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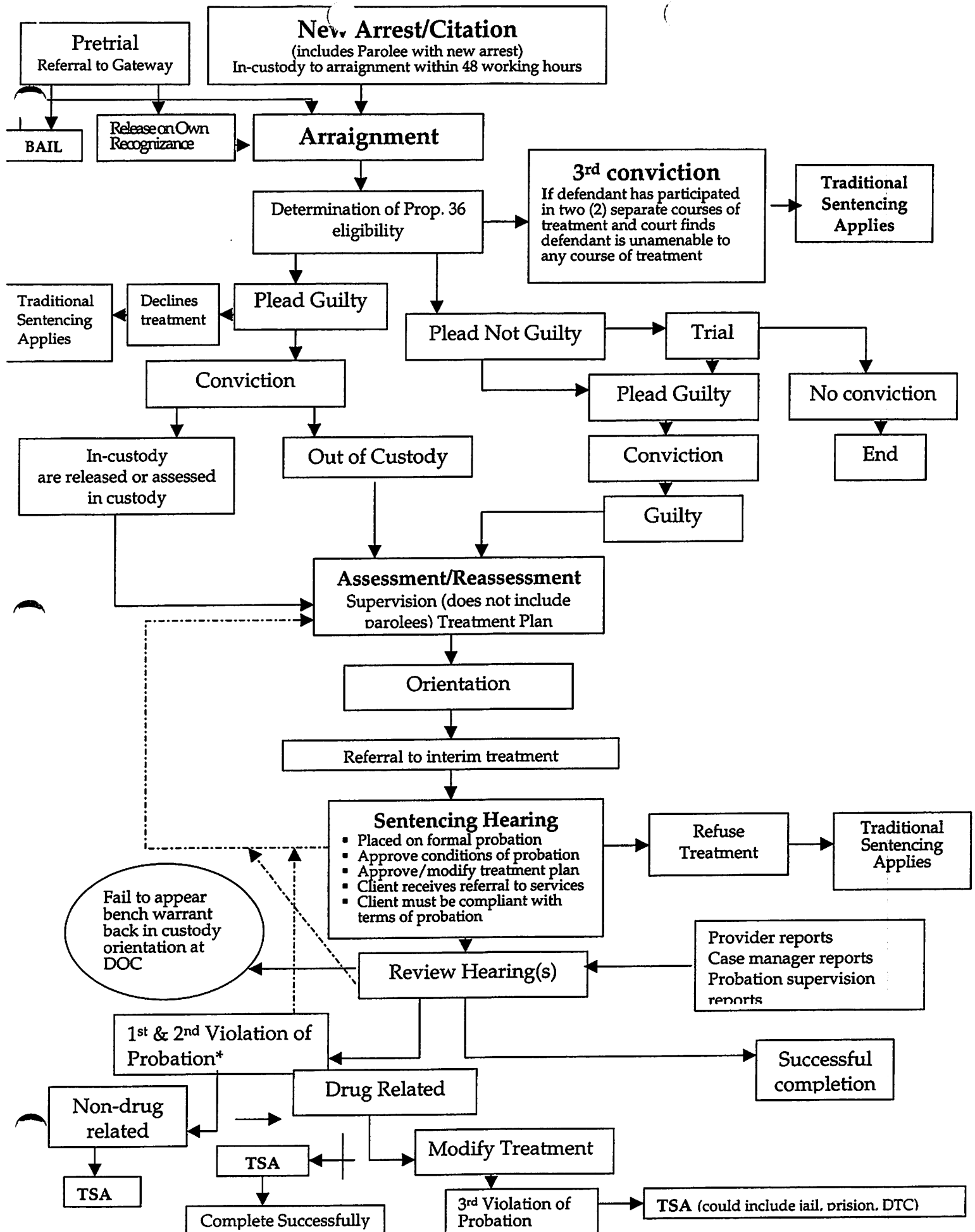
**To:** ALICE FOSTER, DEPUTY COUNTY EXECUTIVE  
**From:** JOSE R. VILLARREAL, PUBLIC DEFENDER  
**Subject:** PROPOSITION 36 "BEFORE AND AFTER" COMPARISON  
**Date:** April 23, 2001

This is in response to your request for a "before and after" comparison of the Prop 36 eligible cases:

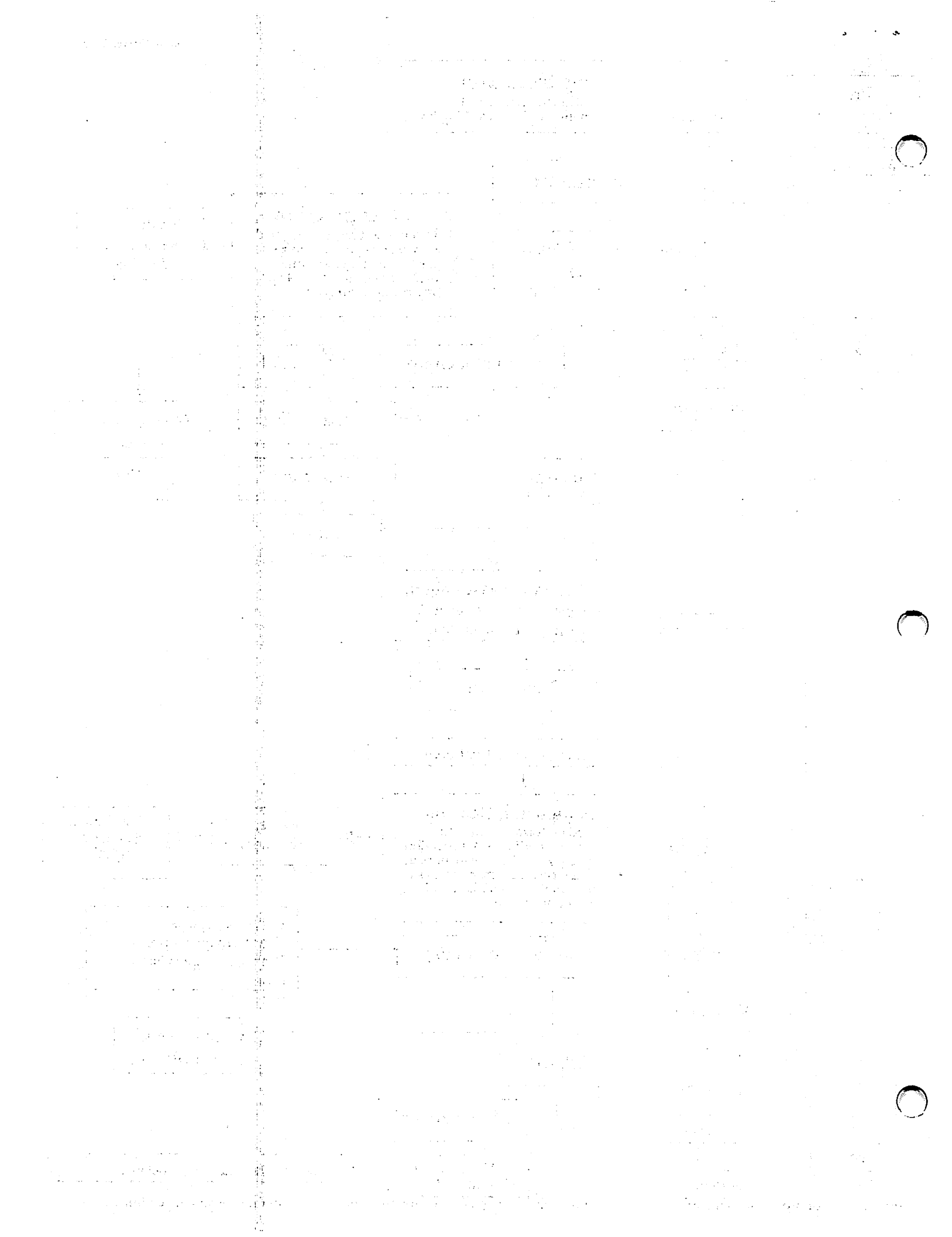
- Proposition 36 applies to nonviolent drug possession offenses which include the unlawful possession, use or transportation for personal use of drugs. The vast majority of persons eligible for Proposition 36 will be those charged with being under the influence of methamphetamine, cocaine, heroin or PCP (a violation of Health & Safety Code section 11550, a misdemeanor) or persons charged with possessing small amounts of one of these drugs (violations of Health & Safety Code sections 11377 or 11350, both felonies) or possession of marijuana which can be either a misdemeanor or a felony, depending upon the amount.
- Persons charged with the sale of drugs, possession of drugs for the purpose of sale, or manufacturing drugs, will not be eligible for Proposition 36 treatment and will proceed through the system as before.
- Persons with prior convictions for serious or violent offenses (strike offenses) will be ineligible for Proposition 36 treatment unless they have been out of prison for at least five years and essentially, have not been in trouble with the law since.
- Persons charged in the same proceeding with an eligible Proposition 36 offense *and* any other non drug related offense will not be eligible for Proposition 36 treatment. For example, a person charged with drunk driving and possession of a small amount of cocaine would not be eligible as the drunk driving charge would preclude eligibility.
- Persons charged with the use of a firearm will not be eligible for Proposition 36 treatment.
- Anyone who refuses treatment as a condition of probation will be excluded from Proposition 36 treatment and can be sentenced to jail and/or state prison.
- Persons who have been through Proposition 36 treatment twice will not be eligible a third time if the court finds the person "unamenable" to drug treatment.

must revoke probation and may then sentence the client to jail or state prison.

- Significantly, few people will be out of custody as a result of Proposition 36 who would otherwise be incarcerated. This county is already providing a substantial amount of drug treatment in lieu of jail to those who show an interest in treatment. The law provides that the most serious felons, those with prior serious or violent felonies, are not eligible for Proposition 36 treatment unless they have shown significant progress in terms of rehabilitation and therefore do not pose a significant risk of danger to the community.



For the violation of probation(s) the prosecution must prove the violation of probation and possibly additional factors depending on if the



**PROPOSITION 36 STEERING COMMITTEE**

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John Cavalli, Chief Probation Officer

Susan Chavez, Director, Office of Pretrial Services

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Dr. Michael Gorman, School of Social Work, San Jose State University

Mel Johnson, Unit Supervisor, State Parole Office

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John Larson, Justice Services Program Manager, DADS

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