SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair
2013-2014 Regular Session

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SB 649 (Leno)
As Amended April 17, 2013
Hearing date: April 23, 2013
Health and Safety Code
JM:mc

DRUG POSSESSION FOR PERSONAL USE

HISTORY

Source: California State NAACP; American Civil Liberties Union; Drug Policy Alliance

Prior Legislation: SB 1506 (Leno) – failed passage on Senate Floor

Support: California Public Defenders Association; Californians for Safety and Justice; Friends Committee on Legislation – California; William C. Velásquez Institute; A New PATH (Parents for Addiction Treatment and Healing); A New Way of Life Re-entry Project; Aegis Medical Systems; Alpha Project; Alternatives to Incarceration of Tulare; Amity Foundation; Advancement Project; Broken No More; California Church IMPACT; California Civil Rights Coalition; California Drug Counseling, Inc.; California Faith Action; Justice Not Jails; California Partnership; Californians for Safety and Justice; Center for Living and Learning; Center on Juvenile and Criminal Justice; Central Valley Progressive; Clergy & Laity United for Economic Justice, Los Angeles; Conference of California State Bar Associations; Courage Campaign; Cri-Help, Inc.; FACTS; HealthRIGHT360; Homeless Healthcare Los Angeles; Human Rights Watch; Judge Harlan Grossman (ret.); Judge James Stiven (ret.); LA Community Action Network; Labor/Community Strategy Center; Law Enforcement Against Prohibition; Los Angeles Metropolitan Churches; Los Angeles Regional Reentry Partnership; National Council of La Raza; National Employment Law Project; National Latino Evangelical Coalition; Right on Crime; San Diego Chapter – National Organization for the Reform of Marijuana Laws Women's Alliance; Students for Sensible Drug Policy, Whittier Law School Chapter; Tarzana Treatment Centers; The Sentencing Project; Time for Change Foundation; Women's Foundation of California; Youth Justice Coalition; California Judges Association; Greenlining Institute; Tarzana Treatment Centers, Inc.; California Association of Alcohol and Drug Program Executives, Inc.; Asian Law Caucus; California Opioid Maintenance Providers; Center Point, Inc.; Ella Baker Center for Human Rights;

(More)

Brownie Mary Democratic Club of Riverside County; Los Angeles County HIV & Alcohol Task Force; Advancement Project; YWCA Pasadena Foothill Valley; East Bay Community Law Center; Women's Council of the CA Chapter of the National Association of Social Workers; Youth Justice Coalition; Legal Services for Prisoners with Children; California Attorneys for Criminal Justice; Sacramento Homeless Organizing Committee; Center for Health Justice

Opposition: California Narcotics Officers Association; California Police Chiefs' Association; California District Attorneys Association; California State Sheriffs' Association

KEY ISSUE

SHOULD POSSESSION FOR PERSONAL USE OF SPECIFIED CONTROLLED SUBSTANCES BE AN ALTERNATE FELONY-MISDEMEANOR ("WOBBLER")?

PURPOSE

The purpose of this bill is to provide that possession for personal use of specified controlled substances shall be an alternate felony-misdemeanor, not a straight felony.

Existing law classifies controlled substances in five schedules, generally according to their danger and potential for abuse. (Health & Saf. Code §§ 11054-11058.)

Existing law provides penalties for sale, possession for sale or distribution, sale or distribution, and manufacturing of controlled substances. (Health & Saf. Code §§ 11350-11401.)

Existing law, with numerous exceptions, includes the following penalties for drug offenses:

- Heroin, cocaine and other specified drugs (section references are to the Health and Safety Code):
  - § 11350 possession - felony - prison term of 16 months, 2 years or 3 years[1];
  - § 11351 possession for sale or distribution - felony - prison for 2, 3 or 4 years;
  - § 11351.5 possession of cocaine base (crack) for sale - felony - prison for 3, 4, 5 years; and
  - § 11352 sale or distribution – felony term of 3, 6 or 9 year term.
- Methamphetamine and other specified drugs:

[1] Hereinafter, a description of a crime as a "felony," without an additional explanation or description of the applicable sentence, means that the crime is punishable by imprisonment for 16 months, 2 years or 3 years.

- § 11377 possession – alternate felony-misdemeanor;
- § 11378 possession for sale or distribution – felony; and
- § 11379 sale or distribution – felony term of 2, 3 or 4 years.

- Marijuana:

  - § 11357 possession of under an ounce is an infraction;
  - § 11357 possession of hashish - alternate felony-misdemeanor;
  - § 11358 cultivation or processing – felony;
  - § 11359 possession for sale – felony; and
  - § 11360 sale or distribution – felon term of 2, 3 or 4 years.

Existing law provides that being under the influence of a specified controlled substance is a misdemeanor. (Health & Saf. Code § 11550.)

Existing Law – Proposition 36 (Nov. 2000 election), the Substance Abuse Treatment and Crime Prevention Act of 2000 (SACPA) – requires non-violent drug possession offenders to be offered drug treatment on probation, which shall not include incarceration as a condition of probation. (Pen. Code §§ 1210.1.)

Existing law provides that non-violent drug possession offenses include:

- Unlawful use, possession for personal use, or transportation for personal use of a controlled substance.
- Being under the influence of a controlled substance. (Health and Saf. Code § 11550.)
- SACPA eligibility is not affected by the classification of the underlying drug possession offense as a felony or misdemeanor. The controlling factor is that the drug is a controlled substance. (Pen. Code § 1210.)

Existing law requires persons who have been convicted of one of a list of numerous drug and drug-related crimes, including possession, possession for sale and sale of various controlled substances to register with the local police chief or sheriff, as specified. The registration requirement does not apply to a person convicted of misdemeanor possession of methamphetamine (or a specified drug such as psilocybin mushrooms). (Health & Saf. Code § 11590.)

This bill provides that possession for personal use of specified controlled substances is an alternate felony-misdemeanor (wobbler).

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the last several years, severe overcrowding in California's prisons has been the focus of evolving and expensive litigation relating to conditions of confinement. On May 23, 2011, the United States Supreme Court ordered California to reduce its prison population to 137.5 percent

of design capacity within two years from the date of its ruling, subject to the right of the state to seek modifications in appropriate circumstances.

Beginning in early 2007, Senate leadership initiated a policy to hold legislative proposals which could further aggravate the prison overcrowding crisis through new or expanded felony prosecutions. Under the resulting policy known as "ROCA" (which stands for "Receivership/ Overcrowding Crisis Aggravation"), the Committee held measures which created a new felony, expanded the scope or penalty of an existing felony, or otherwise increased the application of a felony in a manner which could exacerbate the prison overcrowding crisis. Under these principles, ROCA was applied as a content-neutral, provisional measure necessary to ensure that the Legislature did not erode progress towards reducing prison overcrowding by passing legislation which would increase the prison population. ROCA necessitated many hard and difficult decisions for the Committee.

In January of 2013, just over a year after the enactment of the historic Public Safety Realignment Act of 2011, the State of California filed court documents seeking to vacate or modify the federal court order issued by the Three-Judge Court three years earlier to reduce the state's prison population to 137.5 percent of design capacity. The State submitted in part that the, ". . . population in the State's 33 prisons has been reduced by over 24,000 inmates since October 2011 when public safety realignment went into effect, by more than 36,000 inmates compared to the 2008 population . . . , and by nearly 42,000 inmates since 2006 . . . ." Plaintiffs, who opposed the state's motion, argue in part that, "California prisons, which currently average 150% of capacity, and reach as high as 185% of capacity at one prison, continue to deliver health care that is constitutionally deficient." In an order dated January 29, 2013, the federal court granted the state a six-month extension to achieve the 137.5 % prisoner population cap by December 31st of this year.

In an order dated April 11, 2013, the Three-Judge Court denied the state's motions, and ordered the state of California to "immediately take all steps necessary to comply with this Court's . . . Order . . . requiring defendants to reduce overall prison population to 137.5% design capacity by December 31, 2013."

The ongoing litigation indicates that prison capacity and related issues concerning conditions of confinement remain unresolved. However, in light of the real gains in reducing the prison population that have been made, although even greater reductions are required by the court, the Committee will review each ROCA bill with more flexible consideration. The following questions will inform this consideration:

- whether a measure erodes realignment;
- whether a measure addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- whether a bill corrects a constitutional infirmity or legislative drafting error;
- whether a measure proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy; and

- whether a bill addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

> SB 649 will support reentry and reduce recidivism. Those convicted of a misdemeanor will be spared the lifelong barriers that follow a felony conviction, including obstacles to housing, employment, and even public support. Those convicted of a felony will be able to ask a court to reduce the conviction on their record to a misdemeanor after they have successfully completed probation.
>
> If the reduction is granted, a prospective employer or landlord will see the original conviction but also that a court had reduced the conviction to a misdemeanor following successful completion of probation. This signals rehabilitation to an employer and can increase a person's employment prospects.
>
> Allowing those committed to successful reentry an opportunity at a meaningful second chance both incentivizes positive behavior while under criminal justice supervision and supports people in achieving self-reliance.
>
> SB 649 will reduce disproportionate impact. Despite similar levels of drug use across racial and ethnic lines, people of color are vastly disproportionately arrested, prosecuted and incarcerated for drug offenses. SB 649 will have a tremendous positive impact for families and communities of color.
>
> SB 649 is supported by public opinion. In 2012, Tulchin Research found that 75% of Californians surveyed favor alternatives to incarceration for non-violent offenses; 62% support revising the penalty for low-level drug possession to a misdemeanor.

2. Alternate Felony-Misdemeanors – "Wobblers"

Penal Code section 17 describes an alternate felony-misdemeanor, or "wobbler" offense. A wobbler can either be a felony or a misdemeanor, depending on how the crime is charged by the prosecutor and how the court imposes sentence. If the prosecutor files a complaint charging the crime as a felony, a court can deem the crime to be a misdemeanor until the prosecutor has filed the "information" – the formal document charging a defendant in superior court with a felony. An information is filed after a magistrate in a preliminary hearing finds probable cause that the defendant committed the charged crime. Once the information has been filed, a wobbler charged

as a felony remains a felony throughout the trial process until sentencing, or unless a plea bargain has been made.

Wobblers give prosecutors and courts wide discretion and flexibility in charging and sentencing a defendant. The prosecutor and the court can consider the facts of the charged crime, the defendant's record and the defendant's attitude as these matters are developed through the process. The prosecutor can offer the defendant a plea bargain for specific felony resolution, such as probation, or for a misdemeanor, or the case can proceed to trial.

If the case is not resolved through a plea bargain, the defendant is tried for a felony. The jury does not know that the offense is a wobbler and does not have the option to find the defendant guilty of a misdemeanor. If the defendant is convicted, the court then finally determines whether the offense is a felony or a misdemeanor. If the court imposes a felony sentence, the offense remains a felony. If the court deems the offense to be a misdemeanor or imposes a misdemeanor sentence, the crime is a misdemeanor for all purposes. The court can also place the defendant on felony probation, but without imposing a felony sentence, and determine at a later time that the offense is a misdemeanor.

The appellate court in *People* v. *Trausch* (1995) 36 Cal. App. 4th 1239, 1246, succinctly explained the nature of wobblers from the perspective of the trial court:

> We conclude that section 17 is sui generis.[2] It specifically leaves the determination of the nature of the conviction to the discretion of the judge to be determined at sentencing. It applies only to "wobblers" and to no other crimes. It also provides that once the court has imposed a misdemeanor sentence, the offense becomes a misdemeanor "for all purposes."

3. Simple Possession of Methamphetamine: Felony and Misdemeanor Prosecution Rates in California

The three most widely-known drugs of abuse are cocaine, heroin and methamphetamine. Simple possession of heroin or cocaine is a felony, while simple possession of methamphetamine is a wobbler. A prosecutor thus has discretion to charge simple possession of methamphetamine as a misdemeanor or a felony under Health and Safety Code Section 11377, subdivision (a).

Prosecutors have told Committee staff that they very often charge simple methamphetamine possession as misdemeanor. However, available data indicates that prosecutors have widely varying methamphetamine possession charging practices, including some prosecutors who never charge the offense as a misdemeanor. The Stanford University Public Policy Practicum published a study in 2010 on wobblers[3] called "Wobblers and Criminal Justice in California, a Study in Prosecutorial Discretion."[4] The authors chose simple possession of methamphetamine

[2] Of its own nature – one of a kind.
[3] http://ips.stanford.edu/sites/default/files/shared/DA%20Discretion%20Final%20Report.pdf
[4] Hereinafter - Stan. Wobbler Study

because it comprises "over eleven percent of all charged cases in California in 2007, and because charging variation across counties was the greatest for this crime." (Stan. Wobbler Study, p. 8.)[5]

Seven district attorneys explained their charging discretion. The Ventura County District Attorney stated that it was never appropriate to charge methamphetamine possession as a misdemeanor. The other prosecutors "generally consider the same three case-related factors - quantity of drug, prior criminal record and existence of multiple charges." (Stan. Wobbler Study, p. 14.) However, the data establishes that prosecutors in each county apply these factors very differently.

Statewide, 18% of methamphetamine cases were charged as misdemeanors. However, the statewide average certainly does not truly reflect prosecutorial practice in each of the 58 counties. Charging rates for misdemeanor methamphetamine prosecutions vary widely, ranging from 0% in Fresno and Stanislaus Counties to 50% in San Francisco and Contra Costa Counties.

Representative data from the study is set out below:

County	11377 (a) prosecutions	Percentage of 11377 (a) charges filed as misdemeanor
All Counties	29,341	18%
Alameda	985	11%
Butte	308	4%
Contra Costa	413	50%
Fresno	1,249	0%
Kern	1,695	1%
Los Angeles	3,686	33%
Orange	4,472	24%
San Diego	824	25%
San Francisco	210	50%
Santa Clara	2,123	20%
Stanislaus	567	0%
Sutter	108	40%
Ventura	406	2%
Yolo	107	4%

DO THE DIFFERENCES AMONG COUNTIES IN CHARGING PRACTICES FOR POSSESSION OF METHAMPHETAMINE INDICATE THAT MAKING SIMPLE POSSESSION OF DRUGS SUCH AS COCAINE AN ALTERNATE FELONY-

[5] Health and Safety Code Section 11377 includes drugs other than methamphetamine, such as psilocybin mushrooms. However, the great majority of prosecutions under that section involve methamphetamine. Most of the examples cited in the study involved methamphetamine. (Stan. Wobbler Study, pp. 17-18, 22.)

MISDEMEANOR WOULD ALLOW PROSECUTORS AND COURTS TO EXERCISE WIDE DISCRETION, THUS REFLECTING THE ATTITUDES OF THE COMMUNITY AND THE NATURE OF THE OFFENSE AND THE RECORD AND ATTITUDE OF THE DEFENDANT?

4. Substantially Disproportionate Prosecution and Incarceration of African Americans and Latinos Relative to Drug Use and Commerce

Rates of Drug Use by Race and Ethnicity

Blacks, whites and Latinos use drugs at similar rates, with Latinos usage the lowest of the three. Asians use illicit drugs at a lower rate[6] than other ethnic or racial groups. The data in the following chart is from the National Survey on Drug Use and Health[7] published by United States Department of Health and Human Services (DHHS), including the most recent available data from 2011:

YEAR	Rate of Drug Use - Whites	Rate of Drug Use - Blacks	Rate of Drug Use - Latinos
2002	8.5%	9.7 %	7.2%
2003	8.3%	8.7%	8.0%
2004	8.1%	8.7%	7.2%
2005	8.1%	9.7%	7.6%
2006	8.5%	9.8%	6.9%
2007	8.2%	9.5%	6.6%
2008	8.2%	10.1%	6.2%
2009	8.8%	9.6%	7.9%
2010	9.1%	10.7%	8.1%
2011	8.7	10%	8.4%

Incarceration Rates in Drug Offenses by Race and Ethnicity (White, Black and Latino Defendants)

According to a 1999-2005 Sentencing Project Study,[8] African Americans are imprisoned for felony drug crimes at a rate five times greater than their proportion of the population. Whites are incarcerated for felony drug crimes at rate that is one third or one quarter their proportion of the population.

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[6] Among Asians, the percentage using illicit drugs in the past month was 3.5 percent in 2002, 3.8 percent in 2003, 3.1 percent in both 2004 and 2005, 3.6 percent in 2006, 4.2 percent in 2007, 3.6 percent in 2008, 3.7 percent in 2009, 3.5 percent in 2010 and 3.8 percent in 2011.

[7] Overall drug use in 2011 fell to 8.7 percent from 8.9 percent in 2010

[8] http://sentencingproject.org/doc/dp_raceanddrugs.pdf

YEAR	Whites - Percentage of State Prison Drug Crime Populations	Blacks - Percentage of State Prison Drug Crime Population	Latinos - Percentage of State Prison Drug Crime Population
1999	20.2%	57.6%	20.7%
2000	23.2%	57.9%	17.2%
2001	23.3%	56.8%	19.1%
2002	24.3%	47.5%	23.3%
2003	25.9%	53.0%	20.0%
2004	26.4%	45.1%	20.8%
2005	28.5%	44.8%	20.2%

These data must be viewed in light of the proportion of whites, blacks and Latinos in the population. According to the United States Census:

All whites, including Hispanics of European origin	Non-Hispanic whites	African Americans	Latino/Hispanic
72.4%	63.7%	12.6%	16.3%

In 2000, Human Rights Watch researchers found that through 1996 African Americans were 13 times more times more likely to be imprisoned for drug crimes than whites.[9] The Sentencing Project study indicates that that disparity has been reduced somewhat in recent years, although the disparity is still striking. These disproportionate prosecution rates exist despite the fact that African Americans and whites use drugs in roughly equivalent proportions. Other studies have reported that white youth sell drugs at a much higher rate than African American youth.

5. Drug Use and Commerce by College Students and Adolescents, Analyzed by Race and Ethnicity; Racial Disparities in Juvenile Drug Prosecutions

In 2007, the National Center on Addiction and Substance Abuse at Columbia University published a study of drug and alcohol use by college students.[10] The study showed substantially higher use of drugs by whites than African Americans. For example, white students were twice as likely to illicitly use prescription drugs, marijuana and MDMA (eecstasy) than African American students. Students at traditionally Black colleges had particularly low drug use rates.

The 2011 National Institute of Health (NIH) study of adolescent drug use[11] found that "African American students have substantially lower rates of use of most … drugs than do whites at all three grade levels [10th-12th grades]." (*Monitoring the Future, National Results on Adolescent Drug Use*, Johnston, et al., NIH, 2012, p. 45.)

[9] http://www.hrw.org/reports/2000/usa/
[10] http://www.casacolumbia.org/articlefiles/380-Wasting%20the%20Best%20and%20the%20Brightest.pdf
[11] http://monitoringthefuture.org/pubs/monographs/mtf-overview2011.pdf

Despite the fact that white adolescents use drugs at much higher rates than minority adolescents, the United States Department of Justice Office of Juvenile Justice and Delinquency Programs (OJJDP) found[12] that in 2006 that "juvenile arrests disproportionately involved minorities." African American minors were arrested for drug offenses (30% of all drug arrests) at a rate approximately 3 times their proportion of the population. (Juv. Justice Bulletin, Nov. 2008, U.S. DOJ, OJJDP, p. 10.)

Another study published in the American Journal of Alcohol and Drug Abuse in March of 2010 analyzed data from the National Survey on Drug Use and Health. According to a summary[13] published by NIH, the study found that white and African American youth engaged in drug commerce at equivalent rates. However, white youth used and sold a wide range of drugs. African American youth were more likely to use and sell marijuana. White youth who were engaged in drug commerce were also likely to be "entrenched" users of drugs such as cocaine.

The most recent drug trend statistics from the National Institute on Drug Abuse – last revised in December, 2012[14] - found that non-marijuana drug use has stayed relatively steady in recent years. Cocaine use, however, is down:

> Use of most drugs other than marijuana has not changed appreciably over the past decade or has declined. In 2011, 6.1 million Americans aged 12 or older (or 2.4 percent) had used psycho-therapeutic prescription drugs nonmedically (without a prescription or in a manner or for a purpose not prescribed) in the past month—a decrease from 2010. And 972,000 Americans (0.4 percent) had used hallucinogens (a category that includes Ecstasy and LSD) in the past month—a decline from 2010.
>
> Cocaine use has gone down in the last few years; from 2006 to 2011, the number of current users aged 12 or older dropped from 2.4 million to 1.4 million. Methamphetamine use has also dropped, from 731,000 current users in 2006 to 439,000 in 2011.

6. Felony Drug Possession and Misdemeanor Drug Possession States: Comparison of Drug Use and Drug Treatment Rates

President Nixon declared a war on drugs in1971. After that declaration, drug penalties have generally increased. California adopted the federal controlled schedules and set penalties based on the federal schedules in 1972. Nixon established the Drug Enforcement Administration in 1973. President Reagan signed legislation establishing mandatory minimums for drug crimes, including much higher penalties for simple possession of "crack cocaine" than powdered cocaine, in 1986. (The five year minimum sentence for simple possession of five grams of crack cocaine was only recently repealed by Public Law 111-220.) California enacted higher

[12] https://www.ncjrs.gov/pdffiles1/ojjdp/221338.pdf
[13] http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2871399/
[14] http://www.drugabuse.gov/publications/drugfacts/nationwide-trends

penalties for possession of cocaine base for sale in 1986. President George H.W. Bush appointed the first drug czar in 1989. Inherent in these policies is a belief that relatively severe penalties for drug crimes, including drug possession, deter people from using or selling drugs. (*Timeline, America's War on Drugs*, NPR, April 2, 2007[15]; Health & Saf. Code §§ 11054-11058; 11350-11383.7, 11351.5.)

Similarly, in discussions on legislation in 2012 that would have made simple drug possession a misdemeanor,[16] law enforcement representatives and prosecutors argued that the threat of felony penalties is necessary to induce drug users to stop taking drugs and to engage in treatment. In particular, it was argued that drug possession defendants will refuse Proposition 36 treatment on probation unless the consequence of that decision is a felony.

The long history of steady drug use in the face of punitive drug laws raise issues about whether or not felony penalties actually deter drug use and induce people to participate in treatment. The author has provided the Committee with studies comparing rates of drug use and drug treatment in states that treat simple drug possession as a felony with states that treat simple drug possession as a misdemeanor. The data indicate that drug *use* rates are slightly lower in states in which drug possession is a misdemeanor than in states where drug possession is a felony. In particular, misdemeanor drug possession states had an average illicit drug use rate in the population of 3.55%, excluding marijuana use. Felony possession states had an average rate of use of 3.61%. Among felony states with more severe penalties than California, the average rate rose slightly to 3.62%.[17]

Comparisons of Misdemeanor and Felony Drug Possession States – Drug Use Rates as a Percentage of the Population

Rate of Drug Use in Felony Possession States	Rate of Drug Use in Misdemeanor Possession States	California – Mostly Felony Possession, Wobbler Methamphetamine
3.61%	3.55%	3.50 %

Making drug possession a misdemeanor does not appear to reduce drug treatment participation. Treatment rates in misdemeanor states are significantly higher than in felony states. Further, among the 13 states in which drug possession is a misdemeanor[18], six are among those with the highest rate of drug treatment. These results were not uniform, as some states with misdemeanor penalties had relatively low rates of treatment, such as Wisconsin with 162 in treatment per 100,000 people. However, the misdemeanor possession state of New York had a very high treatment rate of 995 per 100,000. Further, a number of felony possession states - Nebraska

[15] http://www.npr.org/templates/story/story.php?storyId=9252490
[16] SB 1506 (Leno) 2012, failed passage on the Senate Floor.
[17] http://www.samhsa.gov/data/2k5State/AppB.htm#TabB.6
[18] The misdemeanor states are Delaware, Iowa, Maine, Massachusetts, Mississippi, New York, Pennsylvania, South Carolina, Tennessee, Vermont, West Virginia, Wisconsin, Wyoming and the District of Columbia.

Alabama and Arizona for example - had treatment rates below 300 per 100,000, and others, such as North Dakota, Texas and Florida, had treatment rates well below 200 per 100,000.

Drug Treatment Rates per 100,000 people in Felony and Misdemeanor Possession States

Misdemeanor States - Treatment Rates	Felony States - Treatment Rates	National Average - Treatment Rates
513 per 100,000	432 per 100,000	434 per 100,000

7. Addiction and Drug Dependence Treatment Research

The National Institute on Drug Abuse has reviewed much recent research about the science of drug addiction, dependence and treatment. The NIDA website states: "Recent scientific advances have revolutionized our understanding of drug abuse and addiction, which is now recognized as a chronic relapsing brain disease."[19]

NIDA has also conducted research into the science of brain chemistry and addiction. Very new research indicates that treatments focusing on the prefrontal cortex of the brain could interfere with or stop compulsive drug use, use that continues despite negative consequences and the sincere desire to quit:

> Could drug addiction treatment …. be as simple as an on/off switch in the brain? A study[20] in rats has found that stimulating a key part of the brain reduces compulsive cocaine-seeking and suggests the possibility of changing addictive behavior generally.
>
> "This exciting study offers a new direction of research for the treatment of cocaine and possibly other addictions," said NIDA Director Dr. Nora D. Volkow. "We already knew, mainly from human brain imaging studies, that deficits in the prefrontal cortex are involved in drug addiction. Now that we have learned how fundamental these deficits are, we feel more confident… about the therapeutic promise of targeting that part of the brain."
>
> Compulsive drug-taking, despite negative health and social consequences, has been the most difficult challenge in human drug addiction. NIDA researchers used an animal model of cocaine addiction, in which some rats exhibited addictive behavior by pushing levers to get cocaine even when followed by a mild electric shock to the foot. Other rats did not exhibit addictive responses. The …

[19] http://www.drugabuse.gov/publications/science-addiction/drug-abuse-addiction

[20] The study was published in Nature and done by scientists at the Intramural Research Program of the National Institute on Drug Abuse (NIDA) and the University of California, San Francisco.

> scientists compared nerve cell firing … [in the] the prefrontal cortex [of both groups of rats]. [C]ocaine produced greater functional brain deficits in the addicted rats. [The scientists then stimulated the brain cells of both the sets of rats and reversed the behavior of the rats.]
>
> This is the first study to show a cause-and-effect relationship between cocaine-induced brain deficits in the prefrontal cortex and compulsive cocaine-seeking," said NIDA's Dr. Billy Chen, first author of the study. "[O]ur results can be immediately translated to clinical research … with humans, and we are planning clinical trials to stimulate this brain region using non-invasive methods," said Dr. Antonello Bonci, NIDA scientific director and senior author of the study. "By targeting a specific portion of the prefrontal cortex, our hope is to reduce compulsive cocaine-seeking and craving in patients.[21]

8. Underfunded Drug Treatment in the Criminal Justice System

Under SACPA - The Substance Abuse and Crime Prevention Act of 2000 (Proposition 36 of the 2000 General Election) - defendants who are convicted of non-violent drug possession must, with specified exceptions, be offered treatment on probation with no incarceration. SACPA participants can commit two drug-related violations of probation before being excluded from the program and sentenced for the underlying conviction.

The state Substance Abuse Treatment Trust Fund provided $60 million in start-up funds for the first year and $120 million annually for five years (2001-2006).[22] Funding then steadily declined each year until 2009, when all direct state funding for SACPA-mandated treatment ended. Counties are still mandated, however, to provide some sort of treatment to those eligible for SACPA. Current alternative sources of funding relied on by counties include federal block grants, federal Drug Medi-Cal reimbursements, AB 109 Support Services budgets for Behavioral Health, Cal-WORKS Social Services accounts and other local discretionary budgets.

Nevertheless, treatment programs are underfunded and oversubscribed. An indigent SACPA participant is likely to wait to be admitted into a treatment program for anywhere from two days to five months, depending upon the services a participant requires, despite research indicating that treatment should be started as soon as possible.[23] Additionally, programs currently offered by counties may not meet standards for evidence-based treatment as many counties have reported recent reductions in the frequency of treatment, the number of client contacts and the level of supervision.

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[21] http://www.drugabuse.gov/news-events/news-releases/2013/04/nih-study-sheds-light-how-to-reset-addicted-brain
[22] Department of Alcohol and Drug Programs, Substance Abuse and Crime Prevention Act of 2000, Fact Sheet, http://www.adp.state.ca.us/SACPA/prop36.shtml)
[23] David Bornstein, For Drug Users, a Swift Response is the Best Medicine, New York Times, January 8, 2013

Implementation of the Affordable Care Act will likely provide additional funding for SACPA and other court-based treatment programs. On January 1, 2014, California expands its Medi-Cal coverage to lawfully-present childless adults with income up to 138% of the Federal Poverty Level, with the federal government covering all coverage costs for the first three years, eventually decreasing coverage to 90%. As a result, a large share of drug offenders will become eligible for subsidized SUD treatment and next, year, the federal government will cover 100% of treatment costs if the offender earns between 100% and 138% of the Federal Poverty level (between $11,170 and $15, 415 for a family size of 1). If he or she earns less than 100% of the federal poverty level, the federal government only covers 50% of the costs, the current rate. County health officials are exploring these funding sources.

As discussed in Comment # 7, recent research strongly indicates or establishes that addiction and compulsive drug abuse are chronic, relapsing brain diseases. The brains of addicts are altered by use of the addicting substance such that addicts seek out drugs despite serious negative consequences. Many addicts may be genetically predisposed to addiction and certain environmental factors may substantially affect additive behavior. By the nature of their disease, addicts are particularly likely to relapse.[1] Sparse treatment funding, limited availability and a lack of evidence-based standards, combined with the inherent tendency of addicts and chronic drug abusers to relapse, limits the effectiveness of SACPA treatment.

Although SACPA operates with great limitations, studies by the UCLA Integrated Substance Abuse Program (ISAP) establish that taxpayers saved approximately two dollars and fifty cents for each dollar invested in SACPA.[24] Over thirty months, looking exclusively at offenders entering SACPA during its first year, this cost analysis represents a savings to state and local government of $173.3 million. Those offenders who successfully complete treatment save taxpayers nearly four dollars for each dollar invested. ISAP researchers predict substantially higher savings if the program was adequately funded and operated. "The cost savings are dramatic," ISAP researchers explained, "but with increased system accountability measures and improved offender management, as well as incentives to community programs for better treatment entry, retention, and completion rates, they could rise even higher." Additional measures noted by ISAP researchers include improvements in service coordination within counties, improvements to continuity of care, better participant screening and attention to special populations of offenders such as minorities and those with comorbid disorders.

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[1] http://www.drugabuse.gov/publications/science-addiction/drug-abuse-addiction
[24] Longshore, Hawken, Urada and Anglin, Evaluation of SACPA, Cost Analysis, UCLA Integrated Substance Abuse Program, March 13, 2006, http://www.uclaisap.org/prop36/documents/SACPA_COSTANALYSIS.pdf