

# 36 DRUGS. PROBATION AND TREATMENT PROGRAM. Initiative Statute.

## Official Title and Summary Prepared by the Attorney General

### **DRUGS. PROBATION AND TREATMENT PROGRAM.**

Initiative Statute.

- Requires probation and drug treatment program, not incarceration, for conviction of possession, use, transportation for personal use or being under influence of controlled substances and similar parole violations, not including sale or manufacture.
- Permits additional probation conditions except incarceration.
- Authorizes dismissal of charges when treatment completed, but requires disclosure of arrest and conviction to law enforcement and for candidates, peace officers, licensure, lottery contractors, jury service; prohibits using conviction to deny employment, benefits, or license.
- Appropriates treatment funds through 2005–2006; prohibits use of these funds to supplant existing programs or for drug testing.

### **Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:**

- Net savings to the state of between \$100 million and \$150 million annually, within several years of implementation.
- Potential one-time avoidance of capital outlay costs to the state of between \$450 million and \$550 million in the long term.
- Net savings to local government of about \$40 million annually, within several years of implementation.

## OVERVIEW

This measure changes state law so that certain adult offenders who use or possess illegal drugs would receive drug treatment and supervision in the community, rather than being sent to prison or jail or supervised in the community, generally without drug treatment. The measure also provides state funds to counties to operate the drug treatment programs.

The most significant provisions of the measure and their fiscal effects are discussed below.

## BACKGROUND

**Three Types of Crimes.** Under current state law, there are three kinds of crimes: felonies, misdemeanors, and infractions.

A felony is the most severe type of crime and can result in a sentence in state prison or county jail, a fine, or supervision on county probation in the community. Current law classifies some felonies as “violent” or “serious.” The state’s “Three Strikes and You’re Out” law provides longer prison sentences, in some cases 25 years to life, for offenders who have prior convictions for violent or serious felonies.

Misdemeanors are considered less serious and can result in a jail term, probation, a fine, or release to the community without probation but with certain conditions imposed by the court. Infractions, which include violations of certain traffic laws, cannot result in a prison or jail sentence.

**Drug Offenses.** State law generally makes it a crime to possess, use, or be under the influence of certain drugs, including marijuana, cocaine, heroin, and methamphetamine.

Some drug-related offenses are classified as felonies and some as misdemeanors. Whether a drug-related crime is classified as a felony or misdemeanor, as well as the punishment imposed upon conviction, depends primarily upon the specific substance found to be in the possession of an offender. Drug offenses are not classified by law as violent or serious offenses.

State law generally provides more severe punishment for offenders convicted of possessing illegal drugs for sale rather than for their own personal use.

**Probation Violators.** With some exceptions, an offender convicted of drug use or possession can be sentenced to county probation supervision in the community instead of jail or prison, or to probation supervision after a term in jail. A probationer found to have committed a new crime while on probation such as using or possessing an illegal drug, or who violated any condition of probation, could be sent to state prison or county jail by the courts.

**Parole Violators.** After release from prison, an offender imprisoned for felony drug possession is subject to up to three years of state parole supervision in the

community. A parolee who commits a new crime, such as using or possessing an illegal drug, could be returned to prison by the courts based on new criminal charges, or by the administrative action of the Board of Prison Terms based on a finding of a parole violation.

## PROPOSAL

### Drug Offenders Convicted in Court

**Changes in Sentencing Law.** Under this proposition, effective July 1, 2001, an offender convicted of a “nonviolent drug possession offense” would generally be sentenced to probation, instead of state prison, county jail, or probation without drug treatment. As a condition of probation, the offender would be required to complete a drug treatment program.

The measure defines a nonviolent drug possession offense as a felony or misdemeanor criminal charge for being under the influence of illegal drugs or for possessing, using, or transporting illegal drugs for personal use. The definition excludes cases involving possessing for sale, producing, or manufacturing of illegal drugs.

Offenders convicted of nonviolent drug possession offenses would be sentenced by the court for up to one year of drug treatment in the community and up to six additional months of follow-up care. The drug treatment programs must be licensed and certified by the state and could include various types of treatment methods, including residential and outpatient services and replacement of narcotics with medications, such as methadone. A court could require offenders to participate in vocational training, family counseling, literacy training or community service, and could impose other probation conditions. The measure requires that offenders who are reasonably able to do so help pay for their own drug treatment.

**Some Offenders Excluded.** This measure specifies that certain offenders would be excluded from its provisions and thus could be sentenced by a court to a state prison, county jail, or probation without drug treatment. This would be the case for an offender who refused drug treatment, or who possessed or was under the influence of certain (although not all) illegal drugs while using a firearm. This measure also excludes offenders convicted in the same court proceeding of a misdemeanor unrelated to drug use or any felony other than a nonviolent drug possession offense. Also, an offender who had two or more times failed the drug treatment programs required under this measure, and who was found by the court to be “unamenable” to any form of drug treatment, would be sentenced to 30 days in county jail.

In addition, offenders with one or more violent or serious felonies on their record, and thus subject to longer prison sentences under the Three Strikes law,

would not be sentenced under this measure to probation and drug treatment, unless certain conditions existed. Specifically, during the five years before he or she committed a nonviolent drug possession offense, the offender (1) had not been in prison, (2) had not been convicted of a felony (other than nonviolent drug possession), and (3) had not been convicted of any misdemeanor involving injury or threat of injury to another person.

**Court Petitions.** An offender placed on probation who successfully completes drug treatment and complies with his or her probation conditions could petition the court to dismiss the charges and to have that arrest considered, with some exceptions, to have never occurred.

**Sanctions.** An offender sentenced by a court to participate in and complete a drug treatment program under this measure would only be subject to certain sanctions if it were determined that he or she was unamenable to treatment or had violated a condition of probation. The sanctions could include being moved to an alternative or more intensive form of drug treatment, revocation of probation, and incarceration in prison or jail. In some cases involving repeat drug-related violations, return to prison or jail would be mandatory.

### Parole Violators

**Changes in Parole Revocation.** Under this proposition, effective July 1, 2001, a parole violator found to have committed a nonviolent drug possession offense or to have violated any drug-related condition of parole would generally be required to complete a drug treatment program in the community, instead of being returned to state prison. The Board of Prison Terms could require parole violators to participate in and complete up to one year of drug treatment and up to six additional months of follow-up care.

Parolees could also be required to participate in vocational training, family counseling, or literacy training. Parolees reasonably able to do so could be required to help pay for their own drug treatment.

**Some Parole Violators Excluded.** Under the measure, the Board of Prison Terms could continue to send to prison any parole violator who refused drug treatment, or had been convicted of a violent or serious felony. The measure also excludes parole violators who committed a misdemeanor unrelated to the use of drugs or any felony at the same time as a nonviolent drug possession offense.

**Court Petitions.** Unlike drug offenders placed on probation by the courts, parolees would not be eligible under this measure to submit petitions for dismissal of the charges or to have their arrest considered to have never occurred.

**Sanctions.** Parolees who fail to comply with their drug treatment requirements or violate their conditions of parole would only be subject to sanctions similar to those for drug offenders on probation, including modification of their drug treatment program or revocation of parole and return to state prison.

### Other Provisions

The measure provides state funds to counties to implement the measure and requires a study of its effectiveness and fiscal impact. County governments would be directed to report specified information on the implementation and effectiveness of the drug treatment programs to the state, and their expenditures would be subject to audits by the state.

### FISCAL EFFECT

This measure would have significant fiscal effects upon both state and local governments. The major effects are discussed below.

### Individual Fiscal Components

**State Prison System.** This measure would result in savings to the state prison system. This is because as many as 24,000 nonviolent drug possession offenders per year would be diverted to drug treatment in the community instead of being sent to state prison. Because many of these offenders would otherwise have served only a few months in prison, we estimate as many as 11,000 fewer prison beds would be needed at any given time. Consequently, state prison operating costs would be reduced by between \$200 million to \$250 million annually within several years after implementation of this measure.

The estimate reflects a range of potential savings because of (1) differences in how counties would implement the measure and the effectiveness of the treatment programs they would establish, (2) possible changes in the way prosecutors and judges handle drug cases, such as changes in plea bargaining practices, and (3) uncertainty about the number of Three Strikes cases affected by the measure. These savings would be partly offset to the extent that the offenders diverted to the community under this measure later commit additional crimes that result in their commitment to state prison.

Assuming that growth in the inmate population would have otherwise continued, the state would also be able to delay the construction of additional prison beds as a result of this measure. This would result in a one-time avoidance of capital outlay costs of between \$450 million and \$550 million in the long term.

**State Parole System.** This measure would divert a significant number of offenders from entering state custody as prison inmates. Thus, fewer offenders would eventually be released from state prison to state parole supervision, resulting in a savings to the state. We estimate that the initiative would result in a net caseload reduction of as many as 9,500 parolees and a net state savings of up to \$25 million annually for parole operations.

**County Jails.** We estimate that the provisions in this measure barring jail terms for nonviolent drug possession offenses would divert about 12,000 eligible offenders annually from jail sentences to probation supervision and drug treatment in the community. This would result in about \$40 million annual net savings to county

governments on a statewide basis, within several years after implementation of the measure. These savings would decline to the extent that jail beds no longer needed for drug possession offenders were used for other criminals who are now being released early because of a lack of jail space.

**Treatment Trust Fund.** This measure appropriates \$60 million from the state General Fund for the 2000–01 fiscal year, and \$120 million each year thereafter concluding with the 2005–06 fiscal year, to a Substance Abuse Treatment Trust Fund. After 2005–06, funding contributions from the General Fund to the trust fund would be decided annually by the Legislature and Governor.

The money placed in the trust fund would be allocated each year to county governments to offset their costs of implementing this measure, including increased probation caseloads, substance abuse treatment, court monitoring of probationers, vocational training, family counseling, literacy training, and compliance with the state reporting requirements. None of the money could be used for drug testing of offenders.

**Fees Paid by Offenders.** This measure authorizes the courts and the Board of Prison Terms to require eligible offenders to contribute to the cost of their drug treatment programs. The amount of revenues generated from charging such fees to offenders is unknown but would probably amount to several million dollars annually on a statewide basis within several years after implementation of the measure.

**Trial Court Impacts.** This measure would probably result in significant ongoing annual savings for the court system because fewer offenders facing nonviolent drug possession charges would contest those charges at trial. The combined savings to the state and county governments for trial court, prosecution, and indigent defense counsel costs would probably amount to several million dollars annually on a statewide basis within several years after implementation of the measure. However, the savings to the state could be offset by an unknown, but probably small, amount for additional court costs to monitor treatment compliance by diverted offenders.

**Other Drug Treatment Effects.** To the extent that the additional drug treatment services provided under this measure are effective in reducing substance abuse, state and local governments could experience savings for

health care, public assistance, and law enforcement programs. The amount of such potential savings is unknown.

**Summary of Fiscal Effects**

This measure is likely to result in net savings to the state after several years of between \$100 million and \$150 million annually due primarily to lower costs for prison operations. Assuming inmate population growth would have otherwise continued, the state would also be able to delay the construction of additional prison beds for a one-time avoidance of capital outlay costs of between \$450 million and \$550 million in the long term. Counties would probably experience net savings of about \$40 million annually due primarily to a lower jail population.

A summary of the fiscal effects of the measure is shown in Figure 1.

**Figure 1**  
**Proposition 36**  
**Summary of Fiscal Effects of Major Provisions<sup>a</sup>**

	State	Local
Substance Abuse Treatment Trust Fund Appropriation	\$120 million annual costs.	—
Prison operations	\$200 million to \$250 million annual savings.	—
Prison construction	\$450 million to \$550 million one-time cost avoidance.	—
Parole operations	\$25 million annual savings.	—
Jail operations	—	\$40 million annual savings statewide.
Fees paid by offenders	—	Potentially several million dollars in annual revenues statewide.
Trial courts, prosecution, public defense	Potentially several million dollars in annual savings.	Potentially several million dollars in annual savings statewide.
<b>Total Fiscal Impact</b>	\$100 million to \$150 million annual net savings; \$450 million to \$550 million one-time cost avoidance.	About \$40 million in annual net savings statewide.

<sup>a</sup> Within several years after implementation of the measure.

PROPOSITION 36

## Argument in Favor of Proposition 36

If Proposition 36 passes, nonviolent drug offenders convicted for the first or second time after 7/1/2001, will get mandatory, court-supervised, treatment instead of jail.

California prisons are overcrowded. We don't want violent criminals to be released early to make room for nonviolent drug users. We must keep violent criminals behind bars, and try a different approach with nonviolent drug users.

Proposition 36 is strictly limited. It only affects those guilty of simple drug possession. If previously convicted of violent or serious felonies, they will not be eligible for the treatment program unless they've served their time and have committed no felony crimes for five years. If convicted of a non-drug crime along with drug possession, they're not eligible. If they're convicted of selling drugs, they're not eligible.

Treatment under Proposition 36 is not a free ride. The rules are strict. For example, if an offender commits a non-drug crime, or demonstrates that treatment isn't working by repeatedly testing positive for drug use, the offender can be jailed for one to three years.

Besides drug treatment, judges can also order job training, literacy training and family counseling. The idea is to turn addicts into productive citizens, so they pay taxes and stop committing crimes to support their habits.

This is smart drug policy. A California governmental study showed that taxpayers save \$7 for every \$1 invested in drug treatment. The state's impartial Legislative Analyst says Proposition 36 can save California hundreds of millions of dollars a year, even after spending \$120 million annually on treatment programs.

In 1996, Arizona voters passed a similar initiative. Their Supreme Court reported millions of dollars in savings and a

remarkable success rate in treating drug users during the first two years. More recently, New York State decided to implement a similar program.

Proposition 36 is a safe, smart alternative to the failed drug war. It is supported by prominent Democrats and Republicans, major newspapers, and the California Society of Addiction Medicine. Some law enforcement officers and organizations also support Proposition 36. It is opposed by the prison guards union and law enforcement groups that want to spend even more money on failed drug policies we've had for 25 years.

Proposition 36 only affects simple drug possession. No other criminal laws are changed. Right now there are 19,300 people in California prisons for this offense. We're paying \$24,000 per year for each of them. When they get out, many will return to drugs and crime. Treatment costs about \$4,000, and while it doesn't help every drug user, it does reduce future crime more effectively than prison.

Proposition 36 is not radical. It gives eligible drug users the opportunity for treatment. If they fail, or break the rules, they can go to jail. Those who can afford to pay for treatment can be forced to do so. If they are convicted of a violent or serious felony or are dealing drugs, they won't be eligible. Treatment instead of jail works in Arizona and will work in California.

PETER BANYS, *President*  
*California Society of Addiction Medicine*  
RICHARD POLANCO, *Majority Leader*  
*California State Senate*  
KAY McVAY, *President*  
*California Nurses Association*

## Rebuttal to Argument in Favor of Proposition 36

Supporters of Proposition 36 say a similar initiative in Arizona is a "proven success." In fact, it has created a nightmare.

Because drug offenders now realize there are no consequences for failing or refusing treatment, many are thumbing their noses at the court and continuing to abuse drugs.

As a result, treatment is less effective and our drug problems are getting worse.

RICHARD M. ROMLEY, *Maricopa County District Attorney*,  
*State of Arizona*

Proposition 36 is not limited to "nonviolent" drug users.

Persons convicted of possessing "date rape" drugs can remain on the street under Proposition 36—even those with prior convictions for sex crimes like rape and child molesting.

Proposition 36 also lets drug abusers with a history of criminal violence remain free, including those with prior convictions for murder, child abuse, assault and other violent crimes.

Under Proposition 36, they cannot be sent to jail, no matter how violent their criminal history.

ROBERT NALETT, *Vice President*  
*California Sexual Assault Investigators Association*

Proposition 36 doesn't provide "court-supervised" drug treatment.

It ties the hands of judges, hurts legitimate treatment and effectively decriminalizes heroin, methamphetamine and other illegal drugs.

Proposition 36 includes no licensing or accountability guidelines—inviting unregulated, ineffective treatment by unqualified operators.

It cripples California's successful drug courts, which provide effective treatment under court supervision—helping drug abusers and saving taxpayers an estimated \$10 for every dollar invested.

Drug courts hold drug abusers accountable with regular drug testing and consequences for failing treatment—accountability not found in Proposition 36.

STEPHEN V. MANLEY, *President*  
*California Association of Drug Court Professionals*

**Argument Against Proposition 36**

*Decriminalizes Heroin and Other Hard Drugs*

Proposition 36 effectively decriminalizes heroin, crack cocaine, PCP, methamphetamine, “date rape” drugs and many other illegal substances—the hard drugs behind most child abuse, domestic violence, sexual attacks and other violent and theft-related crimes in California.

Instead of offering a real solution to drug abuse, it gives up the fight.

This dangerous and misleading initiative pretends to offer a new approach to drug treatment. In fact, it hurts legitimate drug treatment programs that work—like California’s highly successful drug courts.

Proposition 36 wasn’t written by drug treatment experts. It was written by a criminal defense lawyer and funded by three wealthy out-of-state backers whose ultimate goal is to legalize drugs.

*Puts Potentially Violent Drug Abusers on the Street*

Proponents claim Proposition 36 deals only with non-violent drug users. In reality, it will allow an estimated 37,000 felony drug abusers to remain on our streets every year—many of them addicted to drugs that often ignite violent criminal behavior.

Even drug abusers with long histories of drug dealing, parole violations and prior felonies would escape jail. Instead, they would be diverted into “treatment” programs. But the initiative includes no safeguards or licensing guidelines to ensure these programs are effective. This opens the door to fraud, abuse and “fly-by-night” half-way houses run by people interested in money, not results. Programs offering nothing more than cassette tapes or Internet “chat rooms” could qualify for tax money.

*Weakens the Law Against “Date Rape” Drugs*

If Proposition 36 becomes law, serial rapists, child molesters and other sex offenders convicted of possessing “date rape”

drugs could escape jail or prison. Instead, they would be given treatment.

Proposition 36 also prevents prison or jail for persons convicted of possessing illegal drugs while armed with loaded firearms, or of abusing drugs while on parole.

Proposition 36 forces employers to keep drug abusers on the job, making it easier for drug abusers to continue working as teachers, school bus drivers, even airline pilots.

Proposition 36 promises to save tax money, but former California Director of Finance Jesse Huff warns the “ultimate cost of this initiative is far higher than its promised savings. It commits taxpayers to spending \$660 million and contains millions of dollars in hidden costs for law enforcement, probation and court expenses.”

Proposition 36 spends \$660 million in tax money, but prohibits any of this money from being used for drug testing. Testing is vital because it holds drug abusers accountable during treatment. Without testing, there is no way to prove treatment is working.

*Sends the Wrong Message to Our Kids*

Proposition 36 tells our children there are no longer any real consequences for using illegal drugs like heroin and cocaine. It sends the same message to hardcore drug abusers.

Don’t be fooled. This dangerous and misleading initiative threatens public safety and hurts our ability to help drug abusers conquer their addictions with treatment programs that really work.

JOHN T. SCHWARZLOSE, *President*  
*Betty Ford Center*  
 ALAN M. CROGAN, *President*  
*Chief Probation Officers of California*  
 THOMAS J. ORLOFF, *President*  
*California District Attorneys Association*

**Rebuttal to Argument Against Proposition 36**

Opponents think the war on drugs is working. They want to spend even more money on this failed policy. So they’re distorting Proposition 36.

They claim it “decriminalizes” drugs. Not true. Possession of illegal drugs remains a felony, but for the first two convictions, the punishment is treatment, not prison.

Opponents claim Proposition 36 hurts drug courts. Not true. California’s drug courts will continue, but they serve less than 5% of drug offenders.

Opponents claim drug offenders with loaded firearms will only get treatment. Not true. Carrying concealed weapons is a separate crime for which one can be jailed.

They claim offenders in treatment won’t be drug tested. Not true. Judges can order testing and require offenders to pay for it and their treatment.

Opponents claim treatment programs will be “fly-by-night.” Not true. Proposition 36 requires all programs to be licensed.

They try to scare you by saying sex offenders with “date rape” drugs benefit from this initiative. Not true. Only drug

possession “for personal use” qualifies; using drugs to enable rape is not “personal use.”

Opponents argue that drug users must be kept on the job, including airline pilots and bus drivers. Ridiculous. Nothing in Proposition 36 prevents anyone from being fired for a drug offense, or from being fired for failing a drug test.

Opponents say the initiative has “hidden costs,” but the impartial Legislative Analyst says the initiative will generate huge savings, after treatment programs are paid for. You decide who’s right.

Vote YES on Proposition 36.

MAXINE WATERS  
*Member of U.S. Congress*  
 PETER BANYS, *President*  
*California Society of Addiction Medicine*  
 TIM SINNOTT, *President*  
*California Association of Alcoholism and Drug Abuse*  
*Counselors*