

# DEPARTMENTAL ISSUES

*Health and Social Services*

## ALCOHOL AND DRUG PROGRAMS (4200)

The Department of Alcohol and Drug Programs (DADP) directs and coordinates the state's efforts to prevent or minimize the effects of alcohol-related problems, narcotic addiction, and drug abuse. Services include prevention, early intervention, detoxification, and recovery. The DADP administers funding to local governments and licenses, certifies, and audits alcohol and other drug programs.

The DADP administers the Drug Medi-Cal Program, which provides substance abuse treatment services for beneficiaries of the Medi-Cal Program. It also allocates other funds to local governments (including funds provided under the substance Abuse and Crime Prevention Act, the 2000 initiative also known as Proposition 36) and contract providers and negotiates service contracts. In addition to its substance abuse treatment and prevention programs, DADP oversees the Office of Problem Gambling which provides problem gambling prevention services for individuals, families, and communities.

***Governor's Budget Proposal.*** The Governor's budget proposes almost \$663 million from all funds for support of DADP programs in 2007-08, which is a decrease of \$11.5 million, or almost 2 percent, below the revised estimate of current-year expenditures. The budget proposes about \$285 million from the General Fund, which is a decrease of about \$8.4 million, or almost 3 percent, below the revised estimate of current-year expenditures.

The budget plan includes the following proposed spending:

- **Proposition 36.** The spending plan proposes to reduce funding for the Substance Abuse and Treatment Trust Fund (SATTf), by \$60 million General Fund and increase funding for the Substance Abuse Offender Treatment Program (OTP) by \$35 million General Fund. We describe this proposal in more detail below.
- **Substance Abuse Offender Treatment Program.** The spending plan proposes a General Fund redirection to state operations of \$305,000 in the current year for three and one-half limited-term positions to administer OTP. The costs of these positions would be offset by a corresponding decrease in local assistance for OTP.
- **Drug Medi-Cal.** The budget plan proposes \$149 million (\$78 million General Fund) for the Drug Medi-Cal Program. This is an 8.4 percent increase over the administration's revised current-year estimate due mainly to caseload increases.
- **Comprehensive Drug Court Implementation (CDCI).** The spending plan proposes a redirection of \$341,000 General Fund from the existing CDCI local assistance appropriation for four permanent positions to administer a current-year program expansion.
- **Licensing and Certification.** The spending plan proposes an increase of \$1.2 million to support 8 permanent staff positions and 4.5 limited-term positions to implement the second phase of licensing policy changes. The spending plan also proposes to expand DADP statutory authority to include charging fees from all licensed providers and to establish the Residential Outpatient Program Licensing Fund.
- **Prison Inmate Aftercare Treatment Program.** Chapter 875, Statutes of 2006 (SB 1453, Speier), requires, whenever possible, mandatory aftercare treatment for prison inmates who participate in in-prison drug treatment programs. The spending plan proposes a General Fund increase of \$485,000 and authority for four permanent and two half-time limited term positions to monitor and evaluate the licensing of treatment facilities.
- **California Methamphetamine Initiative.** The 2006-07 Budget Act provided \$10 million for a multimedia methamphetamine public education campaign. The budget plan proposes a current-year redirection of \$197,000 from existing funding for CMI to provide two limited-term positions to assist in developing and coordinating the initiative.

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## THE SUBSTANCE ABUSE AND CRIME PREVENTION ACT: PROPOSITION 36 UNDER POLICY CHANGE

*The Legislature enacted Chapter 63, Statutes of 2006 (SB 1137, Ducheny), that made various policy changes to Proposition 36. These policy changes have not been implemented due to legal challenges. If these legal challenges are not resolved by the May Revision, we recommend that the Legislature consider placing these and other policy changes on the ballot of the next statewide election for voter consideration. We also recommend the Legislature seek legal advice from Legislative Counsel regarding potential funding streams for Proposition 36 programs.*

*We further recommend the Legislature provide \$25 million General Fund above the administration's proposed 2007-08 budget in order to maintain funding for Proposition 36 programs at current levels, offset by a funding reduction of a like amount in the California Department of Corrections and Rehabilitation. (Increase Item 4200-105-0001 by \$60 million and Reduce Item 4200-101-0001 by \$35 million).*

### Program and Funding Background

*Measure Approved by Voters in November 2000.* The Substance Abuse and Crime Prevention Act of 2000 (Proposition 36) was approved by the voters in the November 2000 election and many of its provisions affecting criminal sentencing became effective July 1, 2001. The measure changed state law so that certain adult offenders who use or possess illegal drugs are sentenced to participate in drug treatment and supervision in the community rather than being sentenced to prison or jail or being supervised on probation without treatment. (Please see page C-79 of our *Analysis of the 2006-07 Budget Bill* for more information on Proposition 36 treatment programs, and administration and maintenance of effort requirements.)

A two-thirds vote by both houses of the Legislature is required to amend Proposition 36. The measure requires that all amendments be consistent with and further its purposes. Proposition 36 is funded with General Fund monies that are transferred to a special fund called SATTF. Monies in SATTF may only be spent in keeping with the provisions of the measure, thereby potentially limiting legislative control and ability to implement policy changes.

*Study Shows Proposition 36 Reduces Prison Costs.* In April 2006, the University of California at Los Angeles (UCLA) completed and DADP publicly released a cost-benefit study of Proposition 36. According to the UCLA study, Proposition 36 reduced prison and jail costs as a result of fewer incarcerations thereby resulting in net savings beyond its costs. The

UCLA study concluded that costs are \$2,861 lower per offender than would be expected in the absence of Proposition 36, which reflects a benefit-to-cost ratio of about 2.5 to 1. We have reviewed the study and found that its conclusions that Proposition 36 is resulting in significant net savings to the state, primarily because of the diversion of offenders from state prison, are reasonable. We discuss our own savings estimates later in this analysis.

***Legislature Approved Policy Changes in 2006-07.*** In response to the UCLA study that found some weaknesses in Proposition 36, the Legislature enacted Chapter 63. This legislation modified Proposition 36 by requiring: (1) drug testing as a condition of probation, (2) incarceration for a specified period of time in order to enhance treatment compliance, and (3) a defendant in some circumstances to enter a residential treatment program, or be placed in a county jail for not more than ten days for detoxification purposes only. This statute also made other changes to Proposition 36 generally intended to make the program more cost-effective.

Chapter 63 was challenged in court by the original proponents of Proposition 36, who argued that the statute does not further the act and is not consistent with its purposes. Pending the resolution of the court challenge, implementation of the Chapter 63 policy changes has been suspended by a judicial injunction. At the time this analysis was prepared, the courts had not ruled on whether the policy changes to Proposition 36 can be implemented through Chapter 63. A provision in Chapter 63 would automatically place the measure on the ballot if the courts struck down the program changes contained in Chapter 63.

Chapter 75, Statutes of 2006 (AB 1808, Committee on Budget), established OTP. Under Chapter 75, funds distributed for OTP shall be used to serve offenders who qualify for services under Proposition 36. The DADP distributes funds to counties that meet various eligibility criteria including: (1) regularly scheduled court reviews of treatment progress for persons ordered to drug treatment, (2) use of drug testing to monitor offenders' progress in treatment, and (3) assessment of offenders' treatment needs and the placement of offenders at the appropriate level of treatment. Under OTP, counties are required to provide matching funds to participate in the program at a ratio of \$9 (state) to \$1 (local) county matching funds. A county's OTP funding allocation cannot exceed 30 percent of the funds it received from SATTf.

***Proposition 36's Automatic Appropriation Has Expired.*** Proposition 36 required automatic annual appropriations from the General Fund to SATTf through 2005-06 for support of program activities. The measure specifically allocated \$60 million in startup funds for 2000-01 and \$120 million per year for 2001-02 through 2005-06. In 2005-06, about \$116 million was provided to the counties for the operation of local Proposition 36 programs. In addition,

about \$3.9 million was provided annually to DADP to offset its administrative costs to operate the program. No appropriations were specified for the program for 2006-07 and subsequent years, leaving it to the Legislature to determine how much to appropriate for this purpose.

***Annual Spending Surpassed Funding Allocations.*** Proposition 36 permits counties to carry over unspent Proposition 36 allocations from year to year, and a number of counties have done so. The amount of carryover funds available to counties has been dropping in recent years as programs have ramped up their expenditures.

Current annual county spending from SATTF is projected by DADP to be about \$129 million in 2006-07 which is higher than the annual Proposition 36 appropriation of \$120 million. This is because a number of counties have increased spending to a higher level by using the funds they have carried over from prior years. In 2005-06, almost \$143 million was spent before netting out audit disallowances that would probably reduce this expenditure level modestly.

By appropriating \$120 million General Fund for transfer to SATTF and \$25 million General Fund for OTP, the Legislature provided a total of \$145 million General Fund for support of Proposition 36 programs in 2006-07. These two appropriations, combined with carryover funds, allow counties to maintain Proposition 36 spending for 2006-07 at approximately the 2005-06 spending level of almost \$143 million.

### **Administration's Budget Proposes a Reduction**

The Governor's 2007-08 budget proposes a net reduction of \$25 million General Fund for Proposition 36 programs compared to the current year. This would be achieved by reducing SATTF funding by \$60 million (from \$120 million in 2006-07 to \$60 million in 2007-08), but increasing funding for OTP by \$35 million (from \$25 million in 2006-07 to \$60 million in 2007-08) as shown in Figure 1 (see next page). The Governor proposes to increase funding for OTP because this will allow the implementation of policy changes that are not permitted under Proposition 36, such as short-term incarceration of an individual who had failed to comply with the treatment plan ordered by a judge.

According to the administration, OTP contains some of the Proposition 36 policy changes it seeks and increasing funding for OTP will allow the state to implement these and other policy changes that would lead to improved program performance and client outcomes. If the policy changes to Proposition 36 are not implemented, the administration has indicated that it will revise its budget proposal in the May Revision to move all funding for Proposition 36 programs to OTP and eliminate all funding for SATTF.

<b>Figure 1</b>			
<b>Proposition 36 Funding Governor's 2007-08 Budget Compared to Current Year</b>			
<i>(In Millions)</i>			
	<b>2006-07</b>	<b>2007-08</b>	<b>Difference</b>
SATTF	\$120	\$60	-\$60
OTP	25	60	35
<b>Totals</b>	<b>\$145</b>	<b>\$120</b>	<b>-\$25</b>
SATTF = Substance Abuse Treatment Trust Fund; OTP = Substance Abuse Offender Treatment Program.			

### **Reduced Funding for Proposition 36 Would Increase State Prison Costs**

Using data from the California Department of Corrections and Rehabilitation, we independently estimated the fiscal effect of Proposition 36 on state prison and parole operations at two points in time—in 2002-03 and in 2004-05. We estimated that the \$120 million allocation per year of funding for SATTF resulted in savings to the state of \$205 million in 2002-03 and \$297 million in 2004-05. For 2004-05 we estimated a benefit-to-cost ratio of 2 to 1, which is slightly lower than the UCLA ratio we described above.

Based on our estimate of the benefit-to-cost ratio resulting from Proposition 36, a reduction in funding for Proposition 36 would probably eventually result in increased prison costs proportional to the amount of the reduction. Thus, implementation of the Governor's proposed net \$25 million reduction to Proposition 36 spending could ultimately cost the state more than it would save.

### **Funding Shift to Implement Policy Changes May Meet Legal Opposition**

As noted earlier, the administration has indicated that if the policy changes it is requesting to Proposition 36 are not implemented it will revise its budget proposal in the May Revision to move all Proposition 36 funding to OTP and provide no funding for SATTF. The potential advantage of this approach is that it would provide the Legislature and the administration greater control over Proposition 36 programs. This is because Proposition 36 provides that appropriations to SATTF must only be spent consis-

tent with the provisions of the ballot measure, thereby limiting legislative control to implement policy changes such as short-term incarceration for offenders that are not complying with their drug treatment.

We do not have a programmatic objection to funding Proposition 36 programs entirely through OTP. However, we note that funding Proposition 36 programs through OTP and providing no funding for SATTf may be open to legal challenges.

If funding Proposition 36 programs exclusively through OTP is determined to be legally permissible, and if the Legislature chooses to fund Proposition 36 exclusively through OTP, it would be necessary to make changes in state law. These changes are necessary because under OTP, distribution of funds to the counties may not exceed 30 percent of the county's allocation under SATTf. This requirement would have to be changed or eliminated if a significant amount of funding for Proposition 36 programs were to be provided through OTP.

### **Analyst's Recommendation**

***Fund Proposition 36 at Current Spending Levels.*** In order to ensure that the state continues to achieve net savings, primarily because of diversion of offenders from state prison, we recommend the Legislature fund Proposition 36 at current spending levels. Accordingly, we recommend that the Legislature appropriate \$120 million in General Fund to be transferred to SATTf. This would be an increase of \$60 million above the Governor's proposed funding level of SATTf. This increase would be funded by two related actions. First, we recommend reducing the Governor's proposed 2007-08 funding for OTP to its current year level (\$25 million), thereby freeing up \$35 million that can be used to fund SATTf. We have no objection to funding Proposition 36 exclusively through OTP provided that it is determined to be legally permissible. Our concern is that reducing funding below the 2005-06 level of \$145 million would probably eventually result in increased prison costs at least proportional to the amount of any reduction.

Further, we recommend, elsewhere in this *Analysis*, reducing the Governor's proposed probation grant program for 2007-08 by \$45 million, thereby freeing up \$25 million for SATTf (with the remaining \$20 million reverting to the General Fund). (For more information about the Governor's probation grant program proposal and our recommendation, please see the "California Department of Corrections and Rehabilitation Local Assistance" section in the "Judicial and Criminal Justice" chapter of this *Analysis*.) Figure 2 (see next page) compares the fiscal effect of our recommendation with the Governor's for funding Proposition 36 programs.

<b>Figure 2</b>			
<b>Funding for Proposition 36 Programs—Two Approaches 2007-08</b>			
<i>(In Millions)</i>			
	<b>Governor</b>	<b>Analyst</b>	<b>Difference</b>
SATTF	\$60	\$120	\$60 <sup>a</sup>
OTP	60	25	-35
<b>Totals</b>	<b>\$120</b>	<b>\$145</b>	<b>-\$25</b>
<sup>a</sup> \$35 million reduced from OTP and \$25 million reduced from new probation grant program. SATTF = Substance Abuse Treatment Trust Fund; OTF = Substance Abuse Offender Treatment Program.			

*Seek Needed Legal Advice on Funding Options.* In its 2006-07 budget plan the administration cited potential legal challenges to alternative funding mechanisms as a reason for funding Proposition 36 through SATTF. We recommend that the Legislature seek legal guidance from the Office of Legislative Counsel about approaches to consider for funding Proposition 36. Specifically, the Legislature should consult with Legislative Counsel about (1) whether it is legally permissible to eliminate SATTF funding and instead fund Proposition 36 programs entirely through OTP, and (2) whether it is legally permissible to offset funding reductions to SATTF with funding increases to OTP and what if any legal limitations pertain to this approach. We further recommend that if the Legislature does fund Proposition 36 programs entirely through OTP, it enact the changes in statute that we described above.

*Consider Placing Policy Changes on the Ballot.* Chapter 63, which would implement policy changes sought by the administration and approved by the Legislature, was challenged in court by advocates and at the time this analysis was prepared the courts had not ruled. If the legal challenge to Chapter 63 has not been resolved by the May Revision, the Legislature may wish to consider placing these and other policy changes it wishes to link to the provision of Proposition 36 funding on the statewide ballot in 2008 for voter consideration. This approach may result in a faster resolution of this issue than might be achieved through the courts.

We believe our approach of maintaining Proposition 36 funding for the budget year at its current level will ensure that prevention and treat-

ment activities can continue and that the state would avoid prison cost increases that might eventually result from a decrease in Proposition 36 spending. Our recommendation for Proposition 36 funding is based on the most recent expenditure data available for SATTf. According to DADP, expenditure data for OTP will not be available until April 2007. We will update our recommendation as necessary at the time of the May Revision after we have analyzed the updated SATTf and OTP data.

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