- Disposition of shoplifting offenses as Infractions (PC 490.1)

The following criteria should exist prior to filing or resolving a 490.5 theft offense as an infraction per PC 490.1:

1. The amount taken does not exceed $50;

2. The defendant does not have a prior history of felony or misdemeanor criminal convictions, excluding VC 12500 offenses;

3. The defendant was cooperative with store personnel and law enforcement during detention and investigation, did not flee, and was not combative; and

4. The taking did not evidence any sophistication or involve either adult or juvenile accomplices.

D. JUVENILE CASE SETTLEMENT POLICIES

Case Settlement Offers

A case settlement offer is an offer to a defense attorney setting forth the District Attorney's case settlement position. It consists of two parts: the paragraph (or paragraphs) and the sentencing designation (felony, misdemeanor, or open). The deputy assigned to Juvenile court is responsible for case evaluation and the communication of settlement offers.

Case settlement offers shall be communicated to the appointed or retained defense attorney prior to the Jurisdictional Hearing in a manner allowing a reasonable time for the offer to be communicated to the minor.

In all cases, the settlement offers communicated must be complete and must be recorded on the file's green sheet and underlined in yellow marker, along with the initials of the prosecutor authorizing the offer.

Any change to or withdrawal of a case settlement offer must be immediately communicated to the minor's attorney of record and recorded on the file's green sheet. The notation shall include the date and time the change was communicated, the person notified of the change, and the new offer or "no offer" status underlined in yellow. The prior offer shall be clearly lined out.

Any offer communicated at the time of the initial Detention Hearing in order to complete an early case disposition terminates at the close of that court session unless otherwise specified.

Any case settlements negotiations shall not include offers reduced in charge or felony crime status, absent exceptional circumstances and direction from the Chief Deputy.

Exceptional circumstances are present when:

- there is a substantial likelihood that the evidence is insufficient to obtain a adjudication (e.g., serious factual weakness or the inability to obtain the testimony of a material witness)

- the interests of justice are better served by varying from the established guidelines

All 602 WIC felony type offenses filed as felonies shall be settled as felonies. In those cases with neither aggravating circumstances (as defined in Rule of Court 421) nor a prior juvenile history, an "open" disposition of alternate misdemeanor/felony offenses may be considered. Potential case settlements of supplemental petitions on existing Wards should be discussed with the Juvenile Court Probation Officer prior to offers being extended to the minor.

Otherwise, the case disposition standards for juvenile petitions are the same as for adult felony criminal complaints or Informations. Any deviations from these standards should be based on the individual nature of the offense and the juvenile, and be staffed with the submitting Deputy Probation Officer, and in the case of "serious" or "violent" offenses, the Chief Deputy District Attorney.

When a juvenile admits an allegation in a petition in juvenile court that will constitute a "strike" if he or she commits another felony offense, the deputy should insure that the juvenile is advised of this consequence of this adjudication if a new felony offense is committed.

E. HOMICIDE SETTLEMENT POLICY

Approval of dispositions in cases charging murder or felony manslaughter, or cases alleging special circumstances, can be made only by the District Attorney.

In the absence of the District Attorney, the Chief Deputy District Attorney has the authority to approve pleas from first degree to second degree murder, from murder to manslaughter, and from voluntary to involuntary manslaughter. The facts and circumstances of the plea must be thoroughly discussed with the homicide team prior to any such action.

F. DRUG COURT

Standards will be developed by the courts and District Attorney regarding the referral and acceptance of candidates into any Drug Court.

The policy of the Yuba County District Attorney's office is to consider the acceptance of candidates who meet the following criteria:

- Defendants

  (1) under 30 years of age
  (2) not presently charged with a serious or violent felony; or associated through evidence to drug sales, possession for sale, manufacturing of controlled substances, or furnishing controlled substances to a minor
  (3) lawfully present in the United States
  (4) has a significant prior history of drug offenses or clinical history of substance abuse
  (5) not previously treated in Drug Court
  (6) no history of gang connected violent behavior
  (7) no prior serious or violent felony convictions ("strikes")
  (8) not currently on parole, absent a written indication from the parole authority to defer any violation process during the successful participation in Drug Court

- Special Circumstances

  Violation of Probation
  - Only for charges originally eligible for Drug Court
  - Acceptance is contingent on Defendant admitting the violation
  - Upon successful completion of Drug Court, court orders admission withdrawn, dismisses allegation of violation of probation, and continues defendant on probation for appropriate period

  Deferred Entry of Judgement / Proposition 36
  - Absent extraordinary circumstances, DEOJ and/or Proposition 36 failures will not be considered for Drug Court

G. DEFERRED ENTRY OF JUDGEMENT

Deferred Entry of Judgement proceedings shall be offered or agreed upon only through the provisions of Penal code section 1000 relative to narcotic and drug abuse cases. No informal pre-trial diversion shall be offered or agreed upon as a method of case settlement in any other case. "DA Diversion" is not a recognized or authorized method of case settlement.

All cases shall be reviewed for Penal Code section 1000 Deferred Entry of Judgement eligibility at the time of filing. If DEOJ eligible charges are alleged, a Notification of Eligibility or Ineligibility will be prepared for each applicable Defendant. The Notification will be placed in the file and, at Arraignment, completed. The original shall be served on the Defendant, with a copy provided to the court and a copy retained in the DA file.

A finding of ineligibility based on the statutory criteria shall not be changed unless the initial evaluation is determined to be incorrect. In no case shall a finding of ineligibility based on evidence of an undivertible offense be reversed to accommodate a negotiated plea by either an individual defendant or group of defendants.

The statement of a confidential informant contained in a search warrant affidavit that the defendant sold a controlled substance, which is corroborated by the delivery of that controlled substance to a law enforcement officer and leads to the issuance of a search warrant, is acceptable as evidence of a violation of an undivertible offense.

H. PROPOSITION 36 TREATMENT

The Effective Date of Proposition 36

In order to implement the intent of the Proposition, this Office will not raise legal objections to the application of the Prop. 36 sentencing scheme to otherwise eligible defendants with otherwise eligible offenses occurring before July 1, 2001.

Eligibility Notification

Beginning July 1, the "continuum of care" for substance abusers in Yuba County will be: 1) pre-sentence DEOJ, if eligible (DEOJ evaluations and the statutory notice provisions [PC 1000] will continue unchanged); 2) post-sentence Prop. 36 treatment; and 3) pre-sentence Drug Court (the Drug Court evaluation process will also remain unchanged).

Prosecutors will make every effort to notify both the Court and the defendant of Prop. 36 eligibility as soon as possible. Since eligibility is a function of both the charged offenses resulting in conviction and the defendant's background (which in some cases will require more extensive background information than that currently available through the state CII computer), notifications may be made at arraignment for some defendants or only after conviction for others.

Prop. 36 notifications – both for eligibility and for ineligibility – will be provided through an "NCR-type" form similar to the form now used for DEOJ notifications. The intent is to provide the original to the defendant, with a copy for the Court and a copy for our file.

In some cases, individual defendants will be eligible for both DEOJ consideration and Prop. 36 sentencing. Those defendants will receive notices of eligibility for both, and would have the opportunity to successfully complete the diversion program. Those who fail the diversion program would then be sentenced to further drug treatment under the new law.

Disqualifying Prior Misdemeanor Convictions

New Penal Code section 1210.1(b)(1) excludes defendants previously convicted of a serious or violent felony who have not, for a period of five years prior to the current nonviolent drug possession offense, remained free of the commission of an offense resulting in a *"misdemeanor conviction involving physical injury or the threat of physical injury to another person."*

The District Attorney's Office position is that any offense involving assault, battery, or having injury as an element is included in that definition. In addition, the following crimes should be included due to the elements inherent in the offense:

PC 69	PC 71	PC 76	PC 139
PC 140	PC 273a(a)	PC 273d	PC 273.5
PC 422	PC 646.9		

The following offenses may be included in the definition, depending on whether a qualifying factual basis exists in the court record:

PC 148(a)	PC 273a(b)	PC 273.6	PC 415
PC 415.5	PC 653m		

In misdemeanor pleas that involve actual injury, the danger of injury, or the threat of injury to another person, Yuba County prosecutors will deviate from the past practice of stipulating to a factual basis and will instead provide a detailed factual basis for inclusion in the court record.

"Transportation for Personal Use"

Penal Code section 1210(a) defines non-violent drug possession offenses to include "transportation for personal use of any [controlled substance]".

The District Attorney's Office position regarding this section is as follows:

- This language means transportation for the purpose of use by the person doing the transporting.

- The ultimate determination of personal transportation eligibility must be made independent of the pleadings. Consequently, no additional language will be included in the Complaint or Information modifying our standard "transportation" pleadings to allege "personal use" or "not for personal use".

- Notification of the District Attorney's belief of ineligibility for transportation "not for personal use" will be provided on the Prop. 36 eligibility form described earlier.

- Since Prop. 36 does not alter the penalties for any of the offenses involved, the ultimate determination of personal transportation eligibility is made by the Court as a sentencing issue, and is not a jury determination under *Appredi v. New Jersey* (2000) 530 US 466, 120 S.Ct. 2348.

Consequently, in cases involving the transportation of controlled substances, Prop. 36 eligibility must be determined by the sentencing court as part of the sentencing process conducted per Penal Code section 1203. The situation is analogous to determining diversion eligibility in H&S 11358 cases per *People v. Williamson* (3DCA; 1982) 137 CA3d 419

Case Filing Practices

The current filing practices, including case assessment and the criteria used in determining if an alternate felony-misdemeanor (wobbler) will be charged as a felony, will remain unchanged. Non-drug felonies and misdemeanors – whether drug or non-drug – will continue to be filed in conjunction with Prop. 36 eligible offenses.

All violations involving the illegal use or possession of a firearm or dangerous weapon (PC 417, 245, 12020, 12021, 12025, 12031, and H&S 11370.1) shall be filed and upon conviction will constitute a ground for exclusion from Prop. 36 treatment per section 1210.1(b)(2) and (3).

Case Disposition Practices

Prop. 36 applies to the following *non-violent drug possession offenses*:

*H&S 11350	*11352 – transport for personal use	*H&S 11550
H&S 11357(a)	11360 – transport for personal use	
H&S 11357(b)	11379 – transport for personal use	
H&S 11357(c)	11379.5 – transport for personal use	
H&S 11357(d)		
H&S 11377		

In addition, in order to implement the intent of the Proposition, the Yuba County District Attorney's Office will recognize the following *misdemeanors as those related to the use of drugs:*

H&S 11364 (possession of paraphernalia)
H&S 11365 (presence in a location where drugs are used)
H&S 11590 (misdemeanor failure to register)

BP 4140 (possession of a hypodermic syringe)
PC 647f (intoxicated in public)

A. Pleas to Prop. 36 eligible offenses – whether misdemeanor or felony - will be without sentencing limitations ("straight-up"). In felony cases, this will have the same practical effect as a "No Immediate State Prison" plea – probation will be granted and violations of probation expose the defendant to the full range of sentencing options available to the court.

B. <u>In cases alleging non-violent possession offenses only</u>:

- If one non-violent <u>felony</u> possession offense is charged in conjunction with one or more non-violent misdemeanor possession offenses, the defendant shall plead to the felony offense. The misdemeanor offense shall be dismissed.

- If <u>two or more non-violent felony possession offenses</u> are charged, the defendant shall plead to the felony offense carrying the highest potential determinate sentence. The remaining non-violent possession offenses – whether felony or misdemeanor - shall be dismissed.

C. <u>In cases alleging non-violent possession offenses and a misdemeanor related to the use of drugs:</u>

- The defendant shall plead to both the appropriate non-violent possession offense (as outlined above) and to the misdemeanor in order to ensure appropriate probation terms may be imposed (stay-away; non-association; do not possess; alcohol abstinence).

D. <u>In cases alleging non-violent possession offenses (with or without an attendant misdemeanor related to the use of drugs) and a misdemeanor not related to the use of drugs:</u>

- If the defendant is also charged with a violation of VC 12500, or a first-time violation of VC 14601.1(a), the District Attorney will not object to a continuance in order for the defendant to obtain a valid

California driver's license. If a valid license is obtained, the Prop. 36 disqualifying offense shall be dismissed.

- If the defendant is charged with a violation of PC 415 and does not have an adult criminal history that includes any felony convictions or misdemeanor convictions involving physical injury or the threat of physical injury to another person, the PC 415 violation will be dismissed with a *Harvey* Waiver to ensure appropriate probation and/or restitution terms may be imposed.

- With the specific approval of the Chief Deputy, the defendant admits a violation of an existing misdemeanor or felony probation grant in lieu of pleading to the new misdemeanor not related to the use of drugs and:

  - Exceptional circumstances exist, and

  - An admission assures appropriate punishment, results in an extension of the probation grant for an additional year, and the new misdemeanor offense did not involve the possession of a weapon, physical injury, or the threat of physical injury to another person.

E. <u>In cases alleging non-violent possession offenses (with or without an attendant misdemeanor related to the use of drugs) and any felony other than a non-violent drug possession felony:</u>

- The disqualifying felony offense shall be prosecuted regardless of the effect on the defendant's Prop. 36 eligibility. The disqualifying offense shall only be dismissed if:

  - There is a substantial likelihood that the evidence is insufficient to obtain a conviction (e.g., serious factual weakness or the inability to obtain the testimony of a material witness); or

  - With the approval of the Chief Deputy, the defendant provides persuasive evidence against a more culpable defendant who would otherwise not likely be convicted of a felony offense.

F. <u>Under no circumstances shall a VC 23152/23153 offense be dismissed in exchange for a plea to an H&S 11550 offense.</u>

G. <u>Prop. 36 waivers / Stipulated "Refusals of Drug Treatment" to enable Plea Agreements:</u>

- A defendant charged with a non-qualifying drug charge may enter into a stipulated plea agreement that in return for a reduction of the

charge to a less serious non-violent drug possession charge, the defendant will "refuse" drug treatment as a condition of probation and be sentenced under the traditional sentencing scheme.

Such pleas shall be approved by the Chief Deputy, and occur only when a reduction will not result in a substantial change in sentence and when the defendant is not otherwise eligible or seeking a grant of probation.

Violations of Probation

Prop. 36 contains provisions governing probation violation proceedings for defendants sentenced under the new statute and for existing defendants on probation on July 1 for non-violent drug possession offenses, with or without a misdemeanor related to the use of drugs, only. Probation grants that include convictions for non-qualifying offenses are not covered.

Probation violations are characterized as "drug related" and non-drug related". Under certain circumstances the court is required to revoke probation. If the court revokes probation, the defendant may be incarcerated or imprisoned. If the court does not revoke, it is empowered to modify probation terms by ordering participation in a drug treatment program or altering the program for those already in treatment.

The provisions governing drug-related probation violations create one of the most critical issues arising from Prop. 36. It is the position of the Yuba County District Attorney's Office that the language used to implement the mandatory revocation provisions does not affect the court's traditional discretion to revoke probation. In other words, the court may revoke probation where a drug related violation is proven, but the additional factors mandating revocation ("danger to others" or "unamenable to treatment") are not met.

The Office's practices for handling violations of probation are as follows:

A. Any VOP affidavit alleging the commission of a non-qualifying criminal offense or non-drug related condition of probation, whether with or without an alleged drug-related violation, will be prosecuted regardless of the impact on the probationer's Prop. 36 status.

- Such allegations shall only be dismissed if the evidence is insufficient to obtain a finding (e.g., serious factual weakness or the inability to obtain the testimony of a material witness), and shall not be dismissed in order to continue a violating probationer in Prop. 36 treatment.

- Sentencing for such violations are done under the traditional sentencing scheme, which may include reinstatement under Prop. 36 treatment, reinstatement under regular probation including local incarceration, or no reinstatement and State's Prison.

B. Drug-related violations #1 and #2:

- Mandatory revocation

- any alleged drug-related violation is found true, and the People prove the defendant poses a danger to the safety of others (violation #1) and/or the defendant is unamenable to drug treatment (violation to #2).

- It is unknown at this time who will provide the assessment as to the defendant's present danger, or what the standard defining that will be. For present purposes, Yuba prosecutors will use the following standard: *specific and articulable facts that would lead a reasonable person to conclude that the probationer posed a danger to others at the time his or her conduct violated the terms of the probation grant.*

- A mandatory revocation for either a first or second violation does not limit the court's sentencing options, which may include reinstatement under Prop. 36 treatment, reinstatement under regular probation including local incarceration, or no reinstatement and State's Prison.

- Discretionary revocation

- any alleged drug-related violation is found true, and the People fail to prove any mandatory revocation factor(s).

- A discretionary revocation does not limit the court's sentencing options, which may include reinstatement under Prop. 36 treatment, reinstatement under regular probation including local incarceration, or no reinstatement and State's Prison.

C. Drug-related violation #3:

- Mandatory revocation

- A true finding on any alleged violation requires mandatory revocation. The court's sentencing options include reinstatement under regular probation including local incarceration, or no reinstatement and State's Prison. The defendant is not eligible for continued Prop. 36 probation.

- Discretionary revocation

- There is no discretionary revocation.

Unamenable Twice-Convicted Defendants Per PC 1210.1(b)(5)

Defendants suffering two separate qualifying convictions and participating in two separate treatment programs after July 1, and are unamenable to all forms of treatment, are excluded from Prop. 36. Upon a third qualifying conviction, these defendants shall be sentenced to "30 days in jail".

The District Attorney's Office position is that:

- A defendant who "refuses" drug treatment in an attempt to become "unamenable" is excluded from Prop. 36 pursuant to the provision of 1210.1(b)(4).

- In order for a defendant to be "unamenable" to treatment, the court must find that the defendant is incapable of changing his or her behavior, regardless of the treatment measures that are used. All treatment programs and options must be considered and found ineffective.

- The language of the Proposition creates an issue for our local trial court and the appellate courts: whether "30 days" means 30 days, or 30 days or more not less. For a variety of legal reasons, this Office does not believe that the 30-day jail provision creates a fixed sentence, but rather creates a minimum mandatory sentence.

Successful Completion of Drug Treatment

Prop. 36 (PC 1210.1) allows the defendant to petition the sentencing court to dismiss the Indictment, Information, or Complaint against him or her at any time after successful completion of the treatment program.

The sentencing court must make two findings: 1) that the defendant has successfully completed the program; and 2) the defendant has substantially complied with the conditions of probation. [PC 1210.1(d)(1)].

Section 1210.1(c) defines "successful completion of treatment" to mean that a "defendant...has...completed the prescribed course of drug treatment and, as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future".

The District Attorney's Office position is that such petitions should include a declaration or affidavit from the treatment provider establishing the

factual basis substantiating that the defendant will not return to the abuse of controlled substances.

In cases involving a difficult or erratic treatment history, or a treatment provider whose credibility is in question or whose opinion is inherently improbable, the People will exercise their rights to examine the declarant and contest the opinion.

I. CALIFORNIA REHABILITATIVE CENTER (CRC) COMMITMENTS

Statutory Ineligibility

Section 3052 of the Welfare and Institutions Code specifies those persons who are ineligible for a commitment by virtue of their conviction of certain delineated offenses, including:

- Any conviction for a violent felony offense (PC 667.5) or conviction for a violent sex crime (PC 667.6), or any conviction making a person ineligible for a probation grant per PC 1203.06
- Any sentence commitment which exceeds six years
- Arson offenders

Statutory Unsuitability

Section 3053 of the W&I code allows certain offenders to be excluded from the program for "excessive criminality". "Excessive Criminality" refers to the length and seriousness of the person's criminal history even though some of the criminality may be drug-related.

Other relevant factors that may be argued include:

- drug sales or possession in excess of that needed to maintain the individual's drug addiction
- a history of assaultive or violence-prone behavior
- involvement or affiliation in known gangs with a violent propensity, either within or outside the institution
- unresolved felony warrants or holds from other jurisdictions
- deportation orders
- the existence of sentences for a substantial period of time to be served elsewhere
- a history of chronic medical or mental illness which requires non-routine ongoing management

J. RESTITUTION POLICY

Article I, Section 28 of the California Constitution and Penal Code section 1202.4 provide for a victim's right to restitution from the persons convicted of the crime. In addition, Penal Code section 1202.4 provides that the defendant shall be ordered to pay a restitution fine as well as a fine in the form of a penalty assessment in accordance with Penal Code section 1464.

It shall be the policy of this office that all Deputy District Attorneys are knowledgeable about restitution statutes and shall request a restitution fine and restitution order in every case where applicable.

- Whenever a case involves a victim, restitution to the victim for actual economic losses, or restitution to the State Board of Control to the extent of payments made by the Victims of Crime Program, shall be requested.

  PC 1204.4(g) identifies as primary examples of economic loss:

  - the replacement (not original) cost of stolen property;
  - the actual cost of repair of damaged property;
  - medical expenses; and
  - lost wages or profits, including wages lost as a result of court appearances and interviews with a DA (P. v. Nguyen (1995) 24 CA 4th 32).

  If a victim incurs a loss which has been indemnified by an insurance company, the defendant will be required to pay restitution only for any deductible paid by the victim. As a general rule, we will not seek a second full recovery on behalf of the victim.

- The goal is to establish a restitution figure early enough to be included in an offer and finalized at sentencing. If a restitution amount has been determined by the time of sentencing, but the defendant does not agree with it, the case should be set for a restitution hearing.

- Where a restitution amount cannot be set at the time of sentencing, a "To be Determined" order shall be requested, directing that restitution be determined at the direction of the court.

  The case should be set for a restitution review 30 to 60 days after sentencing. During that period, the DDA will have an opportunity to work with the victim in finalizing a restitution figure. At the review hearing, the court can either modify the sentence to include the restitution amount, or calendar the case for a restitution hearing. This, of course, assumes that the victim is able to support a demand for restitution. If not, the court and defendant will be so advised at the

restitution review, and the matter will be dropped. One way or the other, there will be a final resolution of the restitution issue within 60 days of sentencing.

- A restitution fine shall be requested in every case that results in a conviction.

- A parole restitution fine shall be requested in all cases in which the offender's sentence includes a period of parole. This fine is suspended unless the defendant's parole is revoked.

- If restitution fines and orders requested by District Attorney staff are denied, set aside, waived, reduced, stayed, etc., the file should be documented to reflect the court's rationale for such actions.

General Rules On Restitution

The following general rules apply to issues pertaining to restitution and restitution hearings:

1. An insurance company is not entitled to restitution unless it is the direct victim of a crime. (PC 1202.4(k); People v. Sexton (1995) 33 Cal. App. 4th 64.)

2. A victim's statements in a probation report about the value of his property constitutes prima facie evidence of its replacement cost for purposes of restitution. People v. Foster (1993) 14 Cal. App. 4th 939, disapproved as to the issue of whether an insurance company is entitled to restitution in Sexton, supra.

3. A defendant bears the burden of proving by a preponderance of the evidence that a victim's claim for restitution exceeds the replacement cost of stolen property. (Foster, supra.)

4. In a multiple defendant case, each defendant may be ordered to pay the full amount of restitution on a joint and several basis. People v. Zito (1992) 8 Cal. App. 4th 736; People v. Campbell (1994) 21 Cal. App. 4th 825.

K. CIVIL COMPROMISE

When a PC 1377 civil compromise is worked out, do not dismiss the case until restitution has been paid to the victim. Simply vacate the trial date and continue the case to a date by which restitution must be paid. Dismiss the case then. Attorneys should read and understand PC 1378 before attempting to resolve a case with a civil compromise.

Welfare and Food Stamp fraud cases are not to be civilly compromised.