

# **Proposition 36 – The Substance Abuse and Crime Prevention Act of 2000 – Will It Work?**

## ***Background***

California voters approved Proposition 36, the Substance Abuse and Crime Prevention Act (The Act) in November of 2000. It was approved by 71.8% of Santa Cruz County voters and became effective July 01, 2001. Its main objective is to divert nonviolent substance abusing defendants, probationers, and parolees, from incarceration and into community-based treatment programs. To be eligible defendants can be charged with nothing more than a simple possession or use charge. Any concurrent violent act disqualifies a defendant from treatment under Proposition 36. Parolees and probationers, who commit nonviolent drug offenses or violate drug-related conditions of parole, are also provided with treatment in lieu of incarceration. The Act requires offenders to pay for their treatment if they are reasonably able to do so. Proponents of The Act argued the Arizona equivalent saved taxpayers millions of dollars and touted a 75% success rate in community-based programs geared to the non-violent drug offender. It was expected The Act would:

- preserve jail and prison cells for more serious/violent offenders
- enhance public safety by reducing drug-related crime
- improve public health by reducing drug abuse

Eligible offenders receive up to one year of drug treatment and six months of aftercare. The Act also requires that treatment facilities be licensed or certified. The Act marks a major change in philosophy from incarcerating drug users to treating them. Treatment costs are estimated at \$4,000 per client, while incarceration costs average \$25,607 per inmate per year. Because of the focus on health and treatment, Proposition 36 funds cannot be used for drug testing. The authors of The Act believed testing would be used as a means to disqualify users from treatment. A supplemental measure, AB 223, was passed in October of 2001, which provided an additional \$8.4 million statewide for drug testing to be used as a tool in conjunction with Proposition 36.

Proposition 36 provides \$120 million annually to counties to operate drug treatment programs and other services. Funding for The Act ends in 2005-06. Funds are allocated to counties based on a formula, 50% base allocation, 25% number of drug arrests and 25% on drug treatment caseload. Each county receives \$2500 for every \$1 million available.

## ***Scope***

The Grand Jury investigated the implementation of Proposition 36 in Santa Cruz County to determine whether it is now providing or will provide savings to taxpayers. The Grand Jury also examined whether the services offered by Proposition 36 duplicate existing services. Most

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importantly the Grand Jury examined whether a treatment approach to the drug problem is more effective than the incarceration/punishment approach.

## **Sources**

Interviewed: Santa Cruz County Director of Alcohol and Drug Programs  
Santa Cruz County Drug Court Judge  
Chief of the Detention Bureau  
Director of Janus Treatment Services  
Director of Triad Community Services

Reviewed: the Proposition 36 Implementation Plan  
The Act -Proposition 36  
Proposition 36 website [www.prop36.org](http://www.prop36.org)  
Alcohol and Drug Programs website [www.adp.cahwnet.gov](http://www.adp.cahwnet.gov)  
Substance Abuse and Crime Prevention Act-First Annual Report to the  
Legislature

## **Findings**

1. Santa Cruz County received \$1,003,973 in Proposition 36 funds in fiscal year 2001-2002.
2. Santa Cruz County received \$71,414 in Drug testing funds of which 100 % was used to directly pay for tests.
3. The authors of Proposition 36 established 83% as the benchmark for the most effective programs. Approximately 82.7% of funds will be directly used for treatment in Santa Cruz County in 2002-03.
4. There were 572 unduplicated Proposition 36 clients in 2001-02, of which 511 received treatment plan assessments and 392 received treatment. The Courts/Probation Department referred 91.8% of the clients. The remaining referrals were parolees.
5. Reassessment is necessary when the defendants are placed in program that does not suit their needs. They are reassessed and then reassigned to an appropriate program. There were an estimated 398 reassessments in fiscal year 2001-02 an average of 1.7 per client.
6. The Proposition 36 Steering Committee is comprised of staff from the Health Services Agency, the Probation Department, the Courts, the Public Defender's Office, the Sheriff's Office, the Criminal Justice Council, the County Administrative Office, the District Attorney and the State Parole Board. Members meet once a month to promote defendant recovery and help to ensure public safety.
7. The County Health Services Agency does the assessments for Proposition 36. These health care professionals place an emphasis on treatment.

8. There are 15 certified Proposition 36 treatment facilities in the county with 18 residential treatment beds.
9. The District Attorney has adopted charging guidelines for defendants that maximize the effectiveness of Proposition 36.
10. Penal Code § 1000 provides for Deferred Entry of Judgment (Diversion). First time offenders arrested for minor drug crimes, including cultivation of marijuana for personal use, narcotics secured by a false prescription, simple possession or being under the influence, can be referred to a drug diversion program. If offenders satisfy the requirements of the program, the charges against them are dropped. Urinalysis can be part of the program, but a positive test does not necessarily expose the defendant to additional penalties. A defendant who violates program conditions is subject to sentencing on the original crime.
11. Diversion consists of a minimum of 22 hours of group education and counseling over a minimum of 10 weeks. It includes an assessment of the clients' alcohol and drug use. Successful completion of the program results in charges being dismissed.
12. Proposition 36 allows an offender three opportunities for treatment. While being treated offenders are on probation. An offender's probation can be revoked for: disobeying rules of the drug treatment program, being arrested for a non-violent possession offense, or for violating a drug-related condition of probation. They are then subject to incarceration under otherwise applicable law.
13. Probation can also be revoked if a defendant commits a non-drug related crime, or violates a non-drug related condition of probation.
14. Proposition 36 allows defendants three violations of any kind before their probation must be revoked and the original sentence imposed. This is sometimes referred to as "three bites at the apple or three strikes".
15. Additionally, if a treatment provider notifies the Probation Department that a defendant is "unamenable" to a particular treatment, Probation may recommend another treatment modality. If a defendant is deemed "unamenable" to all forms of treatment, Probation may request the defendant's probation be revoked.
16. Currently under Proposition 36 some clients wait in jail for available treatment space. In some cases they wait almost as long as the sentence they would have received. They then have a choice of whether they will serve out their sentence or go to treatment. Some opt to forego treatment and are released having fulfilled their time commitment. This is one of the reasons the number of those admitted to the program is lower than those assessed and eventually treated. Some clients elect jail time over treatment at the outset.
17. Proposition 36 originally placed very little emphasis on drug testing. No funds were provided for testing. It was feared tests might be used as a "hammer" to disqualify those being treated. Treatment professionals believe testing should be used as a tool and that

18. relapses are part of the recovery process. Consistently failing drug tests will result in probation being revoked.
19. Following failed attempts to divert under Penal Code §1000 and failed attempts to treat under Proposition 36, the offender is placed in a much more structured judicial program called Drug Court. Court visits are more regular, testing is more frequent, and any violation of the program can subject the offender to incarceration.
20. The Drug Court Program is used for more serious drug offenders and unlike Proposition 36 includes alcohol programs. Drug court participants typically have abused drugs for five or more years. Half (52%) have a high school diploma and sixty-two percent were unemployed at the time of their arrest.
21. Drug Court is, at a minimum, a one-year program. The client participates in daily counseling, is randomly tested for drugs three times per week, and goes before the judge weekly to review progress. The client is also required to attend a twelve-step program and provide proof of attendance to the judge.
22. Successful completion of the Drug Court program results in charges being dismissed.
23. Like Diversion and Proposition 36, clients of Drug Court cannot have been charged with a violent offense, drug sales, or possession for sale.
24. Insufficient treatment facilities for Proposition 36 make it necessary to house clients at the Main Jail (courtesy housing). This may explain why the county has not yet seen a decrease in the number of clients being housed at the Main Jail.
25. The Sheriff's Detention Bureau considers Proposition 36 a failure. It cites the number of repeat offenders who abuse the opportunity they are given to stay out of jail and continue using drugs.
26. The Grand Jury was not able to locate any current conclusive data on the success of Proposition 36.
27. A March 2002 report prepared by the California Department of Alcohol and Drug Programs and the Judicial Council of California concluded Drug Court participants who completed the program had an 85% reduction in arrests, a 77% reduction in convictions and an 83% reduction in incarceration in the two years following treatment.
28. Overall, counties reported a total savings of \$43.4 million. \$42.4 million in jail and prison cost savings and approximately \$1 million dollars in fees and fines collected from Drug Court participants.
29. Treatment professionals acknowledge treatment has little effect on those who have not made a commitment to stop using drugs.

30. Treatment professionals believe they could be helpful in assessing clients and recommending treatment.
31. One of the treatment facilities the Grand Jury toured uses biofeedback to aid clients in recovery. The facility reported positive results.
32. Penal code § 1000 cases, Proposition 36 and Drug Court cases are all heard in one consolidated court with the same presiding judge.

## ***Conclusions***

1. While Proposition 36 and Drug Court are very similar, Proposition 36 provides additional funding for treatment services. Drug Court participants are likely to benefit from the increase in treatment capacity.
2. The Proposition 36 Steering Committee does not have a permanent community representative.
3. The Proposition 36 Steering Committee is effectively managing treatment dollars.
4. More facilities are needed to treat Proposition 36 participants.
5. The number of Proposition 36 client reassessments is high.
6. Diversion, Proposition 36 treatment and Drug Court supervision provide a variety of effective tools to help the non-violent drug offender. These programs are complementary and not redundant.
7. Results from Drug Court indicate treatment in lieu of incarceration provides tremendous savings to taxpayers.
8. Results from Drug Court also indicate participants' benefit from court-supervised treatment.
9. Some defendants are not serious about giving up drugs and manipulate programs to their benefit.
10. Most drug treatment programs in the county use proven methods developed over time. Innovative treatments are available and some programs are using these new tools.

## ***Recommendations***

1. The Proposition 36 Steering Committee should add permanent community members to increase diversity and provide better community support.

2. The Santa Cruz County Director of Alcohol and Drug Programs should continue adding treatment capacity and hold well-publicized community forums to involve the community in eliminating drug abuse.
3. The Santa Cruz County Director of Alcohol and Drug Programs should seek out potential treatment providers and educate them in how to qualify to become treatment providers.
4. The Santa Cruz County Director of Alcohol and Drug Programs should work more closely with treatment programs in assessing client needs. This might reduce the number of reassessments and more quickly identify those unamenable to treatment.
5. Treatment providers should continue to develop and implement new treatment modalities.
6. Law enforcement and other parties should give Proposition 36 more time to develop before declaring success or failure.

***Responses Required***

<b>Entity</b>	<b>Findings</b>	<b>Recommendations</b>	<b>Respond within</b>
Santa Cruz County Director of Alcohol and Drug Programs	1-8, 10-23, 25, 26	1, 2, 3, 4	90 days (Sept. 30, 2003)
County of Santa Cruz Probation Department	12-15		60 days (Sept. 2, 2003)
Santa Cruz County District Attorney	9		60 days (Sept. 2, 2003)
Santa Cruz County Sheriff	16, 24, 22	5	60 days (Sept. 2, 2003)