

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

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
Alcohol and Drug Programs website 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.

Response: Santa Cruz County Board of Supervisors AGREES

2. Santa Cruz County received \$71,414 in Drug testing funds of which 100 % was used to directly pay for tests.

Response: Santa Cruz County Board of Supervisors PARTIALLY AGREES

The County received \$71,414 in drug testing funds in 2001-02. However, as provided for by law, \$32,305 was spent to fully cover the costs of drug testing by service providers, and the remaining \$39,109 was spent to offset the costs of Proposition 36 drug treatment.

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.

Response: Santa Cruz County Board of Supervisors AGREES

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.

Response: Santa Cruz County Board of Supervisors AGREES

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.

Response: Santa Cruz County Board of Supervisors PARTIALLY AGREES

Defendants also may be reassessed if they fail to arrive at the assigned program, or drop out prior to completion.

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.

Response: Santa Cruz County Board of Supervisors AGREES

7. The County Health Services Agency does the assessments for Proposition 36. These health care professionals place an emphasis on treatment.

Response: Santa Cruz County Board of Supervisors AGREES

Staff also pays close attention to identifying needs for medical care.

8. There are 15 certified Proposition 36 treatment facilities in the county with 18 residential treatment beds.

Response: Santa Cruz County Board of Supervisors AGREES

Although these residential facilities had more than 18 beds, Proposition 36 funds were used to purchase approximately 18 beds.

9. The District Attorney has adopted charging guidelines for defendants that maximize the effectiveness of Proposition 36.

Response: Santa Cruz County Board of Supervisors AGREES

Response: Santa Cruz County District Attorney AGREES

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.

Response: Santa Cruz County Board of Supervisors AGREES

The County agrees with the finding with the following clarification.

Deferred Entry of Judgment is a post-plea program. If an offender completes the program, the charges are not dropped but the judgment against the client is not entered into official court records. In either case, the client has no criminal record if s/he completes the program. However, if the client does not complete the program, the court can simply enter the judgment of guilty rather than having to determine guilt or innocence.

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.

Response: Santa Cruz County Board of Supervisors PARTIALLY AGREES

See response to Finding #10 above regarding dropping charges versus deferring entry of judgment.

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.

Response: Santa Cruz County Board of Supervisors AGREES

13. Probation can also be revoked if a defendant commits a non-drug related crime, or violates a non-drug related condition of probation.

Response: Santa Cruz County Board of Supervisors AGREES

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".

Response: Santa Cruz County Board of Supervisors AGREES

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.

Response: Santa Cruz County Board of Supervisors AGREES

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.

Response: Santa Cruz County Board of Supervisors PARTIALLY AGREES

Most clients eligible for Proposition 36 choose treatment over jail time and do not experience extended waits in jail due to shortage of treatment space. Those who do wait in jail rarely wait more than 10 days for an assessment. The few clients who have extended waits in jail are typically waiting due to delays in scheduling court hearings unrelated to assessment or treatment availability.

Response: Santa Cruz County Sheriff AGREES

There are currently 39 women inmates housed in the Main Jail. Nine of those 39 inmates are sentenced and therefore eligible for housing at a medium facility. Although the majority of female inmates are housed in the main jail because they are either unsentenced or classified as maximum-security inmates, the Sheriff's Office recognizes the need for a Women's Medium Security Facility to provide alternate housing opportunities for our medium security women inmates.

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.

Response: Santa Cruz County Board of Supervisors AGREES

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.

19. 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.

Response: Santa Cruz County Board of Supervisors PARTIALLY AGREES

Both Proposition 36 and Drug Court are for persons convicted of drug crimes, and not for persons convicted solely of alcohol-related crimes. Both Proposition 36 and Drug Court offer treatment for alcohol abuse, since many drug users also abuse alcohol.

20. 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.

Response: Santa Cruz County Board of Supervisors AGREES

The description above outlines the requirements of the first phase of Drug Court treatment. As clients progress to later phases, treatment services and court supervision are gradually decreased.

21. Successful completion of the Drug Court program results in charges being dismissed.

Response: Santa Cruz County Board of Supervisors PARTIALLY AGREES

See response to Finding #9 above regarding the difference between dismissal of charges and deferral of entry of judgment.

22. Like Diversion and Proposition 36, clients of Drug Court cannot have been charged with a violent offense, drug sales, or possession for sale.

Response: Santa Cruz County Board of Supervisors AGREES

Response: Santa Cruz County Sheriff's Office AGREES

23. 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.

Response: Santa Cruz County Sheriff's Office PARTIALLY AGREES

The Sheriff's Office has not completed any analysis on Proposition 36's relationship to daily jail population counts. Originally, Proposition 36 was advertised as a way to reduce jail population throughout the State. The Santa Cruz County Jail saw a slight drop in population after Proposition 36 was enacted. However, since that time, the daily population count has increased. Many factors may contribute to this increase. One factor may be a lack of treatment beds and the other appears to be Proposition 36 clients who have failed to complete the program.

24. 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.

Response: Santa Cruz County Board of Supervisors

The perceptions of the Sheriff's Detention Bureau may be accurately reported by the Grand Jury, however, it is likely that staff of the Detention Bureau rarely see successful clients and typically see the clients who are back in jail because they have failed Proposition 36, thus getting a skewed view of Proposition 36's efficacy. No treatment can be expected to work 100% of the time. The Proposition 36 program, like other drug treatment programs, should be judged on the questions of whether more people succeed with treatment than without it, and whether that degree of success is worth the cost.

25. The Grand Jury was not able to locate any current conclusive data on the success of Proposition 36.

Response: Santa Cruz County Board of Supervisors

No outcome studies on Proposition 36 exist at this time. However, numerous studies of drug treatment conducted statewide and nationally have demonstrated the effectiveness and cost savings associated with court-ordered drug treatment.

26. 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.
27. 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.
28. Treatment professionals acknowledge treatment has little effect on those who have not made a commitment to stop using drugs.
29. Treatment professionals believe they could be helpful in assessing clients and recommending treatment.
30. One of the treatment facilities the Grand Jury toured uses biofeedback to aid clients in recovery. The facility reported positive results.
31. 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.

Response: Santa Cruz County Board of Supervisors

This recommendation has been implemented. The Proposition 36 Steering Committee requested the Alcohol and Drug Abuse Commission (ADAC) to appoint one of its members to the Proposition 36 Committee. The ADAC appointed a member at their September meeting.

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.

Response: Santa Cruz County Board of Supervisors

The recommendation will not be implemented at this time. Given the current budget situation, the County Alcohol and Drug Program is reducing treatment capacity rather than adding it. Treatment capacity will be added when the availability of resources

permits. Proposition 36 Steering Committee meetings are open to the public and are well-publicized through press releases.

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.

Response: Santa Cruz County Board of Supervisors

The recommendation will not be implemented at this time. Given the current budget situation, the County Alcohol and Drug Program is focusing its energy on trying to maintain current treatment providers, and is not seeking new 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.

Response: Santa Cruz County Board of Supervisors

This recommendation has been implemented. Reassessments are most frequently triggered by the client dropping out of treatment. Clients may not fully disclose the extent of their drug problems at the initial assessment, and additional information may be gained by treatment provider staff or through reassessment. Alcohol and Drug Program staff and Probation staff work with providers on a daily basis to identify clients who are having difficulties in treatment and resolve issues or find a more appropriate placement.

5. Treatment providers should continue to develop and implement new treatment modalities.

Response: Santa Cruz County Sheriff's Office AGREES

6. Law enforcement and other parties should give Proposition 36 more time to develop before declaring success or failure.

Responses Required

Entity	Findings	Recommendations	Respond within
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, 22, 24	5	60 days (Sept. 2, 2003)

Note: County Board of Supervisors of Santa Cruz County responded for Santa Cruz County Director of Alcohol and Drug Programs and County of Santa Cruz Probation Department.