

# DRUG POLICY ALLIANCE

Reason. Compassion. Justice.

CONTACT: Whitney Taylor, (916) 444-3751

## Proposition 36 Update April 9, 2002\*

### Background

California's Proposition 36 took effect on July 1, 2001 after 61 percent of California voters passed the initiative in November 2000. Since July 1, Proposition 36, or the Substance Abuse and Crime Prevention Act (SACPA), has been diverting low-level, non-violent drug offenders convicted solely of possession for personal use into community-based treatment instead of incarceration. While it is too early to determine the ultimate success of this program, this update describes how the state and counties are implementing this initiative.

Conversations with county administrators and key stakeholders in the Proposition 36 implementation process have been crucial in gaining an understanding of how the initiative is working thus far. Early indications suggest that Proposition 36 is being implemented well in most of the state. The initiative has begun fulfilling its promise to reduce drug addiction and crime rates by diverting offenders to drug treatment, and saving California taxpayers many millions of dollars by reducing the state's jail and prison population.

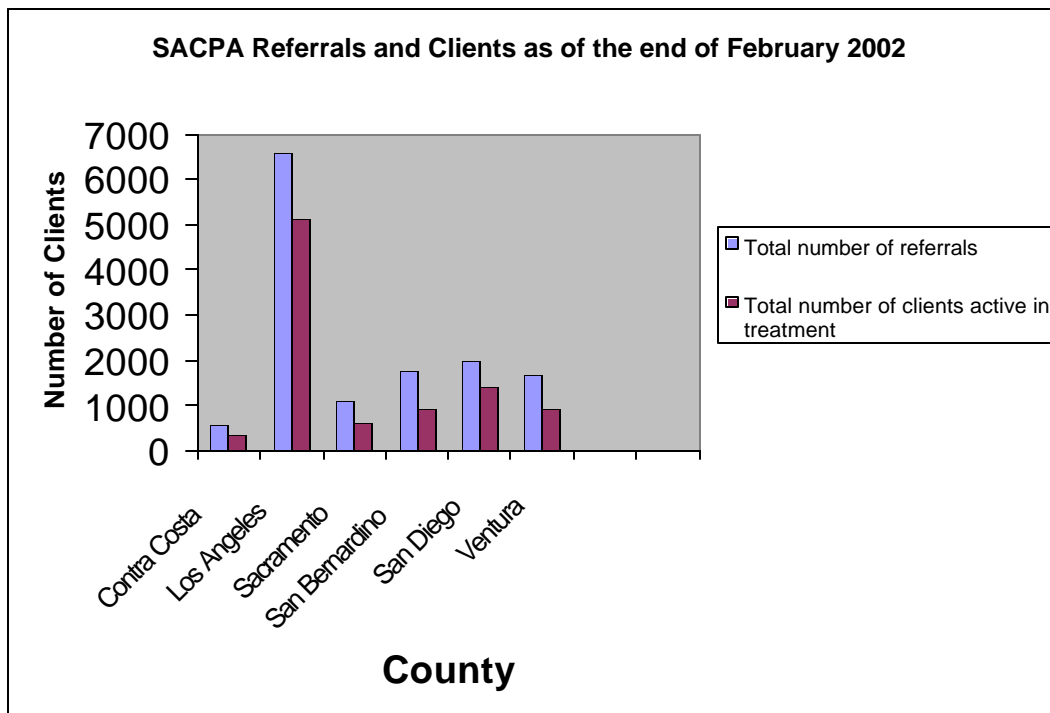
### How many people have received treatment so far?

**As of March 1, 2002, 13, 695 individuals had been referred to treatment under Proposition 36 in the six counties examined for this update.** In those counties, 9,334 individuals were still active in treatment. The average number of clients active in treatment ranged from 53% to 78% of the total number of referrals, with a combined average of 62% -- a higher than average number, according to treatment experts. Several factors could explain those who were not active, including: waiting to be assessed and placed into treatment; being in between programs; or non-compliance (see Failure to Appear at Treatment, p. 5).

County	Total number of referrals	Total number of clients active in treatment	Percentage of referrals active in treatment
Contra Costa	565	346	61%
Los Angeles	6,602	5,120	78%
Sacramento <sup>1</sup>	1,123	600	53%
San Bernardino	1,773	942	53%
San Diego	1,964	1,422	72%
Ventura	1,668	903	54%

<sup>1</sup> The Sacramento numbers are as of March 2, 2002.

\*This is an updated and summarized version of the *Substance Abuse and Crime Prevention Act of 2000 Progress Report* released by Drug Policy Alliance in March 2002. This report can be found at <http://www.prop36.org>.



Several thousand more people are also currently receiving treatment throughout the state's other 52 counties.

### Cost Savings

Prior to its passage, the state's independent Legislative Analyst's Office (LAO) predicted that by treating rather than incarcerating low-level drug offenders, Proposition 36 would save California taxpayers approximately \$1.5 billion (net) over the next five years, and prevent the need for a new prison slated for construction.<sup>2</sup>

According to the state's 2001-2002 budget analysis, it costs \$25,607 per year to imprison each inmate in California.<sup>3</sup> The average cost of drug treatment in California is approximately \$4,000 per client. While exact figures are not yet available, it is reasonable to presume that Proposition 36 has resulted in considerable cost savings to the state already, with over 9,334 individuals diverted to treatment instead of jail.

The experience of Arizona's Proposition 200, an initiative similar to Proposition 36 enacted in 1996, provides reason for optimism about Proposition 36's anticipated cost-savings.

<sup>2</sup> California Legislative Analyst's Office, *Fiscal Effect of "The California Safety and Crime Prevention Act of 2000"* [sic] (1999) <<http://www.drugreform.org/laoreport.tpl>>

<sup>3</sup> Legislative Analyst's Office, Analysis of the 2001-2 Budget, which can be accessed on the LAO's website at <<http://www.lao.ca.gov>>

According to a recent report conducted by the Supreme Court of Arizona, Proposition 200 saved Arizona taxpayer \$6.7 million in 1999.

## **Decrease in Prison Population**

An observed decrease in California's prison population may be attributable, in part, to the effectiveness of Proposition 36 in diverting individuals from incarceration into treatment. The population of inmates incarcerated by the California Department of Corrections statewide decreased by 4,101 inmates between June 30, 2001 and January 6, 2002. During the same time period in 2000, the year before SACPA began, that population decreased by only 1,214 inmates.<sup>4</sup> Although this decrease is not due exclusively to Proposition 36, the number likely reflects the impact of the initiative.

## **Unique Collaboration Between Criminal Justice & Public Health Agencies**

Successfully implementing Proposition 36 has fostered a unique collaboration between criminal justice and public health agencies at the county level. Never before have such distinct agencies worked so closely together on such a large scale. The Community Substance Abuse Services Division in Contra Costa County, for example, collaborates with the probation department at the County Probation Recovery Gateway Unit -- a case management function made up of representatives from probation as well as treatment staff. The Unit enables the client to access services in short order. Additionally, Contra Costa County's Proposition 36 Task Force, which meets regularly, includes the lead agency, prosecutors, public defenders, treatment providers and users, so that the needs of all interested parties are addressed.

## **Legal Update**

~~✍~~ Retroactivity: The first and perhaps biggest legal issue to reach the courts regarding implementation of Proposition 36 concerned the extent to which its sentencing provisions apply to non-violent drug possession offenders who committed their crimes *prior to* July 1, 2001, the effective date of Proposition 36. A unanimous ruling by the 2<sup>nd</sup> District Court of Appeals in Los Angeles in October 2001, *In re Delong*, held that Proposition 36 applies to persons convicted of a qualifying crime, but not yet sentenced before July 1, 2001.<sup>5</sup>

~~✍~~ Drug paraphernalia: Originally Proposition 36 did not specify whether or not defendants charged with possessing drug paraphernalia, but not drugs, would be

---

<sup>4</sup> California Department of Corrections, Data Analysis Unit, Monthly Report of Population. These numbers were found by examining the numbers from the Department of Corrections Institutions (not including Camps, Community Correctional Centers, Department of Mental Health State Hospitals, Parole, Non-CDC Jurisdiction inmates, and inmates-at-large) during each of the dates mentioned.

<sup>5</sup> *In re Delong*, 93 Cal. 4<sup>th</sup> 562 (Oct. 31, 2001)

eligible for treatment under Proposition 36. In August 2001 in an unpublished opinion, the California Supreme Court Appellate Division ruled that drug paraphernalia possession offenders would indeed be eligible for treatment under Proposition 36.

~~§~~ Drug testing: Senate Bill 223, signed by Governor Gray Davis October 10, 2001, clarifies that when Proposition 36 clients are drug tested, the results of the drug tests “shall be used as a treatment tool” rather than to punish the client. To this end, it requires that drug test results “shall be given no greater weight than any other aspects of the probationer’s individual treatment program.” In other words, individuals cannot have their probation revoked simply for a positive drug test. SB 223 also allocates \$8 million of federal block grant funds to be used by the counties for drug testing Proposition 36 clients.

## Concerns

While implementation of Proposition 36 has been overall true to the voters’ intent, there are a few troubling trends. These concerns come out of numerous discussions with key stakeholders from affected communities, and the fields of law enforcement, drug treatment and the judiciary.

~~§~~ Methadone: Early reports indicate that Proposition 36 clients are not being placed in methadone maintenance programs – the proven most effective treatment for heroin and other opiate addiction – consistent with the level of demand. This trend has been attributed to systemic biases against narcotic replacement therapies and lack of provider contracts with the counties to provide methadone services. The State Department of Alcohol and Drug Programs should increase its effort to educate members of the criminal justice system – especially judges and probation officers – on the proven effectiveness of methadone and other narcotic replacement therapies.

~~§~~ Mental Illness: Many clients referred to substance abuse treatment have co-occurring mental health and substance abuse disorders.<sup>6</sup> Unfortunately, many of the Proposition 36 assessment professionals are not adequately trained to detect such coexisting disorders. There is also a dearth of programs to treat both psychiatric disorders and substance abuse.

~~§~~ Sober Living Environments: Sober living facilities can help individuals in recovery by allowing them to live among a community of peers who are also in recovery. Unfortunately, even before the passage of Proposition 36, such facilities were not required to be licensed, nor has there been a statewide authority responsible for monitoring the quality of such facilities.

---

<sup>6</sup> According to data from the National Institute of Mental Health survey, researchers found 53 percent of persons with drug problems had a psychiatric diagnosis not involving drugs.

~~✍~~ Diversity of Treatment Options: There is a shortage of drug treatment programs that address a diversity of needs, including those that are cultural, ethnic or gender related. There is also insufficient funding to support vocational and literacy training, family counseling and other holistic services necessary to provide effective rehabilitation for low-level drug possession offenders.

~~✍~~ Failure to Appear at Treatment: Some counties have had high rates of client “no-shows” to treatment. Among the reasons cited by informants include poor communication with the client, lack of transportation and denial of treatment enrollment due to lack of paperwork. To help increase the rate of compliance in such cases, clients should be provided with assistance when it comes to filling out paperwork; and be given clear and concise directions in their primary language.

~~✍~~ Need for Open & Public Meetings -- It is essential that the communities who are most impacted by Proposition 36 -- especially drug users and their families, who have been historically isolated from the drug treatment infrastructure—be made part of each stage of Proposition 36 implementation through open and public meetings.

## **Conclusion**

Though it is still too early to assess the full impact of Proposition 36 on California’s economy and substance abuse treatment needs, early reports demonstrate that thousands of non-violent possession offenders have already been diverted to treatment instead of jail, as intended.

Some concerns exist, such as lack of access to methadone maintenance for those who are addicted to heroin; lack of facilities to treat those suffering from substance abuse and mental illness; and a need for greater communication between decision-makers and those who are most affected by Proposition 36, such as drug users and their families.

Overall, Proposition 36 is being implemented true to California voters’ intent. It has already started to reduce drug-related crime by providing access to sorely needed treatment services, preserve precious law enforcement resources for violent criminals, and save taxpayers millions of dollars.