



Prop. 36 and NORA

Proposition 5, the Nonviolent Offender Rehabilitation Act (NORA), builds on California's successful landmark treatment-instead-of-incarceration program – Proposition 36. Prop. 36 was enacted by the voters in November 2000. Under this law, people convicted for the first or second time of a nonviolent, low-level drug possession offense receive community-based drug treatment instead of jail or prison. In its first seven years, Prop. 36 has delivered on its promises. It has:

- **Expanded treatment capacity.** There are now 66% more licensed treatment programs in California than before Prop. 36; overall capacity increased 132% in 3 years.
- **Placed about 36,000 people per year in treatment.** Prop. 36 has provided a treatment option to more than 200,000 people, often the first chance these people have had.
- **Achieved a treatment completion rate of about one-third.** This rate is impressive in its own right, and also compares favorably against other systems. UCLA reports that, in 2003-04, Prop. 36 participants completed treatment at the rate of 32%, against 37% for other criminal justice referrals, including drug courts.
- **Sharply reduced the number of drug offenders in prison.** In the 12 years prior to Prop. 36, the number of people in state prison for drug possession quadrupled, reaching 20,116 in June 2000. That number dropped by a third shortly after Prop. 36 took effect, and remained lower by 6,046 (31%) as of December 2007, despite a recent increase in the annual number of drug convictions.
- **Saved almost \$2 billion.** For every \$1 invested in Prop. 36, the state saves a net \$2.50 to \$4 mostly on incarceration savings, according to UCLA researchers. Average per-person treatment costs are about \$3,300, while incarceration costs \$46,000 per year. UCLA calculated that the program saved a net \$173 million its first year; LAO put annual savings for later years at \$200-300 million. In addition, one new prison that was planned was never built after Prop. 36. Prop. 36 savings have reached nearly \$2 billion in 7 years.

NORA Addresses Prop. 36 Shortcomings

The process of implementation, and UCLA research findings, have identified a range of needs, shortcomings and recommended changes for Prop. 36. NORA responds to each of these issues:

- **Youth treatment.** Perhaps the greatest missed opportunity with Prop. 36 was that the measure did not provide services to young people under the age of 18. Instead, Prop. 36 focused on adults who had been arrested for a drug offense. NORA will create a new system of care offering drug treatment to young people regardless of whether they have

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been arrested or not. With \$65 million per year set aside for youth programs, NORA will enable counties to build new treatment systems tailored to local needs.

- **No-shows.** About one-quarter of the people who agree to Prop. 36 treatment never begin their treatment. There is no data to describe exactly why. NORA requires a court hearing if a person has not begun treatment 30 days after committing to do so. The judge can order county agencies to fix problems that are preventing the person from entering treatment, or can terminate a defendant's probation if the circumstances warrant.
- **Treatment matching (funding, duration and methadone).** The UCLA studies of Prop. 36 are clear about one thing: Most participants are not getting the kind of treatment they need, or the duration they need. The biggest issue is money – UCLA said in 2007 that funding for Prop. 36 should be nearly double the \$120 million annually allocated to the program (\$228.6 million). Also, UCLA has repeatedly pointed to the widespread failure to provide appropriate treatment for heroin users, particularly methadone maintenance.

NORA provides adequate funding for treatment of a larger number of defendants – about \$385 million per year for Prop. 36 clients, drug court clients and the lowest-level defendants entering “deferred entry of judgment” programs in NORA’s Track I. The measure also requires that people receive the treatment they are assessed for, including residential treatment and opioid agonist therapies when they are indicated.

- **Graduated sanctions and jail sanctions.** Prop. 36 allows defendants to be terminated from the program for any non-drug violation of probation or after repeated drug-related violations. NORA takes the same approach, but allows a broader range of sanctions short of termination. “Graduated sanctions” can be imposed for any problem during treatment, and brief jail sanctions – followed by return to treatment – may be imposed for non-drug violations or after repeated drug-related violations.
- **High-cost offenders.** UCLA identified a small subset of all defendants entering Prop. 36 as unsuited to the program. Those with 5 prior convictions for nonviolent offenses within 30 months before entering Prop. 36 performed poorly and cost local governments much more than others due to high rearrest rates. UCLA recommended that such defendants be placed in “more controlled” settings. NORA automatically places them in the measure’s Track III, the most intensive level of supervision with the greatest sanctions.
- **Links with mental health.** At the county level, there have been problems with clients who are diagnosed simultaneously with a mental illness and a substance abuse problem. Many counties have not integrated their Prop. 36 drug treatment programs with the new wraparound services offered through another voter initiative, Proposition 63 (2004), the Mental Health Services Act. NORA clarifies the fact that dually diagnosed clients who enter through NORA’s Tracks I-III should also qualify for Prop. 63/MHSA funding for their mental health care, and requires greater integration of these two funding sources at the local level. NORA’s treatment funds can also be used directly for mental health care when necessary.