



## **Prop 36: Balancing Needs**

---



By John McCarthy, MD

**Short and long-term public safety issues of the county's drug diversion program are difficult to reconcile. But it is clear the program has significantly reduced drug abuse.**

IN NOVEMBER 2000, CALIFORNIA voters approved the Substance Abuse and Crime Prevention Act: Proposition 36, an initiative requiring treatment in lieu of incarceration for non-violent drug offenders. Participants must plead guilty to their drug charges and agree to undergo treatment. They are then placed on probation. Those not meeting standards for participation are "deleted" from the program, and the original sentence is imposed.

Counties have considerable latitude in implementing Prop 36. Sacramento County's plan has been developed and monitored by a "multidisciplinary implementation committee," a cooperative effort between the Sacramento County Drug and Alcohol Division as lead agency, and the courts, public defender, district attorney, probation, state parole, and a group of selected local drug treatment providers. I have been a treatment provider member of this committee, which has met monthly since early 2001. Hopefully, what follows accurately represents the process. The conclusions, however, are my own.

Drug treatment is no different than any other medical or behavioral treatment: it should have scientific evidence of validity and must be used at the proper dose or duration.

Over the first three years of the initiative, the implementation committee has developed a comprehensive array of treatment services that certainly fulfill the first criteria. But there have been problems over allowing participants sufficient time to benefit from these services. In fact, the program has two somewhat conflicting goals: protecting short-term public safety by incarcerating those using drugs, and protecting long-term public safety by giving participants sufficient time to benefit from treatment.

County probation and the district attorney were very concerned that addicts not see Prop 36 as a "get out of jail free card," i.e., a license to use drugs with impunity, potentially endangering public safety. They set very demanding standards for compliance - so almost half of participants never received even a minimum effective dose of treatment (three months) prior to being deleted.

Successful drug treatment is highly correlated with time in treatment, and it takes at least 3-6 months before any long-term benefit can be measured. Most patients we routinely treat are too impaired to quickly comply with all the treatment, urine testing, and probation requirements this program demanded. Many of the most impaired were deleted very quickly.

As frustrating as the model was from a treatment perspective, there was a competing need to assure this major change in policy could be implemented without adversely affecting public safety. This is a highly politicized issue and safety problems could jeopardize the whole program.

Our community must understand the high deletion rate results from the priority given to short-term public safety, not from treatment failure. Court and probation monitoring has been intense, and there has been no evidence of negative community fallout attributable to Prop 36.

Crime is going down locally and statewide, as are drug arrests. The efforts of probation, the district attorney, and the judges have shown that Prop 36 can be implemented, while also protecting public safety.

Those entering Prop 36 programs have longer histories of addiction and longer involvement with the criminal justice system than anticipated. A majority of drug addicts have co-existing mental illness. The vast majority of offenders have never had adequate drug or mental health treatment during years of cycling through the criminal justice system. It is like incarcerating people for high blood sugars, and not treating their diabetes. What else could be expected but years of recidivism?

UCLA researchers recently reported that half of a group of 20-year-old heroin addicts, incarcerated in California prisons in the 1970s, were dead 33 years later. Less than 6 percent of them ever had effective drug treatment. Only 10 percent ever achieved a stable abstinence. A majority were repeatedly incarcerated, supporting other recidivism data that show arrests and incarcerations are not answers to long-term public safety needs. Untreated addicts come out of jail unchanged, and often come out of prison worse because of traumatic prison environments.

The problem of severely impaired long-term addicts became apparent when patients who were schizophrenic, or manic, or depressed, were "deleted" for failing a compliance standard they could not possibly achieve. Both their drug treatment and psychiatric care were stopped

Cognitive impairment is very common among Prop 36 participants, because of toxic drug effects and the disorganizing effect of untreated mental illness. This is a major reason why many participants cannot meet our standards. As these cases came through the system, there was philosophical agreement that some patients required more flexibility. And the court process became more open to clinical input documenting overall progress in treatment and mitigating factors that impaired compliance with the program.

Sacramento's plan is perhaps unique in the state in the high level of law enforcement funding and supervision. Of local funds, 27 percent go to the probation department to support perhaps the most intensive supervision of participants in the state. In San Francisco County, by contrast, all the money goes to treatment, and offenders became routine probation cases - as they used to be in Sacramento prior to Prop 36.

There is a unique interaction between probation and treatment providers. Officers are stationed some of the time at the treatment facilities where they directly supervise probationers. To make this work, officers must support and function in a more flexible model than traditional criminal supervision. They must recognize the high incidence of mental illness in this population. Half of Prop 36 participants have identified mental health needs on admission, and many more will have needs that become apparent during treatment.

Officers need to be sensitive to the deleterious effects of mental illness on recovery from drugs; otherwise, they may misconstrue problems with compliance as merely lack of motivation or "conning." Probation officers who support efforts at recovery, in addition to monitoring for evidence of anti-social behaviors, can enhance compliance with treatment. This supports both short and long-term public safety. Local public safety is actually better addressed under Prop 36 than ever before, because intensive probation supervision is paired for the first time with public safety effects of treatment.

So, does this program reduce recidivism (i.e., promote long-term public safety) enough to justify its costs? The county's "Two Year Evaluation Report" was recently released. The

Criminal Justice Research Foundation compared a pre-Prop 36 group of local offenders with Prop 36 participants and found the following.

Prop 36 participants have significantly lower re-arrest and conviction rates. Those arrested are detained 20 days less in jail, and the length of time between arrests is nearly double. Most importantly, 71 percent of participants who had more than 6 months of treatment had no subsequent misdemeanor or felony convictions. (Each arrest costs \$8,000 to process, not counting incarceration costs. So reductions in arrests, and jail or prison time, have great potential cost savings).

Sixty-seven percent of all drug tests are negative, with negative tests increasing to 85 percent after six months in treatment. This is a significant impact on drug use and demonstrates the correlation between recovery from drugs and longer time in treatment. Twenty percent of participants successfully completed treatment. Ten percent had their charges dropped - which required not just completing 12-18 months of treatment, but also meeting seven additional probation criteria.

Heroin addicts are only 10 percent of Prop 36 participants, but, without medical treatment with methadone, theirs is perhaps the most chronic addiction of all. Statewide, methadone is still stigmatized by much of the criminal justice system and not allowed in some jurisdictions despite its dramatic crime reduction effect. For public safety planning, it is important to document how heroin addicts fare in a county with methadone available for all who need and desire it.

Patients referred to our methadone program average 44 years of age and 21 years of addiction, compared to a statewide average of 10 years of addiction. They do not respond to short-term treatment, and rarely respond to treatments that do not include methadone. Of 239 referrals to our program over three years, 89 percent started treatment and only 7 percent dropped out after entering treatment. So 82 percent of patients referred for methadone actively engaged in treatment.

This speaks to a strong motivation for treatment among opiate addicts. Seventy-five percent of drug tests of methadone patients were negative for illicit drugs, and the same linear increase in negative tests over time appeared in the overall county report. Twenty-percent of our patients completed 18 months of treatment. Despite longer addictions and high levels of mental illness, these patients had the same treatment completion rate as other Prop 36 participants.

Eighty percent of patients were "deleted." They averaged only five months in treatment; most wanted more treatment and were showing progress. The courts have come to recognize the need for treatment beyond Prop 36; at times, they have imposed alternative sentences for patients showing progress, allowing treatment to continue even after the person was deleted.

These outcomes support the effectiveness of methadone treatment for chronically addicted opiate addicts. They also show that methadone treatment can be successfully integrated into a criminal justice monitoring system. Our data from the third year of the program show that early deletions from Prop 36 have significantly decreased, reflecting efforts by the implementation team to allow more time for treatment.

There have been complaints in the press from Sacramento police about Prop 36, calling it a "travesty of justice." Once they arrest someone, officers are out of the Prop 36 loop. So they fear the worst. Treatment is not an easy concept for officers trained mainly to recognize intoxication and arrest drug users.

The county should find a way of involving cops in understanding the local process. Not only do they devalue the successful efforts of probation and district attorney to protect public safety, but they miss the important role police play. Cops often provide the first step in recovery, by arresting an out-of-control addict. However, without proper treatment, including mental health care, arrests become part of a futile and costly re-cycling of drug

addicts.

July 1, 2004, ended the first three years in the five years of funding guaranteed by the initiative. The Legislature must decide whether to renew funding, but mandated treatment will continue unless an unlikely two-thirds vote of legislators changes it.

The multidisciplinary approach our county has developed will serve our community well beyond the five years of Prop 36: it is exactly the kind of systems approach required by a costly and complex behavioral, psychiatric, medical, social, and legal problem like drug addiction.

Our local Prop 36 approach is working to strike a balance between short-term and long-term public safety needs. To date the emphasis on short-term public safety has resulted in a high rate of early deletions. We are now working on ways to safely maintain patients in treatment for periods more likely to result in long-term recovery for a larger number of participants.

Nevertheless, the act has already successfully lived up to its name, by significantly reducing drug use and demonstrating reductions in recidivism.

[jmccarthy@bivalley.com](mailto:jmccarthy@bivalley.com)

Sierra Sacramento Valley Medical Society  
5380 Elvas Avenue #100 • Sacramento, CA 95819  
916.452.2671 PH • 916.452.2690 FX • Email: [info@ssvms.org](mailto:info@ssvms.org)

Copyright © 2000-2008 Sierra Sacramento Valley Medical Society - All Right's Reserved