

CADPAAC

County Alcohol and Drug Program Administrators Association of California

*Dedicated to the reduction of individual and community problems related to the use of alcohol and other drugs
and the chronic disease of addiction*

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Thomas Renfree

July 18, 2008

To all CADPAAC Administrators:

Recently the National Association of Drug Court Professionals (NADCP) distributed a paper highly critical of the Nonviolent Offender Rehabilitation Act (NORA) – Proposition 5 on the November 2008 ballot. Much of their criticism is based on ideological differences between the Drug Court professionals and the sponsors of NORA on issues related to the disposition and treatment of drug offenders.

Even though CADPAAC supports NORA, we acknowledge that on many of these issues reasonable people can disagree, and we believe that a spirited debate can be useful. However, we owe it to those with whom we disagree to at least represent their positions accurately. Otherwise, we simply end up attacking a straw man, which is not helpful to anyone. Unfortunately, the NADCP paper contains several misrepresentations of NORA that have caused confusion in some counties, even among treatment and prevention providers. In an attempt to clarify some of these issues, we have prepared the attached paper, which compares the claims of the NADCP paper with the actual provisions of NORA. We hope that this will be useful to you as you are confronted in your county with questions or concerns about Prop. 5.

Ultimately, of course, these issues will be decided by the voters on November 4. If NORA passes, all of us involved with the treatment of drug offenders – judges, law enforcement, probation, parole, treatment providers – will hopefully collaborate to implement the initiative and provide the most effective services. If NORA does not pass, then we will all continue to work together to build on the successes of the current Drug Court, Proposition 36 and Offender Treatment Programs.

Please feel free to contact this office if you have any questions about the attached paper, or if you would like us to provide further clarification or information on any of these issues.

Sincerely,



Tom Renfree
Executive Director

What NADCP Says About NORA

NORA makes negative and unwarranted statements about Drug Courts. Although NORA adopts certain elements of the Drug Court model, it contains language that reflects negatively on Drug Courts, and compares them unfavorably to Proposition 36. This implied hostility toward Drug Courts would be officially incorporated into a statute under the section entitled “Findings and Declarations,” and could be used to guide future interpretations of statutory intent.

NORA decreases Drug Court autonomy, by requiring that eligibility and exclusion criteria be determined by statute rather than by court rules or procedures or clinical judgment. Judges would be disabled from determining, based upon their ongoing experiences with an offender, whether a different disposition would be more likely to improve outcomes or protect public safety. Although NORA pays lip service to collaborative justice, it requires numerous and unnecessary adversarial hearings that can only weaken collaborative efforts and create an adversarial environment hostile to effective rehabilitation.

Drug Courts are required to take the most incorrigible offenders, including those convicted of 5 or more offenses in the previous 30 months, excluding violent and serious felonies. In essence, Drug Courts become the repository for untreatable, and not necessarily addicted, offenders.

What NORA Actually Says

NORA states that Drug Courts will be required “for the first time to systematically collect and report data regarding their budgets, expenditures, operations, and treatment outcomes.” Rather than hostility toward Drug Courts, this requirement reflects a commitment that Drug Courts should be held to the same standards of performance accountability, outcomes measures, and proof of effectiveness as other AOD treatment services.

This issue raises a difference of opinion about how much autonomy Drug Court judges should have. NORA does include some eligibility and exclusion criteria, thereby restricting the authority of judges to determine all of these criteria. At the same time, the initiative gives judges under Track III (the Drug Court model) extensive judicial discretion over the eligibility and disposition of offenders in this track, including the ability to impose jail sanctions at any time. (Jail sanctions are also allowed for Track II offenders.) Adversarial hearings are required as a matter of due process, and no evidence is presented that they create an environment hostile to effective rehabilitation or collaboration.

Drug Court judges have extensive discretion over who gets into Track III programs, as well as the ability to remove offenders who prove to be unamenable to treatment. NORA does require the Track III courts to take the one category of offenders who, according to the UCLA evaluation, did not do well under Prop. 36 – those convicted of 5 or more nonviolent, nonserious offenses in the previous 30 months. There are very few offenders who fit this profile.

What NADCP Says About NORA

NORA weakens and reduces the independence of Drug Courts in California, by requiring all courts working with Track III offenders to be governed by the statute, and by placing primary administrative oversight for the programs under ADP. ADP and the Judicial Council are further put under the direction of a newly-created 23-member Oversight Commission comprised primarily of treatment personnel, defense counsel, and “drug policy advocates” (read: DPA staff), with no more than three judges or law enforcement personnel as members. The effect of these provisions is to bring Drug Courts under the control of non-judicial personnel, and prevent independent decision making and innovation by Drug Courts.

NORA compromises the Drug Court model, and erects multiple barriers to applying the Ten Key Components of Drug Courts.

NORA is inconsistent with scientific research on evidence-based dispositions for drug offenders.

NORA states that the use of jail sanctions “has never been proved effective,” in spite of two experimental studies in the District of Columbia and Hawaii that have demonstrated the efficacy of “coerced abstinence” programs. These studies are ignored, and a contradictory statement is made in the statute under Findings and Declarations.

What NORA Actually Says

This statement of ideology is valid only if one believes that Drug Courts should be independent of statute, regulation, or treatment oversight. The Oversight Commission created by NORA, all of whose members are appointed by the Governor or the Legislature, includes two probation officers and three representatives from law enforcement and/or the judiciary. Almost all of the panel’s members are traditionally Drug Court allies, and there is no reference to or requirement to include DPA staff.

(See the Appendix for a comparison of NORA with the Ten Key Components of Drug Courts.)

Evidence for this claim was not presented in the NADCP paper. NORA in fact requires careful consideration of each individual’s risks and needs in designing a treatment and supervision regimen.

Tracks II and III both embrace the use of a “dedicated court calendar” and “collaborative court model,” including periodic review hearings with graduated sanctions and incentives. These tracks also allow for the use of jail sanctions as a tool to enhance treatment compliance. Consistent with the two experimental studies quoted by NADCP, the California Policy Research Center, in its 2002 case study of drug testing and sanctions, indicates that coerced abstinence, while potentially efficacious for accountability, is not the same thing as treatment, and in and of itself is not likely to lead to lasting recovery. Citing studies by UCLA, the California Department of Alcohol & Drug Programs notes that there is a strong correlation between length of time in treatment and positive outcomes.

What NADCP Says About NORA

NORA prohibits the use of funding from the initiative for drug testing.

Urine tests may only be used as a “treatment tool” to alter treatment conditions, and not as the basis for a violation or entry of judgment.

NORA bases eligibility determinations exclusively on offenders’ official criminal records and ignores their profiles of criminogenic history, needs and risks. High-risk/high-needs individuals generally do not perform well in low-intensity programs, such as diversion or probation, and it is unwise policy to require such poorly-matched dispositions to be implemented numerous times. NORA ignores the recommendations of the Little Hoover Commission and erects steadfast barriers against matching high-risk drug offenders to appropriate supervision.

NORA repeals statutes and programs that take contrary positions to DPA on drug-related matters. For example, it abrogates the proposed amendments to Proposition 36 that would extend court monitoring and accountability. It also eliminates the Offender Treatment Program, which was created by the Governor and the Legislature to improve the Prop. 36 program by implementing innovative practices to enhance the intensity of treatment and supervision.

What NORA Actually Says

NORA funds can be used for drug testing of Track III clients. Section 39 of the initiative states that NORA funds cannot be used for drug testing of youth or clients in Tracks I and II programs. Currently the Health & Safety Code allows SATTA funds to support drug testing in Proposition 36 programs, and NORA would not change that provision. Since the initiative is primarily about treatment, drug testing is supported as a tool to monitor and enhance compliance with a client’s treatment plan. However, if forensic testing is required, nothing in NORA prevents probation or parole offices from doing this.

NORA requires both a clinical assessment, to determine the appropriate level and intensity of treatment for each offender, as well as a criminal history assessment to determine the appropriate level of supervision and monitoring for each defendant.

NORA addresses many of the concerns outlined in the Little Hoover Commission report, such as the requirement for risk and needs assessments to determine appropriate levels of treatment and supervision, the use of rewards as well as escalating sanctions, frequent interaction between offenders and judges, and the use of research and planning to coordinate the treatment of addiction.

The Prop. 36 program will be largely incorporated in Track II of NORA. The Prop. 36 amendments referred to in the NADCP paper were enjoined and then declared invalid on constitutional grounds by the Superior Court. NORA incorporates several of the enhancements recommended by the UCLA evaluation, the Offender Treatment Program, and the LHC report. Moreover, the initiative integrates Prop. 36 and OTP funding, and provides for appropriate treatment and supervision based on comprehensive assessments.

What NADCP Says About NORA

NORA decriminalizes marijuana possession, at a time when national studies are documenting the ongoing use of and addiction to marijuana by adolescents and young adults.

NORA also advances other politically controversial positions, such as the endorsement of harm reduction services on an equal footing with other treatment approaches. The term “harm reduction” has no one meaning, but has come to be associated with the drug legalization movement.

NORA places substantial burdens on the court system without adequate resources. Only 10% of the total NORA appropriation is directed for Track III, although it will be dealing with the most serious offenders. It is highly unlikely that sufficient funds will be appropriated to meet the substantial new mandatory burdens being placed on Drug Courts. Moreover, NORA buries Drug Courts within a complex administrative structure, and places them under the control of an independent oversight commission comprised largely of non-judicial personnel. Additional burdens are imposed with regard to periodic reviews, sealing of records, and

What NORA Actually Says

NORA re-defines the possession of less than 28.5 grams of marijuana as a fineable infraction rather than a misdemeanor, with the proceeds from these fines devoted to youth treatment services. This is a minor change in current law, given that violators now are usually not jailed. The initiative does not legalize marijuana, nor does it deny the potential harm of this drug. However, this provision will help keep nonviolent parolees in treatment rather than recidivating back to overcrowded prisons. NORA also mandates that adolescents who are guilty of a marijuana infraction must participate in a science-based drug education program, a diversion opportunity that could help with early intervention for thousands of adolescents each year.

Section 11 of NORA states that the terms “harm reduction therapy” and “harm reduction services” mean programs guided by a public health philosophy which promotes methods of reducing the physical, social, emotional, and economic harms associated with drug misuse and other harmful behaviors on individuals, their families, and their communities. Even though harm reduction is utilized by other healthcare systems, it is not a substitute for treatment under NORA, and no county is required to implement a harm reduction program.

Under NORA Track III would receive 10% of the annual \$460 million allocation. Even after the withhold of specified “off-the-top” funds, Track III programs will likely receive over \$40 million annually, which would substantially increase the amount that currently goes to adult Drug Court programs. Since many of the offenders who will be eligible for Track III are already in the Drug Court system, it is not likely that the caseload will increase significantly. Drug Court judges already consider a wide range of factors and services when rendering dispositions, imposing sanctions, and dealing with offenders who fail to enter treatment.

What NADCP Says About NORA

collection of evaluation data. The result can only be to weaken California Drug Courts politically and economically, reduce their apparent effectiveness, and constrain judicial innovation and independence.

The enormous taxpayer expenditures mandated by NORA far exceed any realized benefits.

NORA reduces accountability by allowing for more treatment failures and violations, and fails to learn the lessons of Prop. 36. The result is likely to reduce the effectiveness of the judiciary for combating drug-related crime in California, and contribute to a further increase in drug-related recidivism.

What NORA Actually Says

Regular status or review hearings for offenders are currently part of the Drug Court design, and many of the NORA requirements are already common practice. Collection of evaluation data is required of Proposition 36 and other treatment programs in order to measure effectiveness and outcomes performance, and would only serve to strengthen the efficacy of Drug Courts, consistent with Key Component #8, which specifies that “monitoring and evaluation measure the achievement of program goals and gauge effectiveness.” (see Appendix)

The non-partisan Legislative Analyst’s Office, in its objective analysis of NORA, states that the initiative could increase state costs in excess of \$1 billion annually for expanding drug treatment and rehabilitation programs for offenders in prison, on parole, and in the community. At the same time, savings to the state could exceed \$1 billion annually due primarily to reduced prison and parole operating costs, while net state savings on a one-time basis on capital outlay costs for prison facilities could exceed \$2.5 billion. This does not include the cost avoidance to other systems (i.e. child welfare, foster care, mental health, public health) as a result of drug offenders becoming productive, tax-paying members of society instead of a drain on society’s resources.

NORA incorporates many of the lessons of Prop. 36 as identified in the UCLA evaluation. It enables the courts, in Tracks II and III, to impose graduated sanctions, including jail sanctions, on offenders who are noncompliant with treatment, or who commit drug-related offenses while they are on probation. Those who commit non-drug-related offenses are subject to jail sanctions or removal from the program on the first such offense. NORA also requires, for each offender, a clinical assessment to determine the appropriate level and intensity of

What NADCP Says About NORA

NORA caps parole supervision for nonviolent drug offenses to 6 months, limits the circumstances under which parole may be revoked, and releases offenders from custody with insufficient supervision and accountability. The effect of these reforms would be to make Reentry Drug Courts unworkable in California. The brief period of supervision is insufficient to achieve meaningful treatment or rehabilitative gains. These provisions reduce accountability and ignore research findings demonstrating the importance of meaningful consequences for offenders who flaunt their treatment obligations, continue to abuse drugs, and commit new offenses.

What NORA Actually Says

treatment, as well as a criminal history assessment to determine the appropriate level of supervision and monitoring.

NORA reduces the parole terms of some nonviolent parolees, but allows longer parole terms for others. It specifies that offenders whose most recent prison term was for a drug or nonviolent property crime, and who did not have a serious, violent, gang-related or sex crime on their record, would be placed on parole supervision for six months, with up to an additional six months of parole if they fail to complete an appropriate rehabilitation program. At the same time, NORA provides longer parole terms for any offender whose most recent prison sentence was for a violent or serious felony. Currently there are legislative and administration proposals under consideration in California that would result in the early release of some low-level prisoners, and summary parole or even direct discharge (with no parole supervision) for others. If implemented, these measures would make parole supervision *less stringent* than the terms proposed by NORA. However, given the failure of the current parole system, with a recidivism rate of over 70%, NORA also proposes to hold parolees more accountable, while providing meaningful treatment and other rehabilitative services (i.e. education, literacy training, vocational and life skills training, anger management, housing assistance, etc.), that would make successful reentry more likely. Parolees who commit drug-related violations that qualify them for Prop. 36 would continue to be sent to drug treatment. Those who commit parole violations and are not eligible for Prop. 36 could face punishments such as more frequent drug testing or community work assignments. Those who continue to flaunt their treatment obligations or commit misdemeanor parole violations could serve jail time.

What NADCP Says About NORA

NORA prohibits the use of funding to support existing Drug Court programs in areas other than adult drug offenses, including Juvenile Dependency Drug Courts, Family Dependency Drug Courts, and Reentry Drug Courts. Existing funding for these courts is eliminated and now must come from a separate appropriation by the Legislature.

What NORA Actually Says

Existing funding for these other Drug Court programs is not eliminated by NORA. Currently, funding for these programs is provided through separate appropriations approved by the Legislature, which will continue if NORA passes.

APPENDIX

Key Components of Drug Court	NORA Impact
Drug courts integrate alcohol and other drug treatment services with justice system case processing.	There should be no change to collaborative court philosophy.
Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.	Possible changes in procedure. Collaborative nature of courts should remain.
Eligible participants are identified early and promptly placed in the drug court program.	No change. There will be more funding available for screening and assessment. NORA establishes a time frame for early assessment and prompt entry into treatment.
Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.	A wider range of treatment options should become available.
Abstinence is monitored by frequent alcohol and other drug testing.	NORA should pay for Track III testing. The continued availability of SATTA funds should cover costs of Track I and II clients.
A coordinated strategy governs drug court responses to participants' compliance.	NORA supports a coordinated effort between treatment and the courts. Details of implementation may vary depending upon the practices and philosophy of each individual court.
Ongoing judicial interaction with each drug court participant is essential.	No Change. Status hearings and judicial interaction remain in place.
Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.	No Change. Improvements are likely to the extent that NORA requires the implementation of better data systems to track performance and outcomes.
Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.	Annual addiction training for judges is required.
Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness.	No Change.