



# Implementing Proposition 36: Issues, Challenges, and Opportunities

## LAO Findings

In November, voters approved Proposition 36, the “Substance Abuse and Crime Prevention Act of 2000.” The measure makes significant changes to the state’s criminal justice and drug treatment systems. Implementing Proposition 36 will pose challenges to the state and counties, some of which may require assistance and action of the Legislature.

In this policy brief, we outline the implementation issues and challenges and make several recommendations with regard to implementation. Most importantly, in our view, planning by the state and counties must begin *now* in order to ensure the effective implementation of the measure.

## Issues

The state and counties will face organizational, implementation, and funding issues, including:

- ❖ Developing methods for collaboration to ensure that all key players work closely together to increase the likelihood of successful implementation.
- ❖ Assessing drug treatment capacity within counties, the needs of offenders who will be treated under Proposition 36, the gaps in the drug treatment “continuum of service,” and ways to fill those gaps.
- ❖ Determining the criteria for supervising and monitoring offenders who will be in treatment, as well as when to revoke their probation and parole and return them to incarceration.
- ❖ Distributing funds provided under Proposition 36 to treat and supervise offenders in the community, as well as identifying other sources of funding.



## BACKGROUND

### What Proposition 36 Does

The 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 state prison or county jail, or supervised in the community without treatment. The measure also provides state funds (\$120 million on an annual basis) to counties to pay for the treatment programs. Figure 1 summarizes the provisions of the proposition.

### The Key Players in Proposition 36

State agencies, local agencies, courts, and community-based organizations will all play a role in implementing Proposition 36. Figure 2 shows the key players involved in implementation.

## IMPLEMENTATION ISSUES

State and local government agencies will need to address a range of issues in implementing

Figure 1

### Major Provisions of Proposition 36

- ✓ **Changes sentencing laws**, effective July 1, 2001, to require offenders convicted of “non-violent drug possession,” as defined, to be sentenced to probation and drug treatment instead of prison, jail, or probation without treatment. Excludes some offenders, including those who refuse treatment and those found “unamenable” to treatment by courts.
- ✓ **Changes parole violation laws**, effective July 1, 2001, to require that parole violators who commit nonviolent drug possession offenses or who violate drug-related conditions of parole complete drug treatment in the community, rather than being returned to state prison.
- ✓ Requires that eligible offenders receive up to **one year of drug treatment** in the community and up to six months of additional follow-up care.
- ✓ Establishes certain **sanctions for offenders** found unamenable for treatment or who violate the conditions of probation or parole.
- ✓ Permits courts (for probationers) and Board of Prison Terms (for parole violators) to require **offenders to participate in training, counseling, literacy, or community service**.
- ✓ Requires that treatment programs be **licensed or certified** by the state Department of Alcohol and Drug Programs (DADP).
- ✓ Requires **offenders to pay** for their treatment, if they are reasonably able to do so.
- ✓ **Appropriates state funds for distribution to counties** to operate drug treatment programs and provide related services.
- ✓ Requires DADP to **study the effectiveness** of the measure and to **audit county expenditures**.

Proposition 36. The most significant of these issues are discussed below.

### Organizational Issues

Among the first—and most important—issues surrounding implementation is the basic organizational structure necessary to provide the services required by the measure.

**Figure 2**

**Key Players in Proposition 36 Implementation**

**State**

**Department of Alcohol and Drug Programs**

- Distribute funds to counties.
- License or certify drug treatment programs.
- Collect data from counties.
- Audit county expenditures.
- Evaluate measure's effectiveness.

**Board of Prison Terms (BPT)**

- Set revocation criteria for parole violators directed into treatment.
- Decide when to modify or intensify treatment program and revoke parole.

**California Department of Corrections (CDC)**

- Supervise and monitor parole violators directed into treatment by BPT.
- Report violations of revocation criteria to BPT.

**Local**

**County Alcohol and Drug Treatment Agencies (frequently part of county mental or public health departments)**

- Provide treatment services to probationers and parolees directed into treatment within the county, either directly or through contracts with private providers.

**Trial Courts**

- Set probation revocation criteria for probationers directed into treatment.
- Monitor probationers directed into treatment, including modifying or intensifying treatment programs and revoking probation for those who violate.

**County Probation Departments**

- Supervise and monitor probationers directed into treatment by the local trial courts.
- Report violations of drug treatment revocation criteria to courts.

**Educational, Social, and Health Service Agencies**

- Provide treatment services prescribed by the courts, such as vocational and literacy training and counseling.

tion among agencies will be required. Collaboration will be necessary between the key players at each level of government. At a minimum, all key players should be sharing information and discussing their implementation plans.

Among state agencies, for example, the Board of Prison Terms (BPT) will need to work closely with the California Department of Corrections (CDC) to develop the regulations related to parole violations required under the measure. Among agencies at the county level, trial courts and probation departments will need to determine supervision and monitoring responsibilities for probationers.

In addition, collaboration will be required between state and local agencies. For example, the state Department of Alcohol and Drug Programs (DADP) will have

**Close Collaboration Required.** As Figure 2 shows, many different state and local agencies will be involved in implementation. Close collabora-

tion among agencies will be required. Collaboration will be necessary between the key players at each level of government. At a minimum, all key players should be sharing information and discussing their implementation plans.



In our view, collaboration may be the single most important factor to successful implementation of Proposition 36. It could also pose a significant challenge, given that a number of these players at both the state and local levels do not have a strong history of successfully working together.

**Who Is in Charge?** Proposition 36 envisions specific roles for state and local agencies, but does not designate a single entity as being in charge at either the state or local level. For example, the funding provided to counties for implementation of the measure could be distributed to the county board of supervisors, which could decide how much to allocate to county drug treatment, probation supervision, and court monitoring programs. Alternatively, the money could be provided to county drug treatment agencies, which in turn would make the local allocations. The Legislature may wish to consider enacting legislation to designate a lead state or county agency to take charge of implementation.

### Service Issues

Most of the actual delivery of services under Proposition 36 will be undertaken by the counties. These various services include:

- ◆ **Drug treatment services** to both eligible probationers and parole violators.
- ◆ **Probation supervision and court monitoring services** to probationers (the CDC will continue to supervise the parole violators).
- ◆ **Other services for probationers** that are ordered by the court, including vocational training, family counseling, literacy training, and community service.

The measure provides that the funding provided to counties can be used to pay for these services.

Key issues that counties will face in implementing Proposition 36 include determining the *types and levels of treatment and supervision services* that will be needed for the eligible population. Specifically, counties will need to address the following issues:

**Develop New or Utilize Existing Assessment Tools to Identify the Treatment Needs of Individual Offenders.** Valid assessment tools will need to be used when determining the specific treatment needs of each offender who will be assigned to treatment under the measure. The tools will need to primarily assess the specific substance abuse treatment needs (such as alcohol, cocaine, heroin, and amphetamines) of each offender as well as assess other individual social and education needs of the offender (such as family counseling, literacy, and vocational training).

Counties may also wish to assess the needs of offenders that go beyond those specifically spelled out in the measure and listed in Figure 1, such as mental health needs. Given that a large number of drug-dependent persons are dually diagnosed as having both drug and mental health problems, such assessments will be important so that interre-

lated problems of an offender can be properly treated in order to reduce future criminality.

***Estimate the Total Treatment Needs of the Eligible Population.*** This will require research and review of existing cases that come before the courts in the county as well as parolees being supervised within the county.

***Ensure That There Is an Adequate Mix of Treatment Services to Meet the Needs of the Population.*** Proposition 36 contemplates a continuum of services so that offenders who are not succeeding in a certain type of treatment (such as outpatient drug treatment) can be moved “up the continuum” to more intensive treatment (such as residential in-patient drug treatment).

***Develop a Strategy to Expand Drug Treatment Capacity and Fill in Gaps That are Identified in the Continuum.*** Filling in the gaps and expanding capacity will require substantial planning and analysis in each county. It will not take place overnight, but will likely require a long-term strategy.

***Consider How the New Treatment Services Will Affect Existing Treatment Programs.*** Under Proposition 36, the state will provide funds to counties for treatment programs in the current fiscal year, although the provisions of the measure which will divert offenders from prison and jail into treatment will not take effect until the budget year. This will allow counties to begin to expand treatment services. However, given current waiting lists for treatment in counties, it may not be

possible to expand supply fast enough to accommodate the increase in demand that will come about as a result of the measure. In the time it takes to develop more treatment capacity, the additional demand could potentially raise the price of some treatment services. In addition, in order to meet the measure’s requirements, counties may have to redirect existing treatment slots to the Proposition 36 population, which could reduce access temporarily to existing treatment programs, whether for other criminal offenders or the general public who are not part of the criminal justice system.

***Determine the Types and Levels of Supervision and Monitoring Services Needed for Offenders.*** Offenders redirected into treatment will need to be supervised on probation and monitored by the court. Counties and courts will need to determine the levels and methods of supervision they wish to employ. Currently in many counties, offenders on probation who are not receiving treatment for Proposition 36-like offenses, are probably receiving little supervision. (In some cases, we know that these low-risk offenders are on very high caseloads per probation officer.) Making sure that the offenders are participating in their treatment may require some additional level of supervision and possibly drug testing. However, treatment providers can provide substantial information to the courts that may limit the amount of direct contact that is necessary by probation officers, especially for low-risk, low-treatment offenders.



**Develop Quality Control Mechanism.** In order for Proposition 36 to be successful at reducing the substance abuse of criminal offenders, quality treatment services—particularly drug treatment services—will be required. Thus, counties will need to develop mechanisms to ensure that the programs that they choose to fund are delivering high-quality services to clients.

**Trial Courts Will Play Important Role in Oversight of Offenders.** Trial courts, while located at the local level, are essentially state entities because they are subject to state control and funding. As indicated above, they will play an important role in setting probation criteria for offenders and monitoring their progress in treatment and behavior while on probation. In addition, trial courts will need to clarify which offenders will be considered “unamenable” for treatment under the measure.

**State DADP Plays Important Role in Service Delivery.** Although much of the delivery of services will take place in the counties, DADP also has an important role to play. Specifically, we anticipate DADP will need to:

- ◆ Provide **technical assistance** to the counties to assist them with implementation.
- ◆ Develop a **statewide treatment needs assessment** to ensure that treatment expansion and services meet the state’s overall needs.

- ◆ Develop a **statewide quality control mechanism** to ensure that treatment money is being spent on effective programs.

### Funding Issues

Figure 3 outlines the general funding provisions of Proposition 36.

**Distribution of the Current-Year Funds Should Be Quick and Simple.** As Figure 3 shows, the measure directs DADP to distribute \$60 million in the Substance Abuse Treatment Trust Fund (SATF) to the counties in the current fiscal year. At the time this report was prepared, DADP had not yet distributed the funds, although the department advises that it is developing a distribution formula and mechanism.

In our view, it is essential that DADP distribute the current-year amount *as soon as possible* so that counties will have maximum opportunities to build treatment capacity. For this first year, DADP could utilize the simplest of funding formulas that satisfy the basic requirements of the measure and develop more detailed or sophisticated distribution formulas for future years. For example, one of DADP’s existing formulas could be modified to include the two factors specified in the measure—per capita arrests for controlled substances possession and substance abuse treatment caseload within each county.

In addition, we suggest that DADP distribute the funds to counties through contracts. This should make it easier for the state to establish

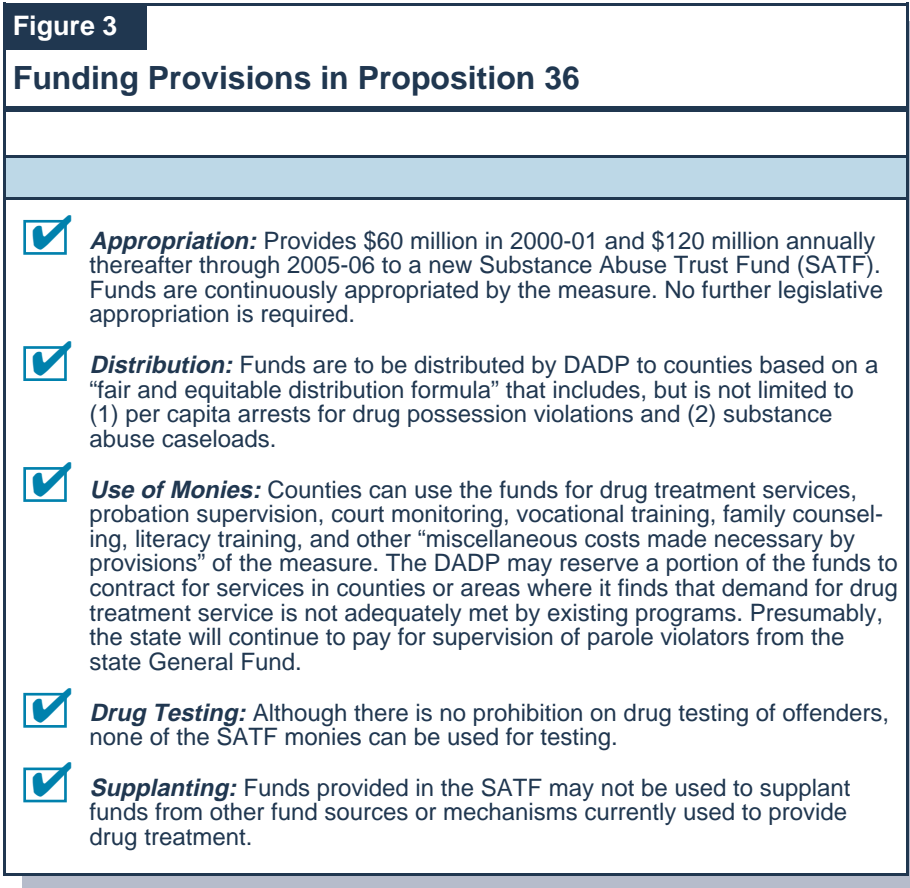
reporting and auditing mechanisms required by Proposition 36 to hold counties accountable for expenditure of the funds.

***Distribution of Funds in 2001-02 and Beyond Should Include Incentives.*** As Figure 3 indicates, DADP must take two factors into account when developing its SATF distribution formulas, but can also go beyond that to include other factors. The department would have more time to develop formulas for distribution of funds for 2001-02 and beyond. We recommend that the department consider future funding formulas that provide specific incentives to counties, for example:

- ◆ ***Success of Treatment Efforts.*** Future formulas could provide an incentive to counties that do a particularly good job in successfully treating eligible offenders. This could be accomplished in a number of ways, such as establishing a recidivism goal for each county and providing additional funds to those counties that meet or exceed the goal.
- ◆ ***County Contributions to Treatment Efforts.*** Counties that choose to add their own discretionary funds could be rewarded for their efforts. The benefit of

using such a criterion might be that the state can get more “bang for the buck” and achieve greater buy-in from counties to meet the overall goals of Proposition 36.

***State and Counties Should Identify Other Funding Sources.*** In addition to the monies that will be distributed to the counties from the SATF, counties and the state should identify other funding sources that may be available to supplement the state funds. Specifically, the counties and the state should look at:





- ◆ **Payments From Offenders.** Proposition 36 requires that offenders who are reasonably able to do so help pay for their own drug treatment. Also, current law already allows counties to collect fees from probationers to cover a portion of the costs of their supervision and treatment. These sources should be explored as a way to supplement state treatment funds.
- ◆ **Medi-Cal and CalWORKS.** The state and counties should begin discussions to determine whether drug treatment services provided to eligible offenders could be paid for by the Medi-Cal or CalWORKS programs, whose costs are shared by the state and federal governments.
- ◆ **Education and Training.** Because the measure provides that offenders can also be required to participate in vocational and literacy training programs as a condition of their probation, counties will need to explore options to expand use of community colleges and adult education programs operated by local school districts.
- ◆ **Other Health and Social Services Programs.** Proposition 36 does not limit the types of services that can be provided to eligible offenders. In particular, counties may need to place offenders in mental health treatment programs, because of dual diagnoses. Such programs are often

funded by multiple federal, state, and county funding sources.

**Will the State Need to Provide Additional Funds to Counties?** A number of counties have indicated that the funding that will be provided from the SATF will be insufficient to provide the treatment and supervision services necessary under the measure. In our view, it is far too early to reach such a judgment. As indicated earlier, counties and the state will need to determine their treatment needs and methods of supervision. After this information is assessed, more accurate determinations can be made as to the adequacy of funding.

We offer four cautions in this area:

- ◆ **Proposition 36 Will Likely Result in Overall Savings in the Future.** As we indicated in our analysis of Proposition 36 in the state ballot pamphlet, we estimate that Proposition 36 will likely result in overall savings to the state and counties, especially in the long-run, by redirecting offenders away from more costly incarceration and into treatment and community supervision that will likely reduce criminality for at least a portion of the eligible population. A portion of these likely savings can be redirected back into treatment and supervision.
- ◆ **Drug Treatment Systems Already Lack Adequate Capacity.** As we pointed out in a 1999 report, *Substance Abuse Treatment*



*in California*, the state's treatment system already has a number of problems, including lengthy waiting lists in a number of counties. A number of individuals on these waiting lists, as well as individuals currently receiving substance abuse services, will be eligible for Proposition 36-funded services. Thus, while the funding provided by Proposition 36 could eventually relieve some of the pressure on this overburdened system, capacity problems are likely to continue, at least in the short term.

- ◆ ***Probation Supervision Services Lacking in Many Counties.*** In addition, many probation departments are not well staffed to supervise criminal offenders on probation in their communities. Most of these problems have been apparent for years and are not related to Proposition 36, but are more likely the consequence of limited county discretionary revenues as well as local policy choices. Funding provided under Proposition 36 should not be expected to cure this staffing disparity.
- ◆ ***Funds Likely to Be Needed for Drug Testing.*** As Figure 3 indicates, none of the funds provided in the SATF may be used for drug testing of offenders. Most experts agree, however, that testing is a necessary and useful tool for monitoring treatment progress and compliance. Thus, counties may need to find other resources to fund testing—either from existing funds for

testing, other county revenue sources, redirection of other funds, payments from offenders, or from the state. It should be noted, however, that funds for drug testing of state parolees are already included in the CDC's regular standard cost allocations for parole supervision. These funds could be used to test parole violators directed into treatment under this measure.

## CONCLUSION

Proposition 36 poses significant challenges to policymakers and state and local criminal justice and treatment practitioners. At the same time, it provides substantial opportunities to the state and counties to move to a different approach to handling criminal offenders with drug problems, consistent with the direction of voters. Research indicates that treatment of these offenders can, but certainly does not always, succeed at reducing future criminality. Successful implementation will require a focused effort and close monitoring. Figure 4 shows the five significant challenges posed by the measure, along with some recommended solutions.



Figure 4

### Five Significant Challenges to Implementing Proposition 36

- Collaboration.** All key players—both state and local—will need to work closely together to ensure successful implementation. The Legislature may need to consider legislation to specify who is in charge at both the state and county levels.
- Treatment Needs.** Counties will need to inventory their drug treatment services, estimate the treatment needs of their Proposition 36 population, determine the gaps in their continuum of services, and develop strategies to fill the gaps.
- Supervision and Monitoring.** Courts and county probation departments will need to determine how to supervise and monitor probationers while they are in treatment. The CDC parole agents and BPT will need to do the same for parole violators.
- Distribution of Funds.** The DADP will need to develop funding formulas and distribute SATF monies. We recommend that DADP: (1) distribute the current-year funds as quickly as possible in order to permit counties maximum time to develop treatment capacity, (2) develop contracts with counties to ease reporting and auditing requirements, and (3) consider funding formulas for future years that provide counties incentives to develop successful programs and add their own funds to the treatment efforts.
- Other Funds.** Counties and the state should identify other sources to support treatment programs, such as offender payments, federal health and social services programs, and education funds. We recommend that the Legislature not consider providing additional state funds until treatment needs and methods of supervising offenders have been more clearly determined.





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