

MINUTES OF THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE.

The meeting was called to order by Chairperson Ward Loyd at 1:30 p.m. on March 20, 2003, in Room 526-S of the Capitol.

All members were present except:

Committee staff present:

Jill Wolters - Revisor of Statutes  
Mitch Rice - Revisor of Statutes  
Jerry Ann Donaldson - Legislative Research Department  
Martha Dorsey - Legislative Research Department  
Nicoletta Buonasera - Legislative Research Department  
Marilyn Revell for Committee Secretary

Conferees appearing before the committee:

Others attending:

See Attached

**SB 123 - Drug convictions; possessions is a level D4 classification; mandatory drug treatment; border boxes on D4 replaced with probation boxes.**

**Chairperson Loyd continued the hearing on SB 123.**

Chairperson Loyd called the committee's attention to a spreadsheet summarizing the anticipated savings from the Washington State drug bill submitted by Ed Vukich, Human Service Policy Analyst-Washington State Department of Social and Health Services (Attachment 1), and a memo listing the bills that are intended to be worked by the committee (Attachment 2).

Discussion and questions from the committee were directed to Barbara Tombs, Executive Director-Kansas Sentencing Commission; Secretary Roger Werholtz-Kansas Department of Corrections; Kathy Porter, Office of Judicial Administration; Stuart Little, Government Relations Consultant-Kansas Community Corrections Association; Kyle Smith, Special Agent-Kansas Bureau of Investigation; and Dan Hermes, Program Administrator-Kansas Association of Addiction Professionals.

Chairperson Loyd made available an Issue Brief from the Health Policy Tracking Service pertinent to the discussion of funding and costs (Attachment 3), a proposed Tax Rate Change paper prepared by Staff if funding was obtained from alcohol sales (Attachment 4), and a Prison Bed Projections paper showing results with **SB 123** (Attachment 5).

**Chairperson Loyd closed the hearing on SB 123.**

**SB 63 - Changing the law enforcement telecommunications committee to the criminal justice information system committee.**

Minority Leader Ward made a motion to pass out **SB 63** favorably. Representative Goprdon seconded the motion. The motion carried.

**SB 64 - Clarification of Kansas Offender Registration Act.**

**SB 45 - Application fee imposed on defendant entitled to indigent defense services, conditions of bond.**

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE at 1:30 p.m. on March 20, 2003, in Room 526-S of the Capitol.

Representative Carter made a motion to pass out SB 64 favorably. Representative Dillmore seconded the motion.

Minority Leader Ward made a motion to amend SB 64 to include SB 45. Representative Kassebaum seconded the motion. The motion carried.

Representative Carter made a motion to increase the amount of fee from \$50 to \$100. Representative Carlin seconded the motion. The vote was 7 yeas and 6 nays. The Chairperson voted nay. The motion failed.

Representative Dillmore made a motion to pass SB 64 favorably as amended. Representative Yoder seconded the motion. The motion carried.

**HB 2390 - Amendments to the statutes concerning the civil commitment of sexually violent predators.**

**SB 27 - Relating to alcohol and drug safety action education program requirements.**

Chairperson Loyd proposed his intention to include **HB 2390** in **SB 27**.

Representative Huntington made a motion to amend into SB 27 the provisions of HB 2390, and report the amended bill favorably for passage. Representative Swenson seconded the motion. The motion carried.

The meeting was adjourned at 3:20 p.m. The next scheduled meeting is on March 24, 2003.



**Estimated Prison Bed Savings Mandated for Treatment Under 2SHB 2338**  
**Prison Bed Average Monthly Population and Dollar Estimates**  
 (Does Not Include Savings From Offenders Kept out of Prison by Increased Treatment Capacity)

*H. Corn & J.J.  
 3-20-03  
 Attachment 1*

	Fiscal Year						
	FY03	FY04	FY05	FY06	FY07	FY08	FY09
Level and Scoring Changes	-18	-148	-321	-452	-529	-580	-612
The New Drug Grid	NA	NA	-20	-146	-171	-166	-174
Total Prison Bed AMP Savings	-18	-148	-342	-598	-700	-747	-786
Cost Per Prison Bed Per Year	\$26,000	\$26,000	\$26,000	\$26,000	\$26,000	\$26,000	\$26,000
Official First Biennium Savings		\$3,847,645	\$8,357,900				
Estimated Total Savings	\$457,888	\$3,847,645	\$8,879,495	\$15,535,629	\$18,199,327	\$19,416,656	\$20,437,408
Total First Biennium Savings		\$12,205,544					
Estimates Total Savings	\$457,888	\$12,727,139		\$33,734,956		\$39,854,064	
25% To DOC for Treatment		\$3,051,386					
75% To DASA for Treatment		\$9,154,158					
70% Distributed Via Formula		\$6,407,911					
30% Distributed Via Grants		\$2,746,247					
70% by Fiscal Year		\$3,203,955	\$3,203,955				
30% by Fiscal Year		\$1,373,124	\$1,373,124				
Total by Fiscal Year		\$4,577,079	\$4,577,079				

*H. Corn & J.J.  
 3-20-03  
 Attach pt 1*

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TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEES

CHAIR CORRECTIONS & JUVENILE JUSTICE  
MEMBER JUDICIARY  
RULES AND JOURNAL

To: Members & Staff  
Corrections & Juvenile Justice Committee

Re: Schedule for Working Bills

Date: March 20, 2003

Bills Intended To Be Worked

- ✓ SB 63 Changes to KCJIS
- ✓ SB 64 KS Offender Registration Act  
(will amend in SB 45-BIDS)
- Sub SB 27 ✓ HB 2390 Revision to Sexually Violent  
Predator (intend to put in a SB)
- BP ✓ SB 11 Community Advisory Board for  
JJA, State-wide
- BPAA ✓ SB 33 Impoundment of Vehicles of DUI  
Offenders
- BPAA ✓ SB 67 Open Records, Child Fatality
- BPAA ✓ SB 14 Background Check Info on  
Employees of Care Homes
- BPAA ✓ SB 123 Drug Sentences, Treatment

Bills We May Work, Subject to Fiscal  
Note/Bed Impact, & Subject to Time

- SB 209 Sub Fire Districts, Recovery of  
Arson Investigation Costs

Same; But May Refer/Recommend for  
Interim Study

- HB 2049 Elective District Attorney  
Office for Judicial Districts
- HB 2270 Recodification of Juvenile  
Code

H. Corr & J.J.  
3-20-03  
Attachment 2

*Keep in mind Committee Rules regarding the prerogative of the Chair to make the determination of what bills are worked; the above is intended to assist you as a planning guide only, and is subject to change.*

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# ISSUE BRIEF

HEALTH POLICY TRACKING SERVICE

Subject: Behavioral Health

Date: 12/31/2002

Title: California's Proposition 36 and other State Diversion Programs:  
Moving Drug Offenders out of Prison and into Treatment

By: Allison C. Colker, Esq.

## Table of Contents:

- Introduction
- Overview of Proposition 36
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- Other State Laws and Programs
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- Legislative and Policy Activity in 2001
  - Florida, Hawaii, Idaho, New Mexico, Oregon and Wyoming
- Federal Activity
- Legislative and Policy Activity in 2002
  - Arizona, California, Florida, Hawaii, Indiana, Michigan, Vermont, Wyoming
  - Ballot Initiatives
    - Ohio and District of Columbia

## Introduction

In November 2000, **California** voters approved a ballot initiative that requires certain non-violent drug offenders to enter treatment programs instead of prison. Although it is not the first state law aimed at rehabilitating drug-addicted criminals, the Substance Abuse and Crime Prevention Act (Proposition 36) has received a great deal of attention nationwide for its bold and controversial provisions. Some see the act as a realistic approach to simultaneously addressing the problems of addiction and criminal recidivism. Others, however, say it is a simplistic response to a complicated problem, and they question whether state and county officials will be able to implement the law effectively.

Whatever their opinion, lawmakers around the country are certain to take note of the initial results of Proposition 36. Early reports of a similar law passed in **Arizona** in 1996 have been positive, and other state diversion programs appear to be working as well; however, California's experience will no doubt set the tone for future debates around the country. Governors and legislators in several states have recently expressed greater interest in revamping sentencing laws for drug offenses and boosting substance abuse treatment for those moving through the criminal justice system. If Proposition 36 proves to be effective, similar laws in some of those states are likely to follow.

## Overview of Proposition 36

Proposition 36 was sponsored by the California Campaign for New Drug Policies, an interest group that worked to gain the signatures required to place the initiative on the ballot for the state's November 2000 general election. Sixty-one percent of voters approved the measure, which was supported by a number of groups, including medical and public health associations; drug treatment providers; local, state and national organizations; and local, state and federal government officials. All these groups and individuals agreed with the measure's basic premise that the best way to reduce drug-related criminal activity and save money in the correctional and criminal justice systems is to mandate treatment instead of incarceration for nonviolent drug offenders. With that goal in mind, the text of the Substance Abuse and Crime Prevention Act—effective July 1, 2001—was drafted to include the provisions described below.

Opponents of Proposition 36 included, but were not limited to, the California Correctional Peace Officers Association, California's drug court judges, California law enforcement officials, about 180 California judges, the California District Attorneys

H. Corr & J.J.

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Attachment 3

Behavioral Health - California's Proposition 36 and other State Diversion Programs: Mov... Page 7 of 19

information and reports from a select number of counties.

## Other State Laws and Programs

### Arizona

Arizona voters approved Proposition 200, the Drug Medicalization, Prevention and Control Act, in the state's November 1996 general election, and the law became effective Dec. 7, 1996. The act called for increased drug treatment and education services for drug offenders and the diversion of nonviolent offenders from prison to probation. It also established the Drug Treatment and Education Fund (DTEF), which is administered by the Administrative Office of the Courts (AOC) (21).

In November 2001, the AOC prepared a report, as required by the 1996 law, analyzing the cost avoidance that had resulted from the act and evaluating the effectiveness of the treatment provided to parolees by the DTEF program. The following information is taken from that report, *Drug Treatment and Education Fund Annual Report: Fiscal Year 1999*.

#### Drug Treatment Education Fund (DTEF)

Arizona's DTEF is funded by a percentage of state liquor tax revenue. Fifty percent of the money in the fund is used to pay for probationer drug treatment and the remaining 50 percent is provided to the Arizona Parents Commission on Drug Education and Prevention for programs that educate parents about the dangers of substance abuse and increase parental involvement in prevention.

The money provided to local probation departments for treatment programs initially was allocated according to a formula, as required by Proposition 200, based on each county's at-risk population, the number of arrests for possession and sale of drugs, and the number of first-time drug possession and convictions in that county in fiscal year 1996. Treatment programs officially began in January 1997, after each department submitted a plan to the AOC detailing how it would use funds to provide the required treatment.

#### Arizona Justice Model

According to the AOC report, officials developed the Arizona Justice Model to address the co-occurring problems of substance abuse and criminal conduct among probationers. The idea behind the model is to incorporate "cognitive-behavioral and social learning approaches" with more traditional types of substance abuse treatment to achieve the best results in offenders.

An essential part of this model, says the AOC, is effectively screening and assessing the offender when the offender first enters the system, to determine the severity of his or her problem. This requires cooperation between the treatment provider and the probation system.

Most important to the model, however, according to the AOC report, is the continuum of services that makes use of several different programs, such as Substance Abuse Education Programming for low-risk offenders; Standard and Intensive Outpatient Programming for medium low-risk to medium high-risk offenders; and Day Treatment, Short-Term and Long-Term Residential, for high-risk offenders.

#### Outcomes

The report found that the program was working as planned in both areas—the state avoided costs and people were effectively treated.

According to the report, in FY 1999 the state avoided \$7,760,966 million in prison costs and spent \$1,049,252 million on total probation costs (supervision costs plus treatment costs). Therefore, the state realized net costs avoided (prison costs minus total probation costs) of \$6,711,714. Moreover, officials concluded that the drug treatment and education funds were adequate to meet the increased demand for treatment services under the diversion program, and that the majority of offenders were completing treatment and passing drug tests. A summary follows of some of the other major findings.

- In FY 1999, 5,385 probationers participated in substance use treatment funded by the DTEF.
- Of those, 5,385 probationers, 1,246 (23 percent) were mandatorily sentenced to probation pursuant to the Act.
- There is no difference in level of substance use involvement between prison ineligible and discretionary probationers. Nearly half of all probationers assessed evidenced medium (44 percent) levels of substance use involvement. The remaining probationers were divided between low (30 percent) and high (26 percent) levels of substance use involvement. Prison ineligible probationers followed this same pattern with 42 percent evidencing medium levels of involvement, 32 percent evidencing low levels and 26 percent evidencing high levels of substance use involvement.
- A total of \$3,954,968 (\$3,455,078 from the FY 1999 budget monies plus monies not expended in FY 1998) in DTEF monies was expended by the local probation departments to provide treatment services to the 5,385 probationers with an average treatment cost of \$734.44 per probationer.
- Standard outpatient treatment was the most frequently used treatment intervention (59 percent). Prison ineligible probationers were slightly less likely to utilize standard outpatient treatment services (54 percent) than discretionary probationers (61 percent).
- As of June 30, 1999, there were 2,719 probationers who ended treatment; of these, 62 percent complied with the treatment requirements and 38 percent failed to comply with treatment program requirements. Prison ineligible and

discretionary probationers followed similar patterns with prison ineligible probationers only slightly more likely to have complied with treatment (64 percent) than discretionary probationers (62 percent).

- Nearly 46 percent of the 5,385 probationers were still in treatment at the end of the fiscal year and 4 percent of all probationers served had undocumented outcomes.
- Over the course of the fiscal year, 3,239 treatments ended (probationers can have multiple treatments); probationers complied with treatment program requirements 63 percent of the time. Of the 5,761 treatments that occurred during the fiscal year, 5 percent had undocumented outcomes.
- Based on prison costs of \$52.81 per day for FY 1999, an estimated \$6,711,464 was avoided in FY 1999 as a result of an estimated 390 qualified offenders receiving probation instead of prison as directed by the Act or being diverted from prison as a result of probation violations. This figure takes into account the \$661,489 that was spent supervising and the \$387,953 that was spent providing substance use treatment to this group of offenders.
- Finally, \$3,567,015 was spent treating the remaining probationers served by the DTEF.

Recidivism data were not reported for FY 1999 because not enough time had elapsed since program inception for data collection to accurately reflect recidivism rates.

## **Alabama**

In 1985, the Court Referral Officer Program (CRO Program) began as one method of reducing the devastating problem of drunk driving. It was a pilot program to assist judges in early identification and placement of DUI offenders. In April 1990, the Alabama Legislature unanimously passed the Mandatory Treatment Act of 1990 (MTA). The purpose of the MTA, as stated in Section 12-23-2, is "To establish a specialized Court Referral Officer Program to promote the evaluation, education and rehabilitation of persons whose use or dependency on alcohol and drugs directly or indirectly contributed to the commission of an offense for which they were convicted in state or municipal courts and to establish mandatory alcohol and drug abuse treatment programs to provide treatment and rehabilitation for these identified offenders." Court referral officers (CROs) have provided services to defendants in a broader spectrum of cases related to alcohol and drug use or abuse since the implementation of the MTA. From 1990 to 2000, CROs evaluated, referred, monitored and provided drug screening services for more than 150,000 defendants. This program is governed by the Administrative Office of Courts (AOC) (22).

### **The Court Referral Officer Program (CRO Program)**

CROs provide a thorough evaluation using the operational screening criteria (OSC) and validated testing instruments and make appropriate recommendations for each defendant. This information ensures that the court will place each defendant in the most appropriate program to supplement traditional judicial sanctions. When a judge offers the choice of jail or help for an offender's drinking or drug problem, it can be one of the simplest yet most effective means of increasing the likelihood that the offender will not return to court on later substance abuse-related charges. Local court referral programs were developed to provide education and treatment for defendants with alcohol and drug abuse-related offenses. These programs were designed not to replace judicial sanctions, but to be used in conjunction with court orders (23).

The goal of the CRO is to promote the education and rehabilitation of court-ordered defendants. The program uses a systems approach to assist courts in managing cases by networking all available state and community resources. The CRO reduces recidivism in cases associated with alcohol and other drugs through the use of Level I/Level II education programs and treatment programs. Specific problems exhibited by defendants may be overcome by using other community resources, such as driver education, anger management, adult education, etc. Defendants assess their problems related to substance use or abuse and get appropriate help to change their lifestyles and avoid recidivism because of the requirement to complete the court referral program. To determine the nature and extent of sanctions needed and to handle the imposition of such supplemental sanctions, the judge uses professional assistance from the CRO. The CRO provides evaluation, screening, an individualized case plan and monitoring for each defendant; technical assistance for judges, clerks, probation officers, law enforcement officers, substance abuse treatment centers and others; assistance in the establishment of guidelines for the CRO Program; and collaboration with national and other state organizations and the judicial system (24).

Under Section 12-23-4(a) of the MTA, the AOC has the legislatively mandated responsibility to establish and certify court referral programs (CRPs) and CROs in Alabama. Section 12-23-4(b) establishes the duties and requirements of the CRO, and section 12-23-4(a) establishes supervision by the administrative director of courts and judges of the circuit. Section 12-23-4(a) of the MTA states that, "Court Referral Officers shall work under the general supervision and direction of the administrative office of courts and the judges of the circuit to which they are assigned." To establish and maintain CRO services of the highest quality, the AOC has adopted rules and regulations that would avoid any appearance of a conflict of interest or impropriety that may place courts, the CRO or the sponsoring agency in a defensive posture. The CRO maintains a professional relationship with the courts, the defendant and court referral agencies and adheres at all times to the regulations and standards (25).

### **Drug Testing Program**

Section 12-23-7 of the MTA states that "Any person who is convicted of an alcohol or drug-related offense and who is placed on probation or parole shall be required to participate in an alcohol or drug testing program at his own expense, unless he is determined to be indigent." The law requires these defendants to submit to drug testing. If convicted defendants fail to comply with the court referral program's drug testing, then CROs should request that judges place those defendants on probation for a



Proportional Tax Rate change 51.0%

	Current Tax Rate	Grand Total	Estimated FY 2004	<del>New Tax Rate</del> <i>Increased Tax Rate</i>	New Revenue Generated	<i>New Rates</i>
Liquor Gallonage			\$ 18,347,289		\$ 9,206,005	
Beer	\$ 0.18 per gallon		\$ 15,967,308		\$ 8,016,014	<i>0.27</i>
Light Wine	\$ 0.30 per gallon		\$ 7,719,222	\$ 0.09	\$ 3,802,572	<i>0.45</i>
Strong Wine	\$ 0.75 per gallon		\$ 760,658	\$ 0.15	\$ 380,329	<i>1.13</i>
Alcohol & Spirits	\$ 2.50 per gallon		\$ 84,444	\$ 0.38	\$ 42,785	<i>3.78</i>
Cereal Malt Beverage	\$ 0.18 per gallon		\$ 7,402,984	\$ 1.28	\$ 3,790,328	
			\$ 2,379,981	\$ 0.09	\$ 1,189,991	

H. Corr & J.J.  
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 Attachment 4

## KANSAS PRISON BED PROJECTIONS

Year	Current Bed Projection	Under (Over) Capacity	Projected Reduction w/o Retroactivity	Adjusted Bed Projection	Under (Over) Capacity	Projected Reduction w/ Retroactivity
2002	8,759	*****	*****	*****	*****	*****
2003	9,044	*****	*****	*****	*****	*****
2004	9,004	12	241	8,763	253	383
2005	9,112	(96)	332	8,780	236	412
2006	9,383	(367)	404	8,979	37	453
2007	9,555	(539)	422	9,133	(117)	454
2008	9,805	(789)	477	9,328	(312)	496
2009	9,927	(911)	514	9,413	(397)	531
2010	10,285	(1,269)	563	9,722	(706)	571
2011	10,411	(1,395)	535	9,876	(860)	541
2012	10,572	(1,556)	552	10,020	(1,004)	557

**Current Prison Capacity = 9,016**  
**per Department of Corrections Report, March, 2003**

\*Statistics from the Kansas Sentencing Commission's Report to the 2003 Kansas Legislature, submitted Feb. 2003

H. Corrs, J.J.  
 3-20-03  
 Attachment 5