

Proposition 36— Three Years and Going Strong



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Less than four years ago, California voters overwhelmingly approved Proposition 36, the Substance Abuse and Crime Prevention Act of 2000 (SACPA), marking a sea change in our criminal justice system. The premise of SACPA is a fundamental shift away from a predominantly punitive policy in addressing drug misuse toward a public health approach.

Rather than prison, SACPA requires that individuals convicted for the first or second time of use or possession of drugs for personal use—absent a history or co-occurring violent offense—be allowed to participate in a treatment program as a condition of probation or parole. Anyone eligible for SACPA who chooses to participate cannot be incarcerated for that offense.

SACPA responded to a growing sentiment, shared by many Americans, that incarcerating people for using or possessing drugs is a losing strategy. In fact, a 2001 Peter D.Hart Research Associates poll found that 63 percent of Americans view drug abuse as a medical problem that would be better addressed by treatment than by incarceration.¹ In California this sentiment was bolstered by the projection from the state's Legislative Analysts Office

that SACPA would save the taxpayers a net of \$200 to 250 million per year, plus a one-time savings of \$500 million due to eliminating the need to build a new prison that was already in the planning stage.

California has the largest prison system and one of the most expansive drug treatment systems in the nation. The possible cost-saving, crime-reducing and public health ramifications of SACPA in California were of interest to policy-makers around the country. To monitor its effectiveness, SACPA mandated an independent evaluation of statewide implementation, fiscal impact and effectiveness, which is being conducted by UCLA's Integrated Substance Abuse Programs. UCLA's report of the first year of implementation yielded encouraging results.

Within the first year of SACPA's implementation, nearly 34,000 individuals convicted of nonviolent drug offenses were placed in community-based substance abuse treatment instead of going to jail. For over 50 percent of the participants, SACPA was their first exposure to treatment.² Eighty-six percent of SACPA participants were placed in outpatient treatment and 10 percent in long-term residential treatment, with 10 percent participating in methadone

maintenance programs. Surprisingly, nearly 50 percent of SACPA participants reported methamphetamine as their drug of choice, compared to lower levels for cocaine (15 percent), heroin (11 percent) and marijuana (12 percent).

The success of SACPA depends on positive collaboration between the courts, probation, law enforcement, criminal defense lawyers and treatment and medical professionals. This has allowed for a significant change in how these separate systems interact—forcing a shift from a criminal-justice-centered view to one that defers to the expertise of public health and medical personnel.

While SACPA mandates directives to all California counties, specific implementation strategies vary widely from county to county. Different models are due in large part to the differing population needs, available treatment options, and the political climate and receptivity to treatment in each county. Recognizing these differences, SACPA leaves it up to each county to determine how clients flow through the SACPA system, who completes assessment and when and where it is done, what kind of treatment is offered, the respective levels

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of involvement of criminal justice and public health partners, the use of drug testing to monitor clients and many other factors.

San Francisco has had a different experience with the implementation of SACPA than many other counties, with consistently lower participation rates. This is primarily because prior to the enactment of SACPA San Francisco was far ahead of the curve in offering community-based treatment as a sensible alternative to incarceration, providing myriad options for individuals charged with drug crimes to access treatment. The combination of pre-plea drug diversion, the Mentor Court program and pre- and post-plea drug courts available to many SACPA-eligible clients in San Francisco made the post-conviction option of SACPA less attractive to many individuals. As a result, SACPA was somewhat slow in ramping up, with only a little over 300 people placed in SACPA treatment during the first year, 478 people the second year, and 312 people during the first half of the third year of implementation.

San Francisco has a diverse population of drug users and misusers who represent a wide range of treatment needs. In addressing this diversity, San Francisco has accordingly developed a SACPA model that one public health official calls a "diverse treatment program matrix."³ The San Francisco Department of Public Health deals with 24 different treatment programs whose methods include intensive outpatient treatment, day treatment, residential treatment and supportive housing. All of these organizations are contracted with the Public Health Treatment Access Program ("TAP")—the division of the Department of Public Health charged with ongoing case management of SACPA clients, which acts as liaison between treatment programs and the courts—to provide services.⁴

It is not surprising that in a city that already embraces the value of treatment, and has adopted a resolution demanding a harm reduction component to every

publicly funded treatment program, SACPA implementation is true to the spirit of the initiative.

A prime example of this is seen in San Francisco's use of drug testing under SACPA. Drug testing was a hotly debated issue during the Proposition 36 campaign, with opponents decrying the lack of funding for drug testing in the initiative. In 2001, less than a year after the passage of Proposition 36, the legislature passed SB 223, a law clarifying that drug testing is only to be used as a treatment tool in SACPA implementation and not as a sole source of a drug-related probation violation, and allowing for some funding for testing under those conditions (see PC section 1210.5).

In many counties, however, drug testing is used primarily by probation and parole as a vehicle to send an individual back to jail. And in many California counties, treatment organizations working under SACPA have assumed a quasi-law enforcement role, reporting positive test results directly to probation or parole officials, which then results in jail or other sanctions against the clients. This dual loyalty can seriously jeopardize the relationship between clients and treatment providers.

San Francisco, however, utilizes drug testing primarily as a means of monitoring progress and has intentionally protected treatment programs from being required to report test results to law enforcement. If a client tests positive for the first time while in a program, staff offer additional counseling and assessment focusing on the circumstances that led to the drug use, and the client's level of readiness to reduce drug use. Also, a plan may be developed for relapse prevention to assist the client in completing his or her SACPA commitment. In many cases a positive test indicates a need for a higher or more intensive level of treatment. Removal from a treatment program occurs only after a second positive test, at which time the individual is referred back to TAP for reevaluation and not directly to the court.

As we approach the end of the third year of SACPA implementation, the results of this relatively new policy initiative are very encouraging. SACPA is not perfect—and public health officials, criminal justice actors and clients must continue to work toward its improvement. But it is by far the best thing going for creating health alternatives to prison for thousands of Californians.

The next two years will offer an opportunity to not only protect but also expand on early successes. The original initiative allowed for \$60 million in funding for the first six months to prepare for implementation and \$120 million for five subsequent years. This funding is due to run out in 2006. A request for reallocation of funds will go before the Legislature in the 2005 session. It is imperative that we make clear to the Legislature that SACPA is offering thousands of our residents a new chance at life, saving lives and saving money.

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4. *Ibid.* ^{51b}