or violation, the probation may only be revoked if the state — presumably the prosecutor, although the law would then be silent on the burden placed on the probation department should they initiate revocation proceedings — proves by a preponderance of the evidence that the defendant poses a danger to the safety to others. This will make revocation hearings into full fledged trials as both parties bring in witnesses to testify as to the defendant’s safety — or lack thereof — to others.

Defendants who violate probation a second time by either being arrested for a “non-violent drug possession offense” or by violating a “drug-related condition of probation,” will have their probation revoked if the state proves by a preponderance of the evidence that the defendant poses a danger to the safety of others or is unamenable to drug treatment. In considering whether the defendant is unamenable to treatment, the court may consider whether the defendant has committed a “serious”
violation of rules at the drug treatment program, “repeatedly” violated program rules so as to “inhibit” his ability to “function in the program,” or has “continually refused to participate in the program.”

Defendants who violate probation a third time may have their probation revoked if the court finds that they have in fact engaged in the violative conduct.

Section 6 of the initiative purports to add a new section 3063.1 to the Penal Code. This section provides that, subject to certain enumerated exceptions, parole may not be suspended or revoked where a defendant commits a “non-violent drug possession offense” or violates any “drug-related condition of parole.” Instead, the “Parole Authority” is directed to require the parolee to participate in an appropriate drug treatment program. Vocational training, family counseling and literacy training may also be imposed as additional parole conditions. Those parolees who can afford to pay for their treatment “may” be required to do so.

These provisions do not apply to parolees who have been convicted of one or more serious or violent felonies, any parolee who commits one or more non-violent drug possession offenses and is found to have concurrently committed a misdemeanor not related to the use of drugs, or any felony, nor does it apply to any parolee who refuses drug treatment. Given this language, one could infer that persons who are on parole for felonies that are outside the scope of Penal Code Section 667.5 or 1192.7 that do not involve the “concurrent commitment” of a non-violent drug possession offense will be able to avoid having their parole revoked. This represents a significant diminution of the ability to hold parolees accountable.

The reader will note that a parolee who violates a “drug-related condition of parole” must be placed in treatment, and cannot have his/her parole revoked. Since the law does not define “drug-related condition of parole,” this provision has the potential to be judicially expanded in ways that are not yet calculable.

The provisions with respect to those circumstances in which a parolee may have his/her parole violated are laid out in Penal Code Section 3063.1 (d). Parolees who are arrested for an offense other than a non-violent drug possession offense, or who violate a “non-drug related condition of parole,” are subject to revocation. The issue of what constitutes a “non-drug related condition of parole” will be the subject of intense and spirited litigation.

Parolees who are arrested for a non-violent drug possession offense, or who violate a “drug-related condition of parole” may have their parole revoked if it is proven that they pose a danger to the safety of others. Parolees who violate their parole a second time either by being arrested for a non-violent drug possession offense or by violating a drug-related condition of parole may have their parole revoked if the parole violation is proven.
Section 7 of the initiative adds a new Division 10.8 to the Health & Safety Code. This new division purports to create the so-called “Substance Abuse Treatment Trust Fund.”

Proposed Health & Safety Code Section 11999.5 provides that $60,000,000 shall be appropriated from the General Fund to the Substance Abuse Treatment Trust Fund for the 2000-2001 Fiscal Year immediately upon passage of the initiative. Since the Governor and the Legislature are currently working on the 2000-2001 Budget, and since that budget must be adopted by July 1, 2000, they would be well served to build in additional budget reserve of $60,000,000 for this purpose in order to avoid having to cut other state programs should this initiative pass on November 7, 2000.

This same section provides that $120,000,000 is to be continuously appropriated from the General Fund for fiscal years 2001-2002 through 2005-2006 inclusive.

Section 11999.6 provides for the distribution of the monies in the Substance Abuse Treatment Trust Fund. Under this section, the Secretary of the Health and Welfare Agency, through the State Department of Alcohol and Drug Programs, is directed to distribute funds to counties to “cover the costs of placing persons in and providing (1) drug treatment programs under this Act and (2) vocational training, family counseling and literacy training under this Act.” This language reveals that the funds in this “Trust Fund” are not encumbered solely for drug treatment, but instead may be diverted to job training, family counseling or literacy training.

As if this erosion were not enough, however, this section goes on to say that “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.” Since the language here speaks of “reimbursement” one wonders if counties obtain these funds by submitting requests for reimbursement, whereas the funds for treatment, vocational, family and literacy counseling/training might be provided to counties via a direct grant. The language is unclear on this point.

Interestingly, although this section seems to contemplate a broad authority to expend “Trust Fund” monies, it specifically prohibits use of these funds for “drug testing services of any kind.” This effectively deprives any drug treatment program of the resources necessary to monitor the compliance of those who are in their program. To the extent treatment programs are forbidden to hold their clients accountable for the success of their recovery, they are significantly undermined.

The distribution formula contemplated by Section 111999.6 is unclear. The Act refers to the funds being “allocated to counties through a fair and equitable distribution formula 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.” In other words, the ultimate manner in which these funds are to be distributed to counties will be resolved in some type of implementing legislation.

This section also gives authority to the State Department of Alcohol and Drug Programs to reserve a portion of the fund to pay for direct contracts with drug treatment service providers in counties or regions where the department has made a determination that existing programs cannot adequately meet the demand. No entity is permitted to supplant funds from any existing funds used for substance abuse treatment.

Section 11999.7 requires that community drug treatment programs agree to make their facilities subject to valid local government zoning ordinances and development agreements. It is unclear whether or not this would permit local government to have any control over the siting of these community-based programs. Under current law, for example, local government has no control over the siting of a residential group home that has six or fewer live-in residents. Presumably, drug treatment programs would be permitted to operate in single-family residential areas under the same terms.

Section 11999.9 provides for an “annual evaluation process.” The Department of Alcohol and Drug Programs is directed to conduct an annual study to “evaluate the effectiveness and financial impact of the programs that are funded pursuant to the requirements of this Act.” This section directs the study to include — but not be limited to — a study of the implementation process, review of “lower incarceration costs,” reductions in crime, reduced prison and jail construction, reduced welfare costs, the adequacy of funds appropriated, and any other impacts or issues the department can identify.” Missing from these directives is any direction to evaluate the increased burdens on the judicial system. More important, these directives do not include any provisions for auditing the various programs that would be using state funds to operate. This omission is a quite serious one. The lack of meaningful audits — particularly when one considers the very loose definition of “treatment program” — is a prescription for fraudulent behavior.

Section 11999.10 creates an “outside evaluation process.” The Department is authorized to set aside $600,000 annually for a “long-term study” to be conducted by a public university in California aimed at “evaluating the effectiveness and financial impact of the programs which are funded pursuant to the requirements of the Act.” The reader should keep in mind that this is not an audit of the various programs. It appears to be duplicative of Section 11999.9’s contemplated evaluations.

Section 11999.11 directs counties to report to the state detailing the numbers and characteristics of client-participants served as a result of funding provided under the initiative. Again, there are no provisions for auditing the individual programs.
Section 11999.12 finally references audits. It gives the department the authority to annually audit the expenditures made by any county with funds provided by the Act. There is no provision to audit the individual programs.

**Section 8** provides that the provisions of the Act will become effective on July 1, 2001, unless otherwise provided within the body of the initiative.

**Section 9** of the initiative provides that it may only be amended by a two-thirds vote of both houses of the Legislature. The amendments may only be in furtherance of the Act and consistent with its purposes. Presumably, legislation to set in place an audit procedure for the individual treatment providers would require a two-thirds vote. It might also be argued that all legislation governing narcotic laws, parole procedures as well as legislation purporting to define with more precision what constitutes a “non-drug related offense” would all be subject to the same two-thirds vote requirement.

**Section 10** is the severability clause of the act.

*June 12, 2000*