

California Public Defenders Association
Position Paper on
Proposition 5 (Nov. 4, 2008 General Election Ballot),
The Nonviolent Offender Rehabilitation Act (NORA) of 2008

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Summary of NORA's Provisions

NORA has three primary aims, and many smaller ones. It will enact or amend 46 Sections of the Government, Penal, Health and Safety, and Welfare and Institutions Codes.

First Primary Aim: Expanding, Reforming, and Tightening “Prop 36 Drug Treatment.” (NORA §§ 11 to 18; 21; 32, and 48; Funding: §§ 36 and 39)

This program will now be divided into three Tracks, I, II, and III. Each track is aimed at persons with increasingly serious drug problems, and so each track is of increasing intensity. These roughly correspond to the existing Penal Code section 1000 Deferred of Judgment program (Track I), Proposition 36 Probationary Drug Treatment (Track II), and Post–Conviction Drug Courts (Track III).

Some short-term incarceration is permitted in Tracks II and III. This will permit courts the flexibility denied them in Prop 36.

Court monitoring of participants is increased and tightened. Participants are required to start treatment within 30 days or face court action, thus addressing the problem of “no-shows.”

Overall program oversight at the state level is also increased. A new Treatment Diversion Oversight and Accountability Commission is created.

Qualified offenders with certain non-drug offenses can, in the court's discretion, be allowed, under different criteria, in each Track. The overriding requirement of non-violence remains, and no one with any non-drug crime gets in without court approval.

Judgment is deferred under Track I. In Tracks II and III the person is on probation.

Drug-related Track I failures must be sentenced to probation in Track II; Persons who fail for other reasons are no longer eligible.

Drug-related Track II failures can be put into Track III, or can be sentenced to a year in county jail; courts are likely to will place the person into Track III treatment. Persons who fail for other reasons are no longer eligible.

Courts have great discretion in admitting a person into Track III: the person must first meet statutory criteria, and then, in most cases, the court must also find that admittance is in furtherance of justice. On a case-by-case basis, courts can permit people who committed non-drug, non-violent offenses into Track III, and can require that they serve a portion of their sentences first. Persons who fail Track III treatment must be sentenced under general law.

Drug treatment can include residential treatment.

Ancillary services in all Tracks can include child care and transportation needed to attend programs.

Startup funding is \$150 Million for all of NORA's non-prison programs, and, thereafter, annual funding for the Tracks I, II, and III programs is at least \$385 Million.

NORA has considerable overlap with the Penal Code 1000 Deferred Entry of Judgment Program, and with traditional Drug Courts. It increases funding for Drug Courts.

Second Primary Aim: New Drug Treatment Programs for At-Risk Youth Under Age 18.

Programs are required in each county. Funding is provided under a complex formula; the Legislative Analyst’s Office states this will be 15% of the funding of the Substance Abuse Treatment Trust Fund; NORA’s proponents state this will be at least \$65 Million¹ annually; fines for low-level marijuana offenses will also be available.

A new Treatment Diversion Oversight and Accountability Commission is created to review, direct and approve the implementation, and use of funds by the Department of Alcohol and Drug Programs for both Tracks I, II, and III, and for the Youth Programs.

Among the purposes for which funds could be used are could be used for drug treatment, mental health medication and counseling, family therapy, educational stipends for higher education, employment stipends, and transportation services.

***Third Primary Aim: To Reform Some Basic Structures of California’s Prison and Parole System by Mandating Numerous Rehabilitation Programs, and Limiting Prison>Returns for Technical Violations.
(NORA §§ 4 to 9, 19 to 25 to 30)***

One of NORA’s “Purposes and Intentions” is to “transform the culture”¹ of California’s prison and parole system by reforming their basic structures, and by mandating numerous rehabilitation programs.

¹ NORA, § 3, subd. (j).

The California Department of Corrections and Rehabilitation (CDCR) will have a new co-leader, a Secretary of Rehabilitation and Parole. Some of the new Secretary's duties will be delineated by the Legislature.

At every prison will be a new Deputy Warden for Rehabilitation.

The Parole bureaucracy is also reformed.

- A Parole Reform Oversight and Accountability Board is created.
- There will be a new Division of Parole Policy, Programs, and Hearings, under the new Secretary of Rehabilitation and Parole.
- The Board of Parole Hearings (recently renamed; formerly, the Board of Prison Terms) will be part of that new Division. The Board will be expanded, and its members chosen somewhat differently.

Rehabilitation programs must be offered to every inmate being released at least 90 days before release. Qualified inmates will receive extra sentence reduction credits for completing a program.

Nonviolent drug possession violations would, as under current Prop 36, result in mandatory drug treatment.

The length of parole for drug and non-violent property-crime offenders is generally reduced to six months. This can be increased by an additional six months if the parolee fails to complete an appropriate rehabilitation program.

Increased parole length is provided for those serious and violent offenses that used to be three years; it will now be five years.

All parolees must receive rehabilitation programs tailored to their needs.

Transportation to and from these programs must be provided by CDCR.

For 12 months after parole discharge, a former parolee can, on request receive rehabilitation services at state expense.

Parole revocation hearings would be held within three business days.

Return to prison for parole violations is sharply limited:

- For a first technical violation (i.e. violation of parole rules other than criminal and absconding) is not permitted; and, for subsequent violations is also to county jail of 7 or 14 days.
- Absconding (which can simply mean not reporting), first offense, can receive no more than 20 days jail. Other non-incarceration options and sanctions can also be imposed.
- Reincarceration for misdemeanors is limited to county jail time. Other modifications and sanctions can also be imposed.
- A first-time absconder can get 30 days jail. Other non-incarceration options and sanctions can also be imposed.

Other Aims of NORA.

- To insure that the dually diagnosed (both mental health and drug problems) are included in county mental health plans.
- To reduce simple possession of less than an ounce (28.5 grams) of marijuana to an infraction.
- County jails that house Track II and III probationers or parole violators, must provide overdose awareness and prevention education to all inmates (NORA § 49)

NORA Will Be Phased In, and Will Be Fully Effective July 1, 2009.

The Governor must appoint a new Secretary of Rehabilitation and Parole by February 1, 2009.

The new Parole Reform Oversight and Accountability Board, whose members are appointed by various office-holders, must be seated by March 31, 2009.

Several provisions permit additional legislative action, and several provisions require new administrative regulations.

NORA will supersede the 2006 amendments made to Prop 36 by SB 1137. Those amendments were never implemented and have been declared invalid by the courts.

Assessment of NORA.

The California Public Defenders Association (CPDA) endorses NORA.

- For courts, NORA is intended to give judges more flexibility, hopefully it will improve court monitoring and state oversight, and, most importantly, it will hopefully improve court-ordered drug treatment.
- For youths under age 18, NORA will provide drug treatment for those at risk, often before they incur juvenile delinquency adjudications.
- For the prisons, NORA is intended to make sure meaningful drug education is provided to all before release, and will ease prison overcrowding.
- For parolees, NORA is intended to make sure that drug treatment is provided, and made really available, when it is needed, and make sure that parolee's reintegration into society is not needlessly disrupted by unnecessary re-imprisonment for technical, non-criminal violations.
- For everyone, NORA is intended to ease prison overcrowding, prevent recidivism, improve the system of court-ordered drug treatment, and help youth before intractable drug problems develop.

NORA can be compared, in overall size and effects, to the six other Initiatives that have radically changed California Criminal Law in the last 26 years. Those Initiatives are set out in the footnote.²

Implementation of NORA's expanded Prop 36 drug treatment programs will require major efforts statewide and in each county that will rival the implementation efforts required for the original Prop 36 in during November 2000 to July 1, 2001. California's counties are likely capable of living up to this task, as shown by the smooth and enthusiastic implementation, eight years ago, of the original Prop 36.

NORA's expansion and reform of "Prop 36 Drug Treatment" will close some major gaps in both eligibility and accountability. The program will hopefully be better, more efficient, and more successful. NORA addresses the following problems and shortcomings of the original Prop 36:

- Judges will have the flexibility to impose short-term jail sanctions in Tracks II and III.
- Drug Treatment can include residential treatment.

² The six other Initiatives that have each made major changes in California criminal law in the last 26 years have been

- (1) Fall 2006's *Proposition 83* (Jessica's Law, concerning sex offenses);
- (2) Fall 2000's Proposition 36 (mandatory drug treatment);
- (3) Spring 2000's *Proposition 21* (Gang Violence and Juvenile Crime Prevention Act of 1998);
- (4) 1994's *Proposition 184* (Three Strikes) (which was preceded, by months, by the legislatures enactment of a nearly identical law);
- (5) 1990's Proposition 115 (far-reaching law and procedural changes such as prosecution discovery); and
- (6) 1982's Proposition 8 (far-reaching law and procedure changes, such as abrogating California's independent state grounds for suppression of illegally obtained evidence.)

- Dividing the program into three Tracks will increase the court's ability to tailor treatment, and to admit those who will really benefit.
- The increase in ancillary services to include child care and transportation when necessary will end a major reason for non-participation.
- The increase in court reviews and monitoring for individuals, and state reviews of county programs will lead to greater accountability, more rapid improvement, and greater program success.

NORA will increase the use of California's drug treatment courts; but this will not be exponential, so it is hoped our county courts will be able to absorb this increase. Courts can absorb this increase because, although treatment populations will increase, it is likely that more of them will succeed at treatment; in addition, NORA also allows some of the existing courts to be combined, for further savings.

Likewise, NORA may increase the need for District Attorney and Public Defender staff, if the county Department Heads, in consultation with all stakeholders, choose to staff the local drug treatment courts. Currently, many of California's drug treatment courts are not so-staffed, so any increase in that county expense will also not be exponential; as mentioned, courts can be streamlined and combined, for further savings.

NORA's new, comprehensive local drug treatment system is intended to be more effective than the existing, fragmented, ones.

For at-risk youth under age 18, NORA's requirement of drug treatment programs does more than close a gap: it provides for treatment where there was almost none before, and where it will do the most good: before the young person's drug problem grows.

For our prison and parole system, it is hoped that NORA will meet its aim of “transforming the culture.” NORA’s changes to the California Department of Corrections and Rehabilitation (CDCR) are not just nominal and are not just additional. NORA’s changes are systemic and comprehensive. They are seemingly sensible and practical changes.

CPDA believes that CDCR is capable of the major implementation task that NORA requires. It would seem that NORA provides adequate time for this. CPDA fervently hopes that our Governor and other elected and appointed officials will appoint good, effective, people to fulfill the new positions that NORA creates.

NORA holds the promise of reducing California’s prison overpopulation problem by limiting the number of drug–offenders who go to prison, and by limiting the return to prison for technical parole violations. This will preserve prison beds for offenders who are serious and violent.

NORA is intended to increase the effectiveness of California’s parole system by requiring it to effectively address a major parole problem: substance use and abuse. NORA is intended to prevent the needless and disruptive return to prison for mere technical, non–criminal, parole violations and by permitting parole resources to be directed toward those who most need parole supervision, serious and violent offenders.

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