

To: Professor Sheldon Gen
From: Gisselle Morales
Date: December 8, 2003
Subject: Final Policy Briefing

California Proposition 36 The Substance Abuse and Crime Prevention Act of 2000

States across the nation are looking at an array of sentencing alternatives to address prison population growth. Concerning non-violent drug addicts, some argue that spending state resources on incarceration is too costly and ineffective. Recognizing that the traditional approach of incarcerating nonviolent drug offenders has failed to reduce drug-related crime, many drug treatment professionals instead advocate the use of intensive, supervised rehabilitative treatment in order to break the cycle of drugs and criminality, hence Proposition 36.

Policy Cycle: Previous drug offender policy was continuously going around the policy cycle, with legislation getting harsher and harsher with punishing drug offender. With the increase in overcrowding in jails and prisons by non-violent drug offenders, the policy cycle approached the agenda setting stage and the issue was redefined to treatment for offenders rather than punishment. This policy is currently being implemented and evaluated by researchers.

Stakeholders: Stakeholders include local and state agencies, which must cooperate and collaborate with each other in order for reaching their shared goals of success for Proposition 36.

Process Models: Advocacy Coalition Framework and Punctuated Equilibrium Theory describe the issue of policy regarding drug offenders.

Prognosis: Proposition 36 will be successful with the collaboration of the stakeholders and until there is sufficient evidence that treatment is not working for drug offenders and the public or other groups express this concern.

CALIFORNIA PROPOSITION 36
The Substance Abuse and Crime Prevention Act of 2000

INTRODUCTION

Sponsored by the California Campaign for New Drug Policies, the Substance Abuse and Crime Prevention Act, Proposition 36, was passed by 61% of California voters on November 7, 2000 (Drug Policy Alliance). The purpose of this initiative is to enhance public safety by reducing drug related crime and preserving jail and prison space for violent offenders. This initiative allows first and second time non-violent, simple drug possession offenders the opportunity to receive substance abuse treatment instead of incarceration (Text of Proposition 36). If a drug user successfully completes treatment, the court can effectively erase the offender's conviction. In support of the new drug diversion program, Proposition 36 allocates \$120 million annually for five and one half years to pay for treatment services and according to the Legislative Analyst's Office, this initiative will result in a net savings of approximately \$1.5 billion for the counties and state combined over the next five years (Drug Policy Alliance).

Not every drug offender qualifies under the new drug diversion program. For example, offenders who refuse drug treatment or who possess a firearm while under the influence of certain drugs are not eligible to participate in the program. Moreover, offenders who enter the program and fail to successfully complete it will be sentenced to jail time.

The California State Department of Alcohol and Drug Programs has instituted a set of emergency regulations to govern the Proposition 36 program, as well as define how initiative funds may be used. On July 1, 2002 Proposition 36 went into effect and an

additional \$120 million was allocated to the counties. To date a majority of California Programs are diverting fewer offenders to Proposition 36 than originally anticipated (Drug Policy Alliance).

The University of California at Los Angeles has been chosen to run the required evaluation of Proposition 36. Their studies will help state legislators determine the future of the program after the first five years as mandated by the voters of California. This study will also show the over all impact that this program will have both socially and financially.

Drug use and abuse has significantly increased the crime problem in the United States for many years. As a result, there have been many approaches that have been utilized to try to eliminate this extensive problem. The main approach used today is known as the “War on Drugs,” which emphasizes more arrests and imprisonment for drug possession and sales. The thought behind this strategy was that stricter punishments for drug use would reduce drug abuse. Therefore, because people want to avoid unpleasant experiences, if we make the punishment for crime more distasteful fewer people would commit crime. Nevertheless, this strategy has been more of a problem than a solution. Subjecting nonviolent drug offenders to prison sentences instead of rehabilitation programs is causing the prisons to become overpopulated.

Prison overcrowding is a serious problem in the United States. Here, in California the care of millions of American prisoners is a major concern because it is very expensive to maintain them. Thus the more prisoners you have the more money you need. In addition, there is a lot of money being wasted in hiring more correctional officers and overtime pay which must be paid to the officers for maintaining all of the

prisoners. According to the Prison Population Bomb (Lynch, 2000), the number of state and federal prisoners has more than tripled, from 319,000 in 1980 to 999,800 in 1994, due in large part to a national wave of tough anti-drug laws. While those laws have removed thousands of drug dealers from the streets it has not truly solved the problem because it has put those drug dealers in prisons, resulting in a growing industry funded by the American taxpayers. If these trends persist, increasing at a very rapid pace, so will this significant problem of overpopulated prisons.

The nonviolent prisoner population has increased at a rate much faster than that of the violent prisoner population. Since 1978 the number of nonviolent prisoners tripled, and the number of persons imprisoned for drug offenses increased eight-fold. Therefore, the majority of the prison population is nonviolent drug offenders.

Proposition 36 is a controversial initiative that is attempting to solve the problem of overcrowding in prisons. The purpose of this paper is to look at Proposition 36 in order to justify whether this proposition is the solution to prison overcrowding and/or whether rehabilitation is the solution to continuing the “war on drugs.”

POLICY CYCLE

California state law generally makes it a crime to illegally possess, use, or be under the influence of specific drugs, including marijuana, cocaine, heroin, or methamphetamine, as well as certain medicines obtained without a physician's prescription. The law classifies some drug-related offenses 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 offender's possession (Cal. Health & Safety Code § 11350).

California courts currently provide drug treatment as a component of sentencing in various situations (Cal. Penal Code § 1203.096). The court will recommend that the defendant participate in substance abuse counseling or an education program while imprisoned if the defendant was convicted on a drug-related offense. Furthermore, courts can require, as a condition of probation, that the defendant not use or be under the influence of any controlled substance and must submit to drug and substance abuse testing as directed by a probation officer (Cal. Penal Code § 1203.1ab).

Following release from prison into the community, nearly all offenders are required to serve a parole period under the supervision of state parole agents. Offenders who have not committed violent crimes, such as those imprisoned for felony drug possession, are subject to three years of parole supervision, but can be discharged from parole after one year if no parole violations are committed (Cal. Health & Safety Code § 11370).

A parolee found to have committed a new crime while on parole, such as using or possessing an illegal drug, is subject to punishment in one of two ways; prosecuted on

new criminal charges and returned to prison with a new sentence or parole is revoked and the parolee is returned to prison for up to a year by the Board of Prison Terms.

Drug Diversion Programs are not a new concept. Hundreds of drug courts have risen across the country in the last ten years. California's first drug court originated in Alameda County in 1991. As of June 1999, there were 98 recorded drug courts in California alone (Office of National Drug Control Policy). Drug courts, unlike prisons, provide addicts with substance abuse treatment, education, and the resources to help them return to society with the skills necessary to lead a drug-free, productive life. The drug court model usually entails the following: judicial supervision of structured community-based treatment; timely identification of defendants in need of treatment and referral to treatment immediately after arrest; regular status hearings before judicial officers to monitor treatment progress and program compliance; and increasing defendant accountability through a series of graduated sanctions and rewards.

Unlike the programs envisioned under Proposition 36, however, the drug court system places drug-using offenders in a closely supervised program where they are ordered to submit to frequent drug testing and make regular appearances before a judge.

President Bill Clinton dramatically increased federal funding for drug courts after meeting former Dade County State Attorney General Janet Reno, who helped plan the nation's first drug court. Since the program's inception in 1995, the Drug Courts Program Office in the U.S. Department of Justice has bestowed approximately 500 grants totaling more than \$100 million to help jurisdictions plan, implement, enhance and evaluate the more than 350 drug courts operating in the United States (U.S Department of Justice, 1999).

Part of the recent popularity of drug diversion programs is due to the apparent success in reducing recidivism. A 1998 study by the Office of Justice Programs found that drug courts cut recidivism for defendants accused of drug possession from an average of 45 percent, for those who do not go through drug court, to 4 percent for drug court graduates (Drug Court Clearinghouse and Technical Assistance Project, 1998).

Under current California law, each county's drug program administrator, in consultation with the court and the county probation department, establishes minimum requirements, criteria, and fees for the successful completion of drug diversion programs. The county board of supervisors must ultimately approve these requirements (Cal. Penal Code § 1211). In order to receive funding, these local programs must satisfy the guidelines adopted by the state (Cal. Health & Safety Code § 11999.3).

The changes proposed by Proposition 36 essentially, modify state sentencing laws, so that an offender convicted of a nonviolent drug possession offense will be sentenced to county probation supervision and participation in a drug treatment program, rather than subjected to incarceration in state prison or county jail.

Proposition 36 has generated a lot of attention and controversy. Its supporters argue that by attacking the core of the problem and treating the offender's addiction, criminality will be eliminated, thereby reducing crime rates. However, opponents, including many public safety groups, disagree and are concerned that crime rates will increase throughout the state. They claim that Proposition 36 does little to address how these addicts will be treated and provides no accountability to ensure that probationers are not continuing to use drugs. They fear this measure will only put more criminals back on the street.

The progression of drug policy through the policy cycle has been continuous (as described below), although there have been two major cycles of drug policy that have had the most recent major effects. The first was an influx of drug policy with the perception that these users and abusers were criminals and deserve harsh punishment as any other criminal would. Soon after, the drug use became so common that it was labeled and “epidemic” and was described in medical terms, turning the table and promoting drug treatment for these individuals, which most currently is reflected in Proposition 36, instead of punishment.

President Nixon saw the relaxation of intolerance for drug use as the first shot in a culture war. He launched a vigorous campaign to turn the tide against the decriminalization and legalization forces, calling for a “War on Drugs.”

Nixon’s policies placed a new emphasis on enforcement, establishing the Drug Enforcement Agency and the National Institute for Drug Abuse, and enacting mandatory prison sentences for first-time offenders. But interestingly, Nixon also strengthened measures to reduce demand, allocating funding for research, education and training in areas of drug addiction, and treatment and rehabilitation for drug addicts.

Towards the end of the Reagan Administration a “tough on crime and drugs” approach prevailed that included the concepts of accountability and zero-tolerance. The feeling among conservative politicians was that drug addicts should suffer some loss as a result of their behavior. With the entry of crack cocaine into the drug scene and American vocabulary, the belief was that the earlier period of laxity had led to these problems with newer, more dangerous drugs and that one solution to recreational drug use was to punish causal users. There was little sympathy for drug users and addicts, and

with the far more frightening introduction to AIDS, the belief of drug addict as disease-spreading was given new life. With very little debate, Congressional leaders quickly passed a series of laws that elevated the War on Drugs to a level that would have grave implications for the nation's legal and public health systems.

The Anti-Drug Abuse Act of 1986 came following the crack and AIDS epidemics. It established a scale of mandatory minimum sentences for convicted drug offenders, effectively negating the input of judges in sentencing and handing unprecedented power to federal prosecutors.

Under the Bush Administration, the second Anti-Drug Abuse Act was passed in 1988. This legislation formally established the White House Office of National Drug Control Policy (ONDCP) and the Substance Abuse and Mental Health Services Administration (SAMHSA). Bennett, who was named Head of the ONDCP, set about disseminating Reagan's previous zero-tolerance concept, minimizing the medical aspects and maximizing the moral failing of drug addiction, re-invoking the "Moral Model" of addiction and demanding accountability from the mentally ill. Bennett gave voice to the conservative belief that drug addicts as well as those who challenged the White House position by using drugs should suffer some personal loss for their transgressions.

The Act adopted a new official vocabulary intended to change the perception of drugs, for instance dropping the term "recreational use" in order to indicate that there was no such thing for illicit drugs like marijuana. This blurred the distinction between the experimenter, the user, the abuser and the addict. The Act also strengthened the ability of prosecutors to seize the assets of persons convicted (or even suspected) of drug

distribution. The Act also reinstated the death penalty for major drug traffickers and significantly lengthened sentences for those convicted of drug offenses.

The consequences of these two Acts were immediate and severe. The United States experienced a phenomenal surge in incarceration rates to the point that the national prison population broke two million in the year 2000. The differences in sentencing between jurisdictions (state vs. federal, and county vs. county) created wild disparity in adjudication of drug offenses. In addition, the fact that prosecuting attorney's had the power to move drug cases from state court to federal court to increase conviction rates and length of sentencing dramatically shifted the balance of power from judges to the U.S. Attorney's Offices.

The current levels of incarceration in the United States are, to say the least, historic. That a nation that calls itself a democracy could have the highest per capita incarceration rate in human history is deeply significant and troubling. When numbers such as "two million" are discussed, the problem is not just a matter of law, it falls back into the lab of public health, and we start using words like "epidemic" and "threat to the nation's health."

Many professionals working in the addiction treatment industry claim that the solution to the problem of drug abuse is "more treatment," hence the 2000 Treatment Diversion Initiative, Proposition 36. For minor drug offenses Proposition 36 specifically prohibits incarceration unless the defendant refuses treatment or relapses three times while in treatment, resulting in an automatic sentence in state prison.

Currently Proposition 36 is in the Implementation and Evaluation Stages. The measure is currently being implemented, at the same time this is in its third year of

implementation and therefore, the success of the measure is being evaluated, in order to continue the funds for the initiative after 2006.

STAKEHOLDERS

There are many stakeholders that play significant roles in Proposition 36. At the State level, the Department of Alcohol and Drug Programs is responsible for distributing funds to counties, licensing or certifying drug programs, collecting data from counties, auditing county expenditures, and evaluating the measures effectiveness. The Board of Prison Terms (BPT) set revocation criteria for parolee violators directed into treatment, decides when to modify or intensify treatment programs and when to revoke parole. Also, the California Department of Corrections (CDC) supervises and monitors parole violators directed into treatment by BPT, and it reports violations or revocation criteria to BPT.

On the Local level the stakeholders include the County Alcohol and Treatment Agencies, which provides 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, and 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 local trial courts, and report violations of drug treatment revocations criteria to courts. And last but not least, Educational, Social and Health Service Agencies, provide treatment services prescribed by the courts, such as vocational and literacy training and counseling.

In order for this policy issue to be successful, all the mentioned stakeholders must collaborate and work together. It is not uncommon for State and Local agencies to not corroborate with each other and top have disagreements. But in order to succeed with Proposition 36, it is imperative for these groups to cooperate with each other.

PROCESS MODELS

The Advocacy Coalition Framework (ACF) best describes the issue drug offenders policy. An Advocacy Coalition consists of actors from a variety of market, state, and civil society institutions at all levels that share a set of basic beliefs. It allows us to examine coalition formation and reformation over time. The Framework allows us to go beyond the assumption that policy formation follows a linear process of problem identification, agenda setting, adoption, implementation, and policy evaluation. Thus, the policy process is not understood as a series of problems that inhibits effective formulation or implementation, but as an iterative system of learning and policy adjustment.

The dependent variable in the ACF is policy change, which occurs when actors in policy subsystems create, adjust, and manipulate policy in response to various stimuli from inside or outside the subsystem. Within policy subsystems actors form alliances, advocacy coalitions, around core beliefs about what government should do. Policy change can occur in two ways. First, change can occur when advocacy coalitions modify their beliefs and behaviors as they learn more about how to achieve their objectives. Thus, policy-oriented learning refers to the relatively enduring alterations of thought or behavioral intentions that result from experience and/or new information. Second, policy change can result from systemic changes external to the subsystem, such as elections or

changes in the economy. External events cause policy changes by creating the conditions necessary to produce new governing coalitions or new policy approaches.

The mood of society during the Nixon era was of punishment and incarceration for drug offenders, as drug offenders filled the jails and prisons and more and more people were being brought in for non-violent drug offenses, the mood of advocacy groups changed. These offenders, were now viewed as having health problems and due to the great influx of cases, it was labeled an epidemic, which brought about a different perspective by advocacy groups of how these individuals should be treated. The sense of harsh punishment for these “criminals” now tuned into a spirit of providing treatment for these “ill” individuals.

Initially there was support for harsh punishment for drug offenders, but as the times changed and there were other issues at play (overcrowding of prisons and an influx of drug offenders cases) so did the perception of society change. It was a change that came as a result of the previous experience.

Similarly, the issues of the treatment of drug offenders can also incorporate some aspects of the Punctuated Equilibrium Theory. True, Jones and Baumgartner (1999) explain this theory in the following manner “Political processes are often driven by logic of stability and incrementalism, but occasionally they also produce large scale departures from the past.” Again, the mood of punishment prevailed until it was redefined as an epidemic at which time the existing issue was questioned and redefined, producing another set of policy issues. As issues rise and fall in the public agenda, the existing policies are either reinforced or questioned (True, Jones, Baumgartner, 1999).

The theory that least reflects the issue of drug offenders is that of the Garbage Can Theory. According to this theory, policy making is chaotic, random and frequently irrational. Unlike the issue at hand, Garbage Can Theory states that there is a loose relationship between problems and the policy solutions offered by national governments. In this case the problems and solutions were directly related and the solutions were developed in response to the problem.

PROGNOSIS

Recent studies of the Proposition 36 have showed it to be successful. In total California state courts found 53,697 drug offenders eligible for Proposition 36 placement in the first year, of these offenders 30,469 people were placed in treatment, according to its first official audit, which covered all of California for the year ending June 30, 2002 (Richman, 2003). This participation is notable considering on going concerns over funding and how local agencies had to cooperate in planning and administration; assessment coordination; offender treatment and supervision; training; and troubleshooting.

The most significant issue is that there are not enough licensed or certified drug treatment programs for all the individuals that are eligible.

According to the Advocacy Coalition Framework and the Punctuated Equilibrium Theory, treatment of drug offenders will continue to be supported until either studies show that the initiative is not effective or the resources are not available to support it. Certified drug treatment programs are important resources necessary for the successful implementation of Proposition 36. Also the public has to feel that treating non-violent

drug offenders as appropriate. The public must develop sympathy for these individuals to support the continuation of funding for Proposition 36 after 2006.

Works Cited

Drug Court Clearinghouse and Technical Assistance Project, U.S. Department of Justice,

Looking as a Decade of Drug Courts, (June 1998).

<http://www.american.edu/academic.depts/spa/justice/publications/decade1.htm>

Drug Policy Alliance. California Proposition 36: The Substance Abuse and Crime

Prevention Act of 2000, <http://www.prop36.org/about.html>

Lynch, T. (2000, February 23). Population Bomb Behind Bars. Cato Institute.

<http://www.cato.org/dailys/02-23-00.html>

Office of National Drug Control Policy, Drug Policy Information Clearinghouse, State of

California Profile of Drug Indicators, 4 (July 2000).

<http://www.whitehousedrugpolicy.gov/statelocal/ca/ca.pdf>

Proposition 36. Text of Proposition 36. California Campaign for New Drug Policy.

<http://www.drugreform.org/prop36/fulltext.tpl>

Richman, J. (2003, July 17). Drug Treatment Law Gets High Marks: First Study of

Prop. 36 shows state saved. Oakland Tribune.

True, J.L., Jones, B.D., & Baumgartner, F. R. (1999). Punctuated Equilibrium Theory:

Explaining Stability and Change in American Policymaking. In P. Sabatier (Ed.),

Theories of the Policy Process (pp. 97-115). Westview Press.

U.S. Department of Justice, Office of Justice Programs Press Release, Attorney General

Reno Announces Funds To Continue Successful Drug Court Program, (June 3,

1999).