

## Proposition 36:

**Five Years Later**

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## PROPOSITION 36: FIVE YEARS LATER<sup>1</sup>

*“Of likely voters, 73 percent would vote for Proposition 36 today. Proposition 36 was passed by 61 percent of California voters in November of 2000.”*

- Results of a Field Poll Corporation survey, May 2004

### Introduction: California’s correctional challenge, and Proposition 36

*Through Proposition 36, one of the few correctional policy reforms fully implemented this decade, California joins New York, Maryland, Kansas, Washington, and many other states that have taken efforts to divert people arrested for drug offenses to drug treatment.*

While the United States still carries the dubious distinction of leading the world in imprisonment,<sup>2</sup> recent changes to sentencing in a number of states may signal that the country is turning the corner. Since 2000, at least 25 states have implemented sentencing and correctional reforms. Seventeen states, including Michigan, Louisiana, Washington, Texas, Kansas, and Mississippi, have rolled back mandatory minimum sentences or restructured other harsh penalties that were originally enacted to ‘get tough’ on low-level or nonviolent offenders, especially those convicted of drug offenses.<sup>3</sup> Sixteen states, including Texas, Washington, Colorado, and Kentucky, have eased prison population pressures by shortening time served in prison, increasing the release rate, and sanctioning probation or parole violators without returning them to prison.<sup>4</sup>

These changes to sentencing policy may be having an impact: The latest federal prisoner survey shows that in 2004, 11 states saw declines in their prison populations, and the rate of state prison growth has fallen from 8.7 percent a decade ago to 1.4 percent today.<sup>5</sup>

California, with the nation’s largest prison system, is struggling with corrections reforms. While prison population growth has leveled off (in 2004, the rate of growth was lower than the U.S. state average), the state has failed to implement the kinds of sentencing reform seen elsewhere, and there are signs that the state is returning to the prison building boom that defined the 1990s.

In California, in the last three years:

- **The Three Strikes reform ballot initiative failed to be enacted:** California’s “Three Strikes” law, which doubles some sentences and imposes a 25-to-life sentence for a third felony offense, contributed to longer sentences for 42,000 prisoners.<sup>6</sup> In 2004, polls showed for most of the year that Californians were poised to vote in favor of an initiative to reform the law. At the encouragement of law enforcement groups, Governor Schwarzenegger put a million dollars of his own political action funds into radio and television advertisements against the initiative. The initiative was narrowly defeated.
- **Parole reforms failed to be enacted:** The Governor embraced the recommendations of an Independent Review Panel on California correctional practices, and sought to implement “a new parole model” providing alternatives to prison for faltering parole. In April 2005, the California Correctional Peace Officers Association and Crime Victims United in California ran television advertisements accusing the administration of implementing policies that would put violent criminals back on the street. The administration ordered the parole reforms pulled.<sup>7</sup>
- **The Governor proposed to build new prisons and fund jail expansion:** In 2005, when the Kern Valley State Prison was opened, the administration was hailed for overseeing the “end of an era:” it was the first time in two decades the state was not planning to build a new prison.<sup>8</sup> In 2006, however, part of the administration’s push for \$68 billion in public works bonds was geared to support the construction of two new prisons and 83,000 jail beds.<sup>9</sup>

In California, the polarized nature of state politics, and the relative strength of interest groups (including the state's law enforcement associations, victims rights groups, and the prison guards union) has meant that even while the people of the state favor more rehabilitative approaches, policy change has not been realized. According to a poll conducted by the Field Research Corporation in May 2004, well over half of Californians surveyed (56%) think that rehabilitating and educating offenders outside of prison would reduce the state's crime problem.<sup>10</sup> According to the survey, by an 8 to 1 margin, Californians favor using state funds for rehabilitation over an approach that just punishes people with a prison sentence.

The 2004 Field Research Corporation survey also shows growing public support for Proposition 36, the Substance Abuse and Crime Prevention Act (SACPA), which was enacted through initiative process with the support of 61 percent of California voters in November 2000. Whereas the baseline penalty for felony drug possession in California ranges from 16 months to 3 years,<sup>11</sup> Proposition 36 allows people convicted of first- and second-time drug possession the opportunity to receive substance abuse treatment instead of incarceration. Since the initiative began in 2001, \$120 million in funds has been spent every year to fund treatment for thousands of people who would otherwise be incarcerated for a drug offense.

Through Proposition 36, one of the few correctional policy reforms fully implemented this decade, California joins New York, Maryland, Kansas, Washington, and many other states that have taken efforts to divert people arrested for drug offenses to drug treatment. Like every other California correctional reform, Proposition 36 has been controversial. And the debate continues today: while the Field Research poll showed that a larger proportion of Californians supported the initiative four years after it was passed, legislators have attempted to change the initiative by adding jail sanctions to the program—a change that could contribute to growing jail and correctional populations in the state.

Five years after the initiative officially came into effect, the Justice Policy Institute has analyzed leading correctional, crime, and expenditure data, and reviewed the literature on treatment efficacy to help put the policy debate around Proposition 36 in context. The data shows that Proposition 36 may have succeeded in its goal of reducing drug imprisonment, and moving drug-addicted people arrested for drug offenses into the treatment system in greater numbers. The report also echoes the findings of a recent University of California report that shows that the initiative is saving the state \$2.50 for every dollar spent on the program, and represented a net savings to government of \$173.3 million in the first year alone.<sup>12</sup>

Given that California's prison population is on the rise again,<sup>13</sup> California policymakers should carefully consider the impact Proposition 36 may have had on the state's troubled corrections system, and how the law may have improved the state's ability to treat drug addiction.

## **Methodology**

This policy brief summarizes and analyzes data and findings from a variety of criminal justice agencies and research entities whose work is national in scope, including the National Archive of Criminal Justice Data, the Federal Bureau of Investigation's Uniform Crime Report, the U.S. Justice Department's National Institute of Justice, the Office of Justice Programs Bureau of Justice Statistics, and the Substance Abuse and Mental Health Services Administration. This report contains original analysis by the Justice Policy Institute of crime and imprisonment data from the California Department of Corrections Data Analysis Unit and the Office of the Attorney General, Criminal Justice Statistics Center, the California Department of Alcohol and Drug Programs, the California Department of Finance, the California State Controller, and the California Board of

Corrections. Findings that report on state imprisonment trends outside of California either come from the Bureau of Justice Statistics, or from the corrections departments or equivalent state correctional statistics bureau of those states. The authors have also reviewed and summarized analyses published by researchers with the John Jay College of Criminal Justice in New York City, National Bureau of Economic Research, *the American Journal of Sociology*, and other scholarship on treatment efficacy, and research in the fields of corrections, economics, and social policy.

### **Choosing a Baseline: 1999 or 2000**

Within the policy community reviewing these issues, there is a methodological challenge in determining the baseline year for judging the impact of Proposition 36. The measure appeared on the ballot on Nov. 7, 2000. While the initiative did not officially go into effect until July 1, 2001, various effects of its passage may have begun prior to then. For example, startup appropriation of funds to support drug treatment, and development of the state's treatment infrastructure, was required by the initiative within weeks of its passage.

The mere presence of Proposition 36 on the ballot, and the elevated public discussion of drug sentencing that it provoked, may have affected sentencing practices for much of the year 2000. After the measure was approved, some justice system actors reported that some defendants with drug possession cases had their trials and/or sentencing postponed from 2000 to 2001, so that, in sentencing, they would be able to take part in Proposition 36 treatment. Further evidence of some pre-enactment effects of Proposition 36 comes from data showing a decline in the number of prison inmates serving time for drug possession, a figure that, between June 2000 and December 2000. It is reasonable to infer that fewer drug offenders were added to the prison population in late 2000 than might otherwise have been added without Proposition 36.

Because there appear to have been some effects of Proposition 36 during parts of the year 2000, researchers believe that using 2000 as a baseline for five-year comparisons could underestimate the impact of the initiative. The year 1999 might, therefore, be preferable as a baseline year, because only in that year could there have been no effects from Proposition 36 being on the ballot or approved by voters. Rather than resolve the issue, JPI has elected to report 1999 and 2000 figures wherever available and possible, and use 2000 as the baseline comparative year for most of our discussion.

**Finding 1: California’s drug possession prison population has fallen since Proposition 36 passed.**

*“The People of the State of California hereby declare their purpose and intent in enacting this Act to be as follows: To divert from incarceration into community-based substance abuse treatment programs nonviolent defendants, probationers and parolees charged with simple drug possession or drug use offenses.”*

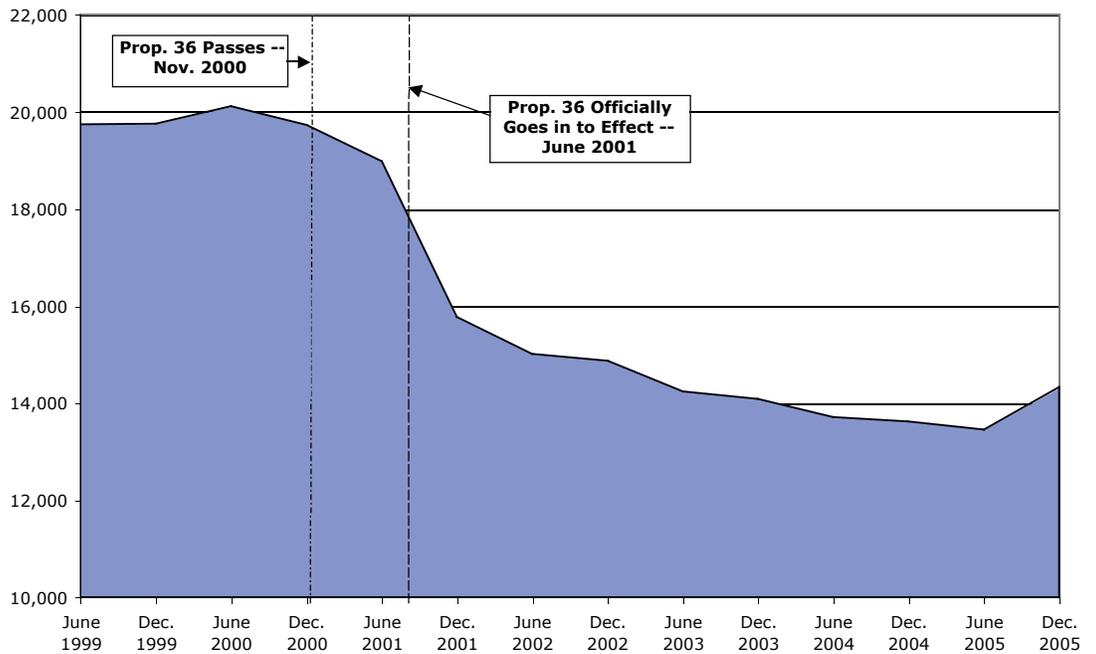
- from the declaration of the Substance Abuse and Crime Prevention Act, Proposition 36

One of the goals of Proposition 36 was to divert nonviolent defendants, probationers, and parolees from incarceration into community-based substance abuse treatment programs.<sup>14</sup> Since the initiative was passed by California voters and came into effect, the number of drug possession offenders in California’s prisons has gone from 19,736 in December 2000 to 14,325 in December 2005, a reduction of 27.4 percent. While Proposition 36 did not officially go into effect until July 1, 2001, it is believed that the drug possession offender population may have begun falling between its passage in November 2000 and its official enactment date since some defendants delayed their cases so they could qualify for drug treatment instead of incarceration.

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**California’s drug possession prisoner population fell 27 percent since 2000**

**California's Drug Possession Prison Population, 1999-2005**

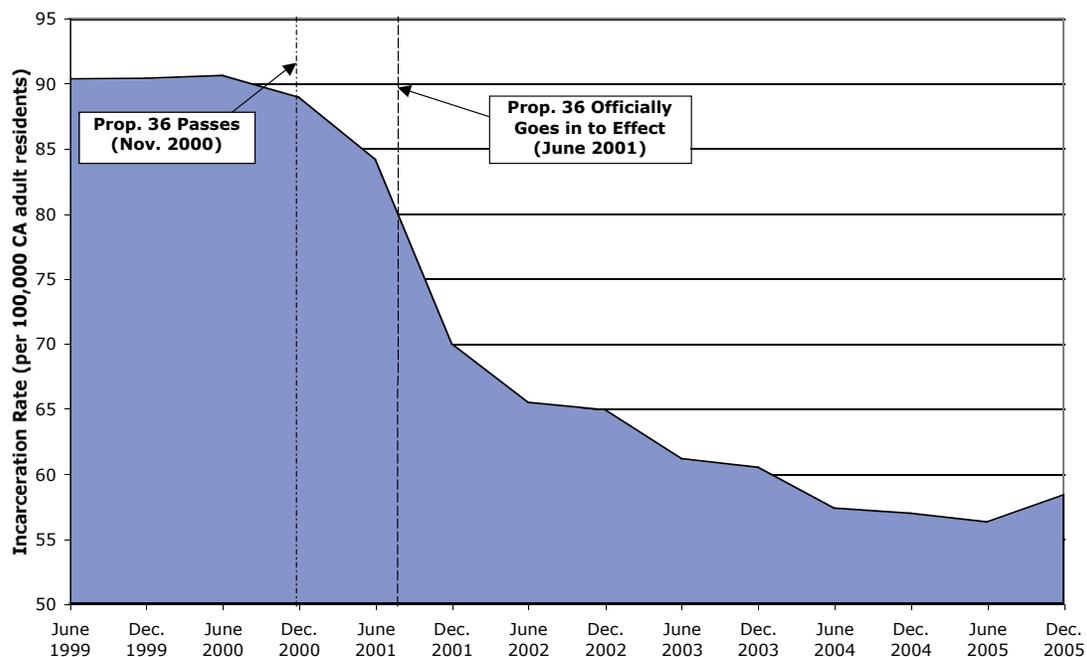


SOURCE: California Department of Corrections and Rehabilitation, Data Analysis Unit, Characteristics of Population in California State Prisons by Institution, June 30, 1999, December 31, 1999, and June 30, 2000 reports; Prison Census Data, December 31, 2000-December 31, 2005 reports.

Along with a drop in the absolute number of people incarcerated for drug possession, California’s rate of drug-possession incarceration per 100,000 residents also fell during the period. The rate of incarceration for drug possession offenses has gone from 89 per 100,000 California adults in December 2000 to 58 in December 2005, a 34.3 percent decrease.

## Since 2000, California's drug possession incarceration rate fell 34 percent

**Drug Possession Incarceration Rate, 1999-2005**



SOURCE: Incarceration data from California Department of Corrections and Rehabilitation, Data Analysis Unit, Characteristics of Population in California State Prisons by Institution, June 30, 1999, December 31, 1999, and June 30, 2000 reports; Prison Census Data, December 31, 2000-December 31, 2005 reports; population estimates based on adult "population at risk," 18-69 years of age, from Demographic Research Unit, California Department of Finance, as cited in Crime in California, 2004, California Department of Justice, Criminal Justice Statistics Center, Table 58, p. 165; year 2005 population estimate based on rate of increase between 2003 and 2004 (2.6%).

The "static" prison population reviewed above measures the population of drug prisoners at a particular point in time. Prison populations are affected by the length of sentence, the number people leaving prison, the number of people admitted to prison on new felonies, and parolees who are returned to prison on a new prison term or returned for a parole violation. While the Department of Corrections does not publish data on the reasons why parolees are returned to prison for parole violations, it does publish data on prison admissions for new felony admissions and parole violators with a new prison term handed down by the courts.

While it is not known if Proposition 36 is wholly responsible for the drop in drug-possession prison admissions since its enactment, no other changes in public policy, population, or public behavior provide an explanation. It is also possible that Proposition 36 diverted even more people from prison than are indicated from the reduced prison admissions, since prison admissions may rise because of increases in the population of California as a whole.

### Declining drug possession admissions to prison

In the past four years, drug-possession admissions to prison—including new felon admissions for new crimes and parole violators returned with a new term—have been, on average, 32 percent lower than the year 2000, when Proposition 36 passed. This does not include parole violators returned to custody without a new term, who made up 77 percent of the felon parolees returned to custody in 2004.<sup>15</sup> Proposition 36 has likely helped reduce the number of parole violators returned to custody without a new term, which has dropped 20 percent since 2000.<sup>16</sup>

**Drug possession admissions to prison are 32 percent lower than in 2000  
Parole violator returned to custody without a new term dropped 20 percent**

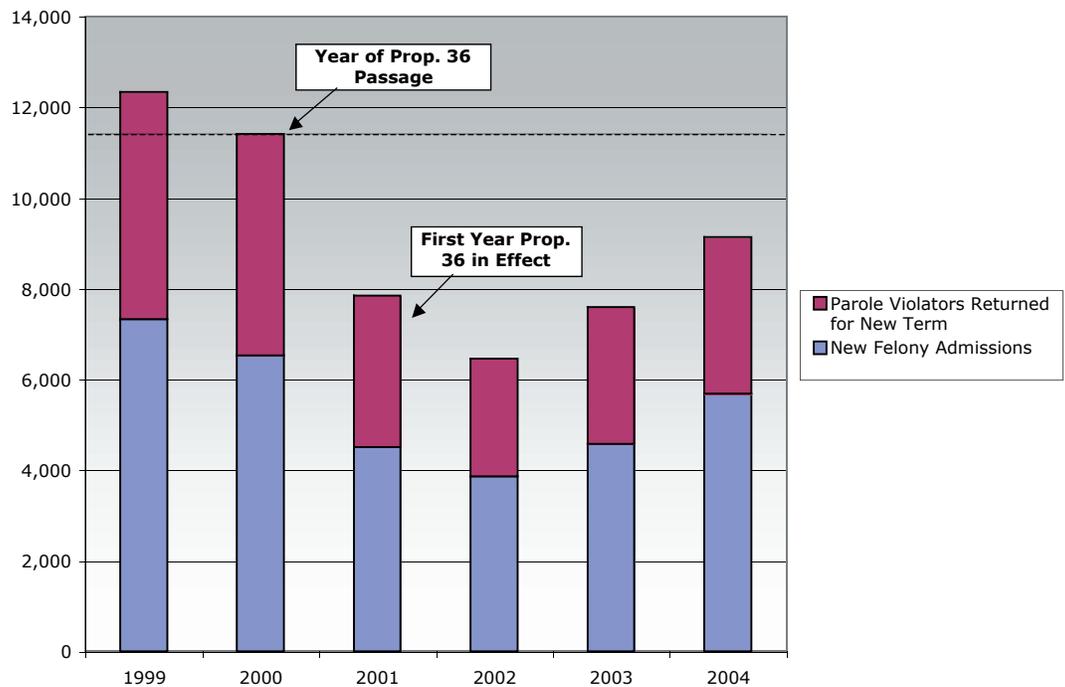
**California Drug Possession Prison Admissions, by Admission Type**

Offense	1999	2000	2001	2002	2003	2004	
New Felon Admissions	7,335	6,522	4,503	3,868	4,575	5,680	
Parole Violators Returned with a New Term	5,005	4,891	3,346	2,588	3,015	3,461	
<b>Total Drug Possession Prison Admissions</b>	<b>12,340</b>	<b>11,413</b>	<b>7,849</b>	<b>6,456</b>	<b>7,590</b>	<b>9,141</b>	<b>Avg. % Reduction from 2000 Baseline</b>
<b>% Difference Compared w/ 2000</b>			-31.23%	-43.43%	-33.50%	-19.91%	-32.02%

SOURCE: California Department of Corrections and Rehabilitation, Data Analysis Unit, Characteristics of Felon New Admissions and Parole Violators Returned with a New Term, calendar years 1999 to 2004.

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**Drug possession admissions to prison 32 percent lower than in 2000  
Drug Possession Prison Admissions, by Type (1999-2004)**



SOURCE: California Department of Corrections and Rehabilitation, Data Analysis Unit, Characteristics of Felon New Admissions and Parole Violators Returned with a New Term, calendar years 1999 to 2004.

**Sentences to prison and jail for drug possession have decreased by 21 percent  
Sentences to probation and treatment increased 370 percent**

**Adult Felony Drug Sentences, 1999-2004\***

	1999	2000	2001	2003	2004	Change, 2000 to 2004
<b>State Institutions</b>	18,297	14,656	10,882	10,416	11,606	-3,050
Percent	27.72%	25.59%	21.46%	17.80%	18.73%	-20.81%
<b>Probation</b>	4,186	4,051	9,175	18,491	19,028	14,977
Percent	6.34%	7.07%	18.09%	31.61%	30.70%	369.71%
<b>Probation with Jail</b>	41,692	36,740	28,892	27,359	28,864	-7,876
Percent	63.17%	64.16%	56.96%	46.76%	46.58%	-21.44%
<b>Jail</b>	1,827	1,818	1,771	2,238	2,474	656
Percent	2.77%	3.17%	3.49%	3.83%	3.99%	36.08%
<b>Total Convictions</b>	<b>66,002</b>	<b>57,265</b>	<b>50,720</b>	<b>58,504</b>	<b>61,972</b>	<b>4,707</b>
Percent	100.00%	100.00%	100.00%	100.00%	100.00%	8.22%

\*2002 data is not available.

SOURCE: California Department of Justice, Criminal Justice Statistics Center, Crime in California, 2004, Table 41, p. 149.

Proposition 36 only affects sentencing of people without a history of violence who are convicted for *drug possession*, not drug dealers or traffickers. Available sentencing data in California does not break down felony drug convictions into possession and dealing offenses, but FBI statistics indicate that nearly 80 percent of felony drug arrests in the West are for possession,<sup>17</sup> and felony drug convictions in California likely follow this pattern. While adult felony drug convictions have risen since the passage of Proposition 36, sentences to prison have decreased by over 20 percent, probation with jail sentences have decreased over 21 percent, and probation sentences have increased almost 370 percent.

**Finding 2: California’s prison population has grown at a much slower pace than was projected since 2000, and the state incarceration rate has fallen.**

“The key to reforming the system lies in reducing the numbers.”

- Corrections Independent Review Panel for Reforming California’s Youth and Adult Correctional System, June 30, 2004.

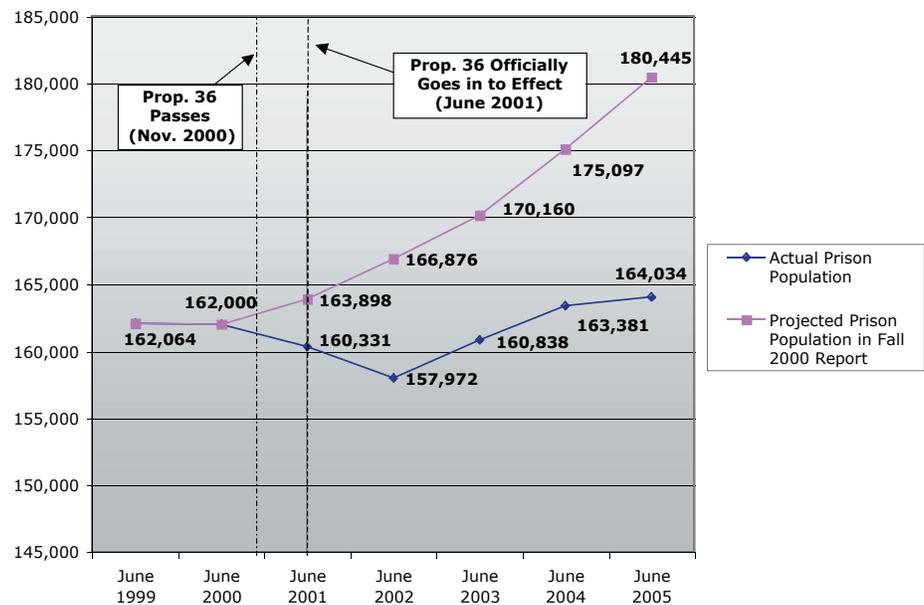
“This measure would result in savings to the state prison system. This is because as many as 24,000 nonviolent drug possession offenders per year would be diverted to drug treatment in the community instead of being sent to state prison.”

- Legislative Analysts Office assessment of Proposition 36.

California’s overall prison population growth did not achieve the levels predicted by the California Department of Corrections. Prior to Proposition 36’s passage, the Department of Corrections projected<sup>18</sup> that the prison population would be more than 180,000 by June 2005.<sup>19</sup> The actual prison population on June 30, 2005<sup>20</sup> was just over 164,000 and reached 166,000 at year-end.

**California’s prison population did not grow as projected**

**Projected Prison Population Before Prop. 36 vs. Actual Population After Passage**

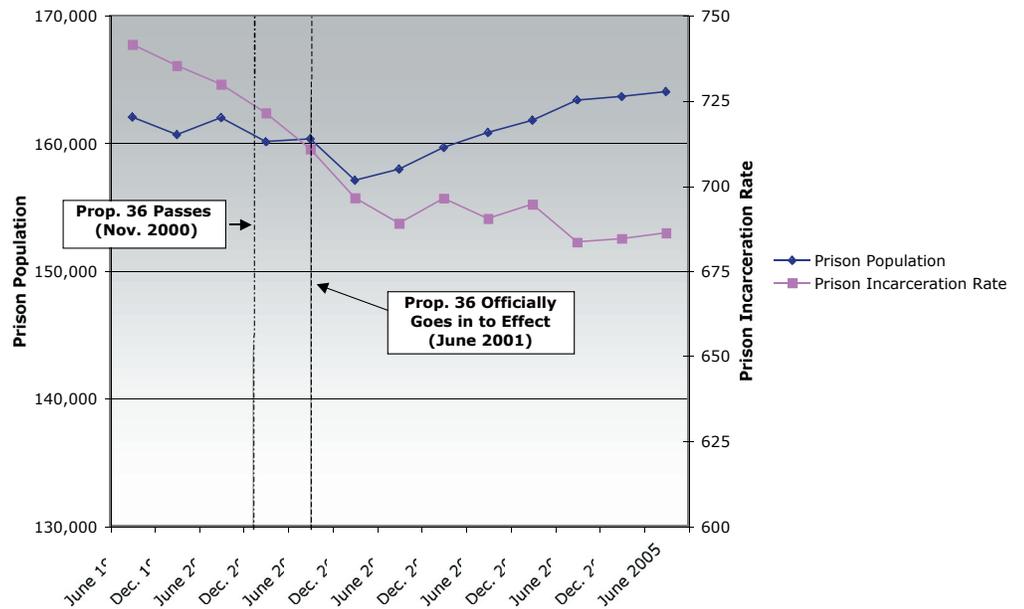


SOURCE: Actual prison population: California Department of Corrections and Rehabilitation, Data Analysis Unit, Characteristics of Population in California State Prisons by Institution, June 30, 1999, December 31, 1999, and June 30, 2000 reports; Prison Census Data, December 31, 2000-June 30, 2005 reports; projected prison population: California Department of Corrections and Rehabilitation, Population Projections Unit, Spring 2001 Population Projections-2001-2006, Table A, p. 4 (revised April 3, 2001).

The overall prison population increased by 7,900 between December 2000 and December 2005. The *rate of incarceration* (per 100,000 resident adults, age 18 to 69) has *decreased* more than 5 percent.<sup>21</sup> Using the Bureau of Justice<sup>22</sup> statistics standard for comparing state incarceration rates (residents of all ages incarcerated, per 100,000 residents of all ages), California’s incarceration rate declined 4 percent, while the overall U.S. incarceration rate rose slightly.

## Since 2000, California's incarceration rate has fallen

### California Prison Population and Incarceration Rate, 2000-2005



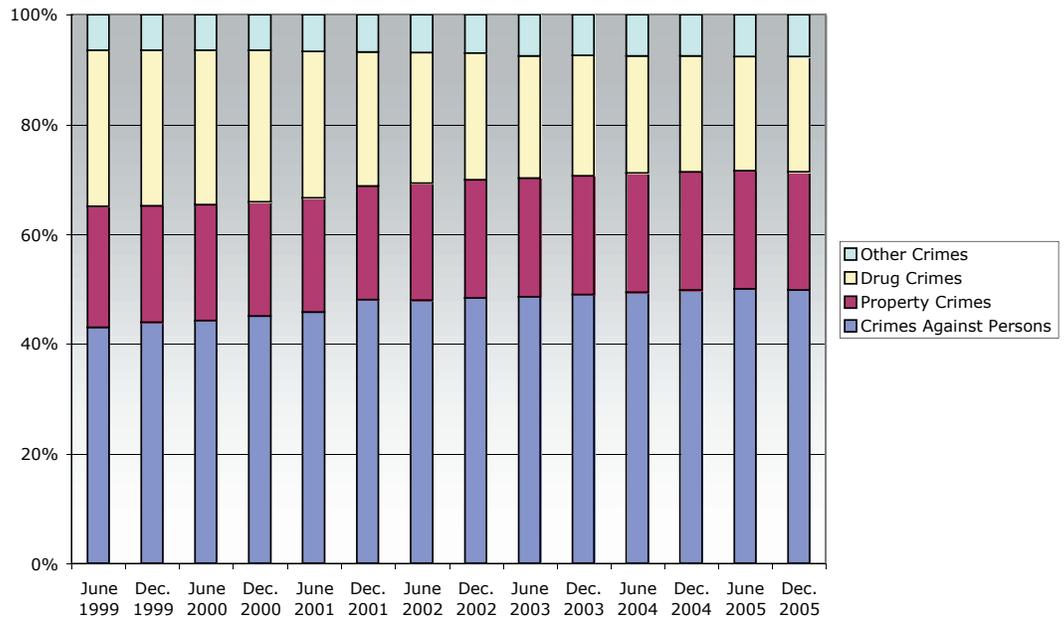
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SOURCE: Incarceration data from California Department of Corrections and Rehabilitation, Data Analysis Unit, Characteristics of Population in California State Prisons by Institution, June 30, 1999, December 31, 1999, and June 30, 2000 reports; Prison Census Data, December 31, 2000-June 30, 2005 reports; population estimates based on adult "population at risk," 18-69 years of age, from Demographic Research Unit, California Department of Finance, as cited in Crime in California, 2004, California Department of Justice, Criminal Justice Statistics Center, Table 58, p. 165.

California's prison population is composed of a higher percentage of people convicted of crimes against persons than in 2000. The percentage of the population that was convicted of property offenses has increased very slightly, as did percentage of "other crimes." At year-end 2005, 21 percent of the prison population was incarcerated for drug offenses—down from 27.6 percent in 2000.

## The proportion of people incarcerated for drug offenses has fallen

### Percentage Makeup of California's Prison Population, by Offense Category



SOURCE: California Department of Corrections and Rehabilitation, Data Analysis Unit, Characteristics of Population in California State Prisons by Institution, June 30, 1999, December 31, 1999, and June 30, 2000 reports; Prison Census Data, December 31, 2000-December 31, 2005 reports.

Persons convicted of “crimes against persons” accounted for more than 68 percent of the increase in the prison population since 2000. Property offenders accounted for just over 17 percent of the increase. “Drug crimes” is the only offense category that has decreased in the prison population since 2000: The drug crime imprisonment rate fell 27 percent, and the number of people imprisoned for drug crimes fell 20 percent.

**Drug crimes were the only offense category that declined in California prisons since 2000**

<b>Offense Category</b>	<b>Dec. 2000</b>	<b>Dec. 2005</b>	<b>Change (Dec. 2000- Dec. 2005)</b>	<b>% Change (Dec. 2000- Dec. 2005)</b>	<b>% of Total Growth (Dec. 2000-Dec. 2005)</b>
<b>Missing</b>	137	0	N/A	N/A	N/A
<b>Crimes Against Persons</b>	72,158	83,666	11,508	15.95%	68.41%
<b>Percent</b>	45.06%	49.78%			
<b>Rate (per 100,000 adults, age 18-69)</b>	325.06	341.03	15.96	4.91%	
<b>Property Crimes</b>	33,152	36,081	2,929	8.84%	17.41%
<b>Percent</b>	20.70%	21.47%			
<b>Rate (per 100,000 adults, age 18-69)</b>	149.34	147.07	-2.28	-1.52%	
<b>Drug Crimes</b>	44,191	35,437	-8,754	-19.81%	N/A
<b>Percent</b>	27.60%	21.09%			
<b>Rate (per 100,000 adults, age 18-69)</b>	199.07	144.44	-54.63	-27.44%	
<b>Other Crimes</b>	10,486	12,871	2,385	22.74%	14.18%
<b>Percent</b>	6.55%	7.66%			
<b>Rate (per 100,000 adults, age 18-69)</b>	47.24	52.46	5.22	11.06%	
<b>Total Prisoners</b>	160,124	168,055	7,931	4.95%	100.00%
<b>Percent</b>	100.00%	100.00%			
<b>Rate (per 100,000 adults, age 18-69)</b>	721.33	685.00	-36.34	-5.04%	

SOURCE: Incarceration data: California Department of Corrections and Rehabilitation, Data Analysis Unit, Prison Census Data, December 31, 2000 and December 31, 2005 reports; population estimates: based on adult “population at risk,” 18-69 years of age, from Demographic Research Unit, California Department of Finance, as cited in Crime in California, 2004, California Department of Justice, Criminal Justice Statistics Center, Table 58, p. 165.

### **Finding 3: Since 2000, California has seen a larger decline in drug possession imprisonment than the other 10 largest prison systems in the United States.**

As shown above, California has reduced its drug possession population since Proposition 36 was passed by the voters. To put this decline in context, the researchers surveyed the states with the largest prison populations. Of the ten largest systems, six have data on the proportion of their prison population incarcerated for drug possession.<sup>23</sup>

Between 2000 and 2005, California reduced its drug possession prison population by over 5,400 prisoners. For the six states that keep statistics on drug possession prisoners, New York had the second-highest drop in the number of drug-possession prisoners, reducing its population by 329. With a 27 percent decline in five years, California also had the largest percentage drop in drug prisoners incarcerated for possession; Michigan, which saw a decline of 127 drug-possession prisoners, had the second-highest percentage drop. When comparing the percentage of the prison populations that are made up of drug-possession offenders, California also experienced a larger decline than the other six reporting states: In 2000, drug-possession offenders made up over 12 percent of California’s prison population; in 2005, it had dropped to 8.5 percent, a drop of 31 percent.

#### **California experienced the largest drop in drug possession Comparison of state drug possession prisoner populations, 2000-2005**

<b>State</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>Change</b>	<b>% Change</b>
<b>California</b>	19,736	15,781	14,877	14,091	13,620	14,325	-5,411	-27.42%
<b>Percentage of the Prison Population</b>	12.33%	10.00%	9.30%	8.70%	8.30%	8.50%		-31.06%
<b>Florida</b>	2,564	2,664	2,567	3,008	3,377	3,736	1,171	45.67%
<b>Percentage of the Prison Population</b>	3.60%	3.70%	3.49%	3.89%	4.12%	4.40%		22.22%
<b>Georgia</b>	3,356	3,522	3,286	3,298	3,403	3,311	-45	-1.33%
<b>Percentage of the Prison Population</b>	8.00%	8.00%	7.00%	7.00%	7.00%	7.00%		-12.50%
<b>Michigan</b>	1,100	1,079	1,063	929	n/a	n/a	-171	-15.54%
<b>Percentage of the Prison Population</b>	2.40%	2.28%	2.15%	1.90%	n/a	n/a		-20.83%
<b>New York</b>	5,781	5,506	5,720	5,744	5,586	5,451	-329	-5.70%
<b>Percentage of the Prison Population</b>	8.24%	8.17%	8.57%	8.81%	8.77%	8.69%		5.46%
<b>Ohio</b>		3,534	3,672	3,604	3,700	4,042	508	14.38%
<b>Percentage of the Prison Population</b>		7.86%	8.21%	7.97%	8.43%	9.17%		16.67%
<b>Pennsylvania</b>	228	236	226	220	184	199	-29	-12.59%
<b>Percentage of the Prison Population</b>	0.62%	0.62%	0.57%	0.54%	0.45%	0.47%		-24.19%

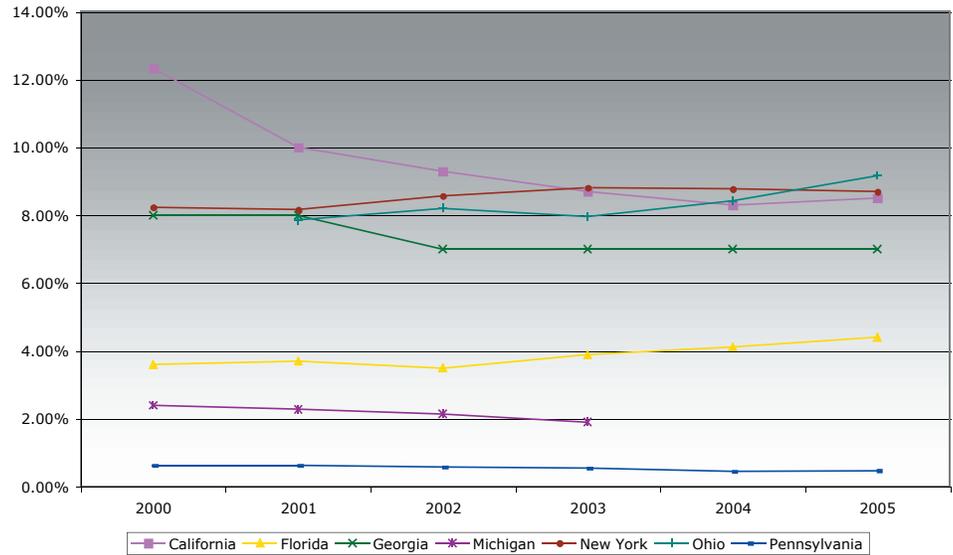
SOURCE: Reporting prison systems and state correctional statistical agencies (see note 23)

While California’s drug possession prison population was much higher than states like New York, Ohio, and Georgia in 2000, it is now fairly close to those states when compared to their prison populations as a whole. As previously mentioned, 8.5 percent of California’s prison population was serving time for drug possession in 2005; in New York the percentage was 8.7 percent, and Georgia’s was 7 percent. Ohio’s drug possession prison population used to be relatively smaller than California’s, but now more than 9 percent of Ohio’s prison population is serving time for drug possession.

Despite these reductions, California has a long way to go before reducing its drug-possession prison population to levels like those achieved in states like Michigan, Pennsylvania, and even Florida. In that southern state, 4.4 percent of the prison population was serving time for drug possession as of June 30, 2005. While recent data is not available from Michigan, as of 2003, only 1.9 percent of that state’s prison population was serving a sentence for drug possession. In Pennsylvania, less than one-half of one percent of that state’s prisoners was serving a sentence for drug possession in 2005.

## Compared to other states, California experienced a sharp decline in drug possession prisoners

**Drug Possession Prisoners as a Percentage of State Prison Populations**



SOURCE: Reporting prison systems and state correctional statistical agencies (see note 23).

*With a 27 percent decline in five years, California had the largest percentage drop in drug prisoners incarcerated for possession of the six largest state prison systems reporting.*

Compared to the 10 largest state prison systems, which together account for 53 percent of the people incarcerated in state prisons, California experienced the biggest numerical drop in drug prisoners. In contrast to 2000, today California's drug prisoner population is more in line with other big states.

It is of note that New York had the largest drop in drug prisoners on a percentage basis, with more than a 32 percent drop in drug prisoners since 2000. While it is beyond the scope of this analysis to note the cause of the New York decline, in 2000 New York's Unified Court System developed a proposal to divert 10,000 defendants from prison or jail into treatment at a savings of \$500 million a year in incarceration and other taxpayer costs.<sup>24</sup>

**Of the 10 largest prison systems,  
California experienced the largest drop in drug prisoners  
Comparison of state prison populations, all drug offenses**

State	2000	2001	2002	2003	2004	2005	Change	% Change
<b>California</b>	44,191	38,271	36,711	35,368	34,502	35,437	-8,754	-19.81%
Percentage of the Prison Population	27.60%	24.40%	22.99%	21.86%	21.08%	21.09%		-23.59%
<b>New York</b>	21,116	19,140	18,355	17,082	15,485	14,240	-6,876	-32.56%
Percentage of the Prison Population	30.10%	28.40%	27.50%	26.20%	24.31%	22.70%		-24.58%
<b>Texas</b>	30,052	27,198	26,070	26,134	25,922	26,561	-3,491	-11.62%
Percentage of the Prison Population	19.89%	18.76%	17.95%	17.64%	17.20%	17.45%		-12.27%
<b>Michigan</b>	5,622	5,489	5,485	4,517	n/a	n/a	-1,105	-19.66%
Percentage of the Prison Population	12.27%	11.60%	11.09%	9.24%	n/a	n/a		-24.69%
<b>Illinois</b>	45,281	44,348	42,693	43,418	44,054	44,669	-612	-1.35%
Percentage of the Prison Population	25.54%	26.10%	25.49%	24.89%	24.96%	25.00%		-2.11%
<b>Louisiana</b>	11,565	n/a	n/a	n/a	9,134	11,274	-290	-2.51%
Percentage of the Prison Population	33.00%	n/a	n/a	n/a	25.00%	30.40%		-7.88%
<b>Georgia</b>	7,131	7,484	7,041	7,067	7,293	7,096	-36	-0.50%
Percentage of the Prison Population	17.00%	17.00%	15.00%	15.00%	15.00%	15.00%		-11.76%
<b>Ohio</b>	n/a	5,751	6,025	6,389	6,913	7,406	1,655	28.78%
Percentage of the Prison Population	n/a	12.79%	13.47%	14.13%	15.75%	16.80%		31.35%
<b>Pennsylvania</b>	6,504	7,185	7,967	8,070	7,873	8,222	1,717	26.40%
Percentage of the Prison Population	17.67%	18.91%	20.11%	19.77%	19.22%	19.37%		9.62%
<b>Florida</b>	12,608	12,875	13,387	14,690	16,026	17,065	4,457	35.35%
Percentage of the Prison Population	17.70%	17.88%	18.20%	19.00%	19.55%	20.10%		13.56%

SOURCE: Reporting prison systems and state correctional statistical agencies (see note 23)

*California experienced the biggest numerical drop in drug prisoners. In contrast to 2000, today California's drug prisoner population is more in line with other big states.*

**Finding 4: California’s violent crime rate has declined since 2000, at a rate higher than the national average.**

*“Proponents claim Proposition 36 deals only with nonviolent drug users. In reality, it will allow an estimated 37,000 felony drug abusers to remain on our streets every year—many of them addicted to drugs that often ignite violent criminal behavior.”*

- ballot argument against Proposition 36<sup>25</sup>

Proposition 36 specifically excluded persons with violent crime histories from being eligible for diversion into drug treatment for a drug offense, except in cases where the person had been out of prison for five or more years prior to committing the drug offense. While there were concerns that the initiative would lead to an increase in violent crime, since the initiative’s passage, violent crime has declined. Between 2000 and 2004, the national average violent crime rate dropped 8.1 percent, while California’s violent crime rate dropped 11.2 percent. During the same period, California also went from having the 10th-highest violent crime rate in 2000 to the 11th-highest in 2004.

**Since 2000, violent crime in California has fallen  
State violent crime rates for California, United States,  
and states higher than the national average, 2000-2004**

2004 Violent Crime Rate Ranking	State or Jurisdiction	2000	2001	2002	2003	2004	% Change, 2000 to 2004
1	District of Columbia	1507.9	1736.7	1637.9	1608.1	1371.2	-9.07%
2	South Carolina	828.1	720.3	822.7	793.5	784.2	-5.30%
3	Florida	812	797.2	771.2	730.2	711.3	-12.40%
4	Maryland	786.6	783	770.8	703.9	700.5	-10.95%
5	Tennessee	707.2	745.3	717.8	687.8	695.2	-1.70%
6	New Mexico	757.9	781.1	740.7	665.2	687.3	-9.32%
7	Louisiana	681.1	687	663.3	646.3	638.7	-6.23%
8	Alaska	566.9	588.3	565.4	593.4	634.5	11.92%
9	Nevada	524.2	586.8	639.3	614.2	615.9	17.49%
10	Delaware	684.4	611.4	600	658	568.4	-16.95%
11	California	621.6	617	595.4	579.3	551.8	-11.23%
12	Illinois	653.8	636.9	601.9	556.8	542.9	-16.96%
13	Texas	545.1	572.8	579.7	552.5	540.5	-0.84%
14	Arizona	531.7	540.3	554.5	513.2	504.1	-5.19%
15	Oklahoma	497.8	512.3	504	505.7	500.5	0.54%
16	Arkansas	445.3	452.8	425	456.1	499.1	12.08%
17	Missouri	490	541.3	539	472.8	490.5	0.10%
18	Michigan	555	554.7	540.7	511.2	490.2	-11.68%
19	United States-Total	506.5	504.4	494.4	475	465.5	-8.09%

SOURCE: 2000-2003: FBI, Uniform Crime Reports, prepared by the National Archive of Criminal Justice Data, downloaded January 28, 2006; 2004: FBI, 2004 Uniform Crime Report, Table 5, p. 86-96.

**Finding 5: Since 2000, California has experience a larger increase in drug treatment clients than the rest of the country.**

During a time in which the state was gripped by a budget shortfall that drove politicians to trim education and public service spending, California experienced an increase in drug treatment spending, an increase in drug treatment clients, and an increase in the number of drug treatment facilities in California.

According to the California Department of Alcohol and Drug Programs (ADP), the agency responsible for licensing treatment centers in California, the number of drug programs in the state has increased<sup>26</sup>:

- In 2000, there were 1,061 drug treatment programs, including 663 licensed residential facilities and 398 certified outpatient programs. Three years after Proposition 36 passed, there were 1,766 programs—842 licensed residential facilities and 924 certified outpatient programs.
- The number of treatment sites has increased by 705, or 66 percent. The number of licensed residential facilities increased by 179, or 27 percent.
- Since 2000, the number of certified outpatient programs increased by 526, or 132 percent.
- Since 2000, the residential treatment bed capacity of the state increased by 4,229 beds, or 27.6 percent increase.

Using a different methodology<sup>27</sup> to report standardized changes in national treatment capacity between states, data from the National Survey of Substance Abuse Treatment Services (N-SSATS) also shows a significant change in the number of California treatment facilities. According to the N-SSATS, the number of substance abuse treatment facilities in California went from 1,413 in the year 2000 to 1,779 facilities in 2004 (a 25.9 percent increase). If you exclude California from the national totals, during the same time period, the number of treatment facilities in the rest of the United States *declined*, going from 12,015 to 11,675, a *reduction of 2.8 percent*.<sup>28</sup>

**The nation experienced a decline in treatment facilities  
California experienced an increase**

**Number of Substance Abuse Treatment Facilities, 2000-2004\***

	2000	2002	2003	2004	Change in # Facilities, 2000 to 2004	% Change in # Facilities, 2000 to 2004
<b>California</b>	1,413	1,772	1,818	1,779	366	25.90%
<b>United States</b>	13,428	13,720	13,623	13,454	26	0.19%
<b>United States, excluding California</b>	12,015	11,948	11,805	11,675	-340	-2.83%

\*2001 data not available

SOURCE: Office of Applied Studies, Substance Abuse and Mental Health Services Administration, National Survey of Substance Abuse Treatment Services (N-SSATS): 2004, Table 6.2(a). Online at: [http://www.dasis.samhsa.gov/04nssats/nssats04\\_tbl6.2a.htm](http://www.dasis.samhsa.gov/04nssats/nssats04_tbl6.2a.htm).

According to the federal survey, the number of substance abuse treatment clients in California increased from 104,657 in the year 2000 to 140,401 in 2004, a 34.1 percent increase. During the same period, the number of treatment clients in the rest of the United States went from 896,239 to 931,850, an increase of only 4 percent. California has contributed over half of the increase in the number of people accessing substance abuse treatment in the U.S. since 2000.

**California represents half the growth in drug treatment clients since 2000  
Number of Treatment Clients, California vs. US**

	2000	2002	2003	2004	Change in # Clients, 2000 to 2004	% Change in # Clients, 2000 to 2004
<b>California</b>	104,657	158,653	150,140	140,401	35,744	34.15%
<b>United States</b>	1,000,896	1,136,287	1,092,546	1,072,251	71,355	7.13%
<b>United States, excluding California</b>	896,239	977,634	942,406	931,850	35,611	3.97%

\*2001 data not available

SOURCE: Office of Applied Studies, Substance Abuse and Mental Health Services Administration, National Survey of Substance Abuse Treatment Services (N-SSATS): 2004, Table 6.2(a). Online at: [http://www.dasis.samhsa.gov/04nssats/nssats04\\_tbl6.2a.htm](http://www.dasis.samhsa.gov/04nssats/nssats04_tbl6.2a.htm).

As mentioned, during a time in which the state was trimming funding to higher education, schools, and other public services, drug treatment spending in California experienced a significant increase. Comparing drug treatment expenditures in fiscal year 2004-5 to fiscal year 1999-2000, state substance abuse treatment funding has more than doubled. Under the cost-sharing Medical program, where federal dollars match state dollars spent on health care, \$16 million more in federal dollars were spent since 1999-2000.

*California has contributed over half of the increase in the number of people accessing substance abuse treatment in the U.S. since 2000.*

**During a state budget crisis, California drug treatment spending doubled**

DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS

SUMMARY OF STATE AND FEDERAL DRUG TREATMENT EXPENDITURES (IN MILLIONS)  
Fiscal Years (FY) 1999-00 through 2004-05

PROGRAMS	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	% Increase/ Decrease in Treatment Funding (FY 1999/2000-2004/5)
Drug Medi-Cal	\$33.0	\$43.4	\$41.7	\$43.6	\$54.2	\$57.4	74%
Drug Medi-Cal Federal	\$36.0	\$46.7	\$44.3	\$48.6	\$55.8	\$52.2	45%
Non-Drug Medi-Cal	\$50.9	\$67.9	\$54.3	\$53.5	\$42.7	\$42.9	-16%
Drug Courts	\$8.0	\$17.7	\$14.7	\$11.6	\$16.9	\$16.9	111%
Proposition 36	\$0.0	\$59.5	\$119.5	\$120.1	\$120.2	\$118.8	N/A
Special Funds	\$2.5	\$2.5	\$2.6	\$2.7	\$2.6	\$2.2	-12%
Parolee Services Network (Reimbursement from Department of Corrections)	\$11.2	\$11.2	\$11.2	\$11.2	\$11.2	\$11.2	0%
Indian Health Clinics (Reimbursement from Department of Social Services)	\$0.0	\$2.4	\$2.8	\$2.8	\$2.8	\$2.0	N/A
<b>GRAND TOTALS</b>	<b>\$141.6</b>	<b>\$251.3</b>	<b>\$291.1</b>	<b>\$294.1</b>	<b>\$306.4</b>	<b>\$303.6</b>	<b>114%</b>

NOTE: Includes State Support Administrative Costs  
Federal Medi-Cal Assistance Percentage (Match %) varies from year to year.  
In addition, some of the Drug Medi-Cal costs are 100% State General Fund with no federal match.

SOURCE: Sherri Gauger, Deputy Director, Office of Legislative and External Affairs, California Department of Alcohol and Drug Programs, correspondence, February 24, 2006.

## **Finding 6: The available literature on drug courts and completion rates of Proposition 36 suggest their completion rates are comparable.**

*“There are other programs, including California’s drug courts, which offer a far better chance of success.”*

- Bonnie Dumanis, San Diego District Attorney, in a press release issued by Senator Denise Moreno Ducheny, February 22, 2005.

*When comparing the various models of providing drug treatment through the criminal justice system, it appears that drug courts and Proposition 36 outcomes are similar.*

One of the most controversial parts of the Proposition 36 debate has centered on the differences between the operational procedures of the initiative compared with drug courts. The primary difference between drug courts and Proposition 36 is that drug courts utilize jail time as punishment for treatment relapses (“jail sanctions”), require more court appearances by participants, and require more judicial training and involvement in the treatment process. Drug courts also have varying eligibility requirements, whereas Proposition 36 made eligibility for treatment universal for all people convicted of drug offenses who did not have violent criminal convictions on their record.

In 2005, legislation (SB 803) was introduced that would make the initiative more like drug courts by allowing judges to jail defendants up to 21 days for relapsing, among other changes.<sup>29</sup> The bill’s “purposes” language says these changes are needed because “[d]rug dependent criminal offenders who receive drug treatment are far more likely to complete the drug treatment program if they are monitored and supervised by courts that use the drug court model....”<sup>30</sup>

### **Completion Rates of Drug Courts, SACPA Participants, and Other Drug Treatment Populations**

The research on drug court treatment completion rates was reviewed to determine if clients are “far more likely” to complete drug treatment under drug courts, compared with Proposition 36.

Completion rates for drug court participants are as varied as the evaluation studies performed on the programs. When comparing the various models of providing drug treatment through the criminal justice system, it appears that outcomes are similar. In 2005, the federal Government Accountability Office reviewed 16 program evaluations and found completion rates ranging from 27 percent to 66 percent.<sup>31</sup> A 2001 study of 10 California drug court evaluations found treatment completion rates ranging from 11 to 61 percent, with most at or below 38 percent.<sup>32</sup>

The latest evaluation shows Proposition 36 completion rates were 34.4 percent in year one, and 34.3 percent in year two. Overall, 41.6 percent of Proposition 36 clients completed treatment or made satisfactory progress.<sup>33</sup> On a county-by-county basis, completion rates have ranged from a low of 13 percent in Monterey County in 2001/2002, to 100 percent in Alpine county in both years that data is available. Twenty-seven counties had completion rates of 40 percent or higher (see graph, Proposition 36 completion rates by county).

All non-SACPA persons entering treatment through the criminal justice system in California had drug treatment completion rates of 36 percent in 2001/2002, and 37.5 percent in 2002/2003. Non-criminal justice clients completed treatment at rates of 29.8 percent and 30 percent.<sup>34</sup>

## Proposition 36 – County Completion Rates, 2001-2003

### County Variation in Completion Rates for SACPA Offenders (CADDs)

County	2001/02	County	2002/03
ALPINE	100%	ALPINE	100%
MODOC	71%	PLUMAS	71%
SUTTER	71%	SAN BENITO	63%
YUBA	71%	MODOC	57%
MONO	67%	HUMBOLDT	57%
PLUMAS	58%	TRINITY	56%
SISKIYOU	57%	AMADOR	56%
DEL NORTE	51%	MARIN	52%
BUTTE	50%	BUTTE	52%
TEHAMA	50%	TUOLUMNE	51%
YOLO	48%	YOLO	49%
TUOLUMNE	48%	INYO	48%
MARIN	46%	SANTA CRUZ	46%
HUMBOLDT	46%	SAN MATEO	45%
SAN LUIS OBISPO	45%	FRESNO	45%
LASSEN	45%	MONO	44%
ALAMEDA	44%	SHASTA	43%
PLACER	43%	SANTA CLARA	43%
SANTA CLARA	42%	LASSEN	43%
SAN BERNARDINO	42%	SAN BERNARDINO	42%
SAN MATEO	41%	NAPA	42%
NEVADA	41%	GLENN	42%
RIVERSIDE	40%	TEHAMA	41%
CALAVERAS	39%	SONOMA	41%
CONTRA COSTA	38%	KERN	41%
SONOMA	37%	SISKIYOU	40%
SHASTA	37%	MARIPOSA	40%
FRESNO	37%	RIVERSIDE	39%
EL DORADO	37%	CONTRA COSTA	39%
ORANGE	36%	ALAMEDA	39%
MADERA	36%	SAN LUIS OBISPO	37%
STANISLAUS	35%	STANISLAUS	36%
SAN DIEGO	34%	TULARE	35%
SANTA BARBARA	33%	SAN DIEGO	34%
LOS ANGELES	33%	PLACER	34%
AMADOR	33%	NEVADA	34%
KINGS	32%	MONTEREY	34%
KERN	32%	SANTA BARBARA	33%
SANTA CRUZ	31%	DEL NORTE	33%
SAN BENITO	31%	YUBA	32%
SACRAMENTO	29%	SUTTER	32%
LAKE	29%	SAN FRANCISCO	32%
SAN FRANCISCO	28%	KINGS	31%
NAPA	28%	ORANGE	30%
SOLANO	25%	EL DORADO	29%
TULARE	25%	CALAVERAS	29%
VENTURA	25%	MENDOCINO	28%
MERCED	24%	LOS ANGELES	28%
SAN JOAQUIN	24%	SACRAMENTO	25%
MARIPOSA	24%	VENTURA	25%
INYO	21%	MADERA	22%
IMPERIAL	17%	SAN JOAQUIN	21%
MENDOCINO	15%	LAKE	20%
MONTEREY	13%	MERCED	20%
No clients		SOLANO	20%
COLUSA	0.0%	IMPERIAL	17%
GLENN	0.0%	No clients	
SIERRA	0.0%	COLUSA	0.0%
TRINITY	0.0%	SIERRA	0.0%

SOURCE: Office of Applied Research and Analysis, California Department of Alcohol and Drug Programs, "County Variation in Completion Rates for SACPA Offenders (CADDs)," October 21, 2005.

## **Finding 7: While the effectiveness of using incarceration to prevent drug use and treatment relapse is not clear, there is an impact of the increased use of incarceration through jail on individuals and communities.**

*“There is no evidence for the efficacy of jail sanctions. Although there is research evidence supportive of drug courts in general, the use of jail time as a ‘sanction’ to enforce treatment compliance is not supported.”*

-The California Society of Addiction Medicine

*“Unquestionably, policies leading to mass incarceration created a dangerous crisis in state prisons and county jails.”*

- Barry Krisberg, president of the National Council on Crime and Delinquency, writing in the San Francisco Chronicle, February 28, 2006

*The growing price tag of jails strains county budgets, which are already struggling to fund everything from public hospitals to roads and local transportation infrastructure.*

One of the key policy issues surrounding the differences between Proposition 36 and drug courts concerns whether or not incarceration effectively reduces drug use or prevents relapse.

According to the California Society of Addiction Medicine, “There is no evidence for the efficacy of jail sanctions. Although there is research evidence supportive of drug courts in general, the use of jail time as a ‘sanction’ to enforce treatment compliance is not supported. *Drug courts around the nation have been using this tool for over 15 years, yet not a single study isolates the impact of jail sanctions in generating improved treatment outcomes.*”<sup>35</sup>

While the recent UCLA cost analysis of Proposition 36 suggests that jail sanctions (or residential drug treatment) may be appropriate for the 1.6 percent of the population they studied who are “high cost” offenders—people with five or more prior convictions—they are equivocal on the benefits of the approach: “The benefits of flash incarceration are not yet consistently confirmed in the research literature....Importantly, the offender’s perception of fair and impartial use of this sanction weighs heavily in determining the success attributable to this method.”<sup>36</sup>

### **The impact of jail incarceration on individuals and communities**

If jail sanctions were an effective way of ensuring that people would complete treatment, the policy would still need to be weighed against the costs of what is known to be the impact of incarceration on the individual and his or her community. As the state and country grapples with the impact of the overuse of incarceration, a growing body of research shows that imprisoning or jailing people carries with it negative consequence for the people incarcerated, their families, and communities. Expanding the use of jail sanctions for people in treatment could contribute to the growing costs of jails in county corrections budgets, worsen the mental health issues some recovering drug users carry, contribute to unemployment, and expose people to a higher risk of suicide.

### **Jail sanctions could cost counties and communities millions more in jails spending—draining funds from other local services**

In 2003, 30 percent of California counties spent more than they took in from various sources of revenue. The growing price tag of jails strains county budgets, which are already struggling to fund everything from public hospitals to roads and local transportation infrastructure. Eighty percent of county spending in California is comprised of public protection spending (including policing, jails, juvenile detention, and court costs), public assistance spending (welfare, social services, and general relief), and health and sanitation expenditures.<sup>37</sup>

It is hard to know how many days Proposition 36 participants would spend in jail if the option was more readily available to judges. While judges would not have to use the maximum jail time that SB 803 allows—21 days—an analysis of a Santa Clara drug court suggests they might use the full term available under the law. A 1998 study of the Santa Clara drug court found that the average number of jail days served by persons completing the program was 51 days per person. The cost of incarceration was \$3,417 above all other treatment, probation, and court supervision costs.<sup>38</sup> If the annual 36,000 people currently enrolled in Proposition 36 were to serve five days in jail at an average daily cost of \$62.60, it could cost counties an additional \$11.2 million per year. For ten days, the cost to California counties would be \$22.5 million.

County spending on jails and corrections reached \$3.3 billion of the \$44 billion spent by counties in 2003—accounting for a third of the increase in county spending on public protection. While total county per capita spending increased by 27 percent, spending on public protection (a third of which is jail spending) rose by 45 percent.

Looking at a different period, between 1998 and 2003, spending on jails and corrections rose by about billion dollars (\$2.3 to \$3.2 billion). During that five-year period, spending on jails increased at three times the level of spending on roads and local transportation infrastructure (\$420 million).

According to the latest available *Jail Profile Survey*, “on days when the statewide jail population is about average, it exceeds the number of beds by over 3,400 inmates.” With California’s jail populations is on the rise, it is worth noting the local jail population dilemma: for every drug-involved person put in a jail bed, either the county will have to come up the funds to pay for a larger jail, or someone must be released—decisions that impact public safety and local resources for other services.<sup>39</sup>

### **Jail incarceration “traumatizes persons with mental illnesses and makes them worse”**

On any given day, one-sixth of the detained jail population suffers from mental illness.<sup>40</sup> People who have co-occurring disorders in the domains of drug addiction and mental health can experience a psychological deterioration once jailed due to the interruption in treatment and medication, and environmental stressors. According to the National Association of Counties, jail “traumatizes persons with mental illness and makes them worse.”<sup>41</sup> People with drug and mental health issues are in need of extra care from health department psychiatrists, who, according to NACO, have to work “twice as hard to get them back to where they were before they entered the jail.”<sup>42</sup>

### **Jail populations experience higher rates of suicide deaths than the general population**

Researchers have found that the reaction of detained populations to conditions of jails can exacerbate mental health or conditions that increase the individual’s propensity towards suicidal behavior. Researchers have found that newly jailed people experience fear of the unknown, distrust of the environment, isolation from family and significant others, shame and stigma of incarceration, a loss of stabilizing resources, and severe guilt or shame over the alleged offense. Current mental illness and prior history of suicidal behavior also intensify in the jail environment.<sup>43</sup> These conditions and stressors conspire to increase the suicide rate in jails, as compared to the general population. According to the correctional research arm of the U.S. Justice Department, suicide is the leading cause of death in jail. Compared with a U.S. suicide rate of 17 per 100,000 people, the Bureau of Justice Statistics researchers finds that the suicide rate in local jails is 47 per 100,000 people.<sup>44</sup>

## **Jail may expose people to various diseases**

According to the National Commission on Correctional Health Care, jails are recognized as settings where society's infectious diseases are highly concentrated. "In particular, sexually transmitted diseases (STDs) may be more common in jail settings than in prisons, as ... rapid turnover and frequent movement of inmates makes jails difficult settings in which to quantify the prevalence of various diseases."<sup>45</sup> In 1996, 12-15 percent of all individuals diagnosed with Hepatitis B and approximately 30 percent of the 4.5 million individuals diagnosed with Hepatitis C, spent time in a correctional facility.<sup>46</sup> The HIV/AIDS prevalence in jails is four to six times higher than the national population.<sup>47</sup> In 1997, the infection rate for tuberculosis in jails was 17 times higher than the rate for the general population: That year, thirty-five percent of the people nationwide with tuberculosis were in prison or jail, and 566,000 people released from prison or jail (the majority from jail) tested positive for latent tuberculosis.<sup>48</sup>

*According to the National Commission on Correctional Health Care, jails are recognized as settings where society's infectious diseases are highly concentrated.*

## **Jail may impact future employment**

A small but growing number of studies show that jail has significant immediate and long-term negative employment and economic outcomes. Richard Freeman of the London School of Economics and Harvard University has found that jail reduces work time of young people over the next decade by 25-30 percent when compared with arrested youths who were not incarcerated. According to Freeman, "Having been in jail is the single most important deterrent to employment" with "the effect of incarceration on employment years later... substantial and significant."<sup>49</sup> Using the National Longitudinal Survey of Youth, Bruce Western and Katherine Beckett found that, on average, youth who spent some time incarcerated in a jail experienced three weeks less work a year compared to youth who had no history of incarceration. The effect was larger for African-American youth, who experienced five weeks less work a year than those African-American youth who experienced no jail time. Further, the impact of incarceration on reduced annual employment did not significantly decay over time: fifteen years later, formerly incarcerated youth worked between three and five weeks less a year than youth who had never been incarcerated.<sup>50</sup>

## **Jail may increase the likelihood of recidivism**

The proliferation of alternatives to jail incarceration reinforces the fact that even short-term incarceration may aggravate recidivism. According to a 2003 review conducted by the Office of Legislative Analyst for the San Francisco Board of Supervisors, the city's alternative to jail had lower recidivism rates than people who were simply jailed. People released to home detention, work release programs, and residential program all fared better than the control group in jail: nearly two-thirds of all inmates who were released without an alternative to incarceration committed a repeat offense compared to the 33 percent recidivism rate of inmates who completed diversion programs such as home monitoring with ankle bracelets, residential drug treatment, and/or work-release.<sup>51</sup>

## **Jail may impact the families and children of people jailed**

Increasing the use of jail through jail sanctions not only affects people sent to jail, but it affects their families and children as well and compounds the costs to communities. The California Research Bureau has reported that 97,000 children have parents who are detained in jail.<sup>52</sup> According to a Bureau of Justice Statistics report, 25 percent of children remain in their father's custody after their mother has been incarcerated, yet almost 90 percent of children remain in their mother's care upon the incarceration of their father.<sup>53</sup> When a woman is imprisoned, her child is displaced: ten percent of children with

mothers incarcerated in state prison are in foster homes or agencies. *When the related expenses of placing children of women who are incarcerated in foster care is considered, the cost of imprisonment more than doubles.*<sup>54</sup> These collateral consequences to jail have a disproportionate impact on the African-American community, whose children are almost 9 times more likely than white children to have a parent incarcerated.<sup>55</sup>

### **The increased use of jail contributes to the impact of “mass incarceration”**

Relying on jail sanctions adds to all the impacts associated with having the highest incarceration rate in the world, and what a growing body of researchers contend are the “unintended consequences” of mass incarceration. At mid-year 2004, the nation’s prisons and jails incarcerated more than 2.1 million persons, driving up the U.S. incarceration rate to more than 726 people per 100,000 residents.<sup>56</sup> California contributes its fair share to the nation’s growing use of imprisonment: the state prisons and jails hold about a quarter of a million people, or 12 percent of the incarcerated population of the entire country.<sup>57</sup>

*Increasing the use of jail through jail sanctions not only affects people sent to jail, but it affects their families and children as well and compounds the costs to communities.*

Researchers have begun documenting the impact of America’s experiment with “mass incarceration.” Groundbreaking research by Todd Clear of the John Jay College of Criminal Justice in New York City has shown that, rather than keeping communities safe, mass incarceration may undermine public safety.<sup>58</sup> Clear found that neighborhoods with the highest levels of incarceration in one year had higher-than-expected crime rates the following year (compared to other neighborhoods, and controlling for factors such as poverty, racial composition, and voluntary mobility). In other words, high levels of incarceration were associated with reduced safety in communities.

Clear also contends that mass incarceration may “backfire,” both in terms of crime control and the local economy: “As an economic being, the person would spend money at or near his or her area of residence—typically an inner city. Incarceration displaces that economic activity.”

The impact of mass incarceration in California and elsewhere, is concentrated in the African-American community. An analysis of the U.S. Census found that one out of 33 California African Americans was in jail or prison on April 1, 2000, compared with about one in every 122 Hispanics and one in every 205 whites.<sup>59</sup> One out of 17 African-American men in California was incarcerated on April 1, 2000, compared with one out of 114 white men being behind bars.

Since increased use of jail could worsen the problem of mass incarceration, that policy needs to be weighed against the costs. Ernest M. Drucker, professor of epidemiology and social medicine and professor of psychiatry at Montefiore Medical Center and the Albert Einstein College of Medicine in New York says that “when this phenomenon [mass incarceration] occurs on a large scale and for an extended period of time, it may significantly damage the mental and physical health of individuals, families, and entire communities—and create or intensify the very social conditions that enable crime to flourish.”<sup>60</sup>

## **Finding 8: Proposition 36 is saving the state hundreds of millions of dollars.**

*“The People of the State of California hereby declare their purpose and intent in enacting this Act to be as follows: To halt the wasteful expenditure of hundreds of millions of dollars each year on the incarceration—and re-incarceration—of nonviolent drug users who would be better served by community-based treatment.”*

- Proposition 36

To determine the fiscal impact of Proposition 36, a methodology would need to be designed to estimate what would have happened to prison and jail populations absent the initiative. Key questions that would need to be answered include:

- What ultimately happens to probationers and parolees after they enter the program?
- How many of the participants would have gone to prison, and how many people to jail, if Proposition 36 had not been in place? How long would people have served in prison or jail?
- How many participants would have received probation with or without Proposition 36?
- How many Proposition 36 participants had their probation revoked? Of those who were revoked, were they sentenced to jail or prison, and for how long?

These and many other variables must be considered when trying to determine the ballot initiative’s costs or savings.

### **Estimated savings due to reduced admissions to California’s prisons**

The researchers felt the most accurate way to approximate the prison-related fiscal impact of Proposition 36 was to examine prison admissions for drug possession prior to the passage of the initiative and compare that to drug possession admissions after its passage. Assuming that no other major policy changes occurred in the criminal justice system that would have reduced or increased drug-possession prison admissions, this method should yield a reasonable estimate of how many fewer persons went to prison as a result of the initiative and the savings that accrued.

As the table below shows, 14,616 fewer people were admitted to California’s prisons for drug-possession convictions between the years 2001 and 2004, as compared with the year 2000. As discussed in the methodology section, prison admissions for drug possession convictions for the year 2000 were likely lower because of sentencing postponements until the measure came into effect—something that would underestimate the impact of the initiative. Nevertheless, for the purposes of this analysis, prison admissions for the year 2000 were used as a baseline. The researchers assume that drug-possession prison admissions would have stayed flat at the 2000 level for the years 2001 to 2006, and would not have risen with increases in the general population.

## An estimated 14,000 fewer people were admitted to prison for drug possession due to Proposition 36

### California Drug Possession Prison Admissions, by Admission Type

Offense	2000	2001	2002	2003	2004	Cumulative Change in Drug Possession Felon Admissions, 2001 to 2004 (Year 2000 Baseline)
<b>New Felon Admissions</b>	6,522	4,503	3,868	4,575	5,680	-7,462
<b>Parole Violators Returned with a New Term</b>	4,891	3,346	2,588	3,015	3,461	-7154
<b>Total Drug Possession Prison Admissions</b>	11,413	7,849	6,456	7,590	9,141	<b>-14,616</b>

SOURCE: California Department of Corrections and Rehabilitation, Data Analysis Unit, Characteristics of Felon New Admissions and Parole Violators Returned with a New Term, calendar years 2000 to 2004.

Based on these figures, the reduction in prison admissions for drug possession for the year 2005 and half of 2006 (the end of the initiatives' funding, according to the ballot initiative language) was estimated using the average reduction in prison admissions for drug possession between 2001 and 2004. These estimated cost savings were entirely due to reduced prison admissions, and do not include any savings resulting from prison closures or avoidance of capital outlays for prison construction.

## There was an estimated \$350 millions in savings from reduced prison admissions

Year	Reduced Drug Possession Prison Admissions for New Felons and Parole Violators with a New Term	Mean Time Served in Prison, in Years (2004)	Annual Cost of Incarceration (2005)	Reduced Incarceration Costs (2000-2004)	Prop. 36 Costs (2000-2006)	Total 5-Year Savings of Prop. 36
2001 to 2004	14,616	1.48	\$34,150.00	\$740,385,660.00	\$480,000,000.00	\$260,385,660.00
Est. 2005	3,654	1.48	\$34,150.00	\$184,680,468.00	\$120,000,000.00	\$64,680,468.00
Est. Jan 1 to June 30, 2006	1,827	1.48	\$34,150.00	\$92,340,234.00	\$60,000,000.00	\$32,340,234.00
<b>Est. Totals: 2001 to June 30, 2006</b>	<b>20,097</b>			<b>\$1,017,406,362.00</b>	<b>\$660,000,000.00</b>	<b>\$357,406,362.00</b>

SOURCE: Drug possession prison admissions: California Department of Corrections and Rehabilitation, Data Analysis Unit, Characteristics of Felon New Admissions and Parole Violators Returned with a New Term, calendar years 2000 to 2004; mean time served in prison: California Department of Corrections and Rehabilitation, Data Analysis Unit, Felons First Released to Parole by Offense, Calendar Year 2004, Table 1 (February 2005); annual cost of incarceration: California Department of Corrections and Rehabilitation, "Fourth Quarter 2005 Facts and Figures," online at: <http://www.cdcr.ca.gov/divisionsboards/AOAP/FactsFigures.html>.

Given this model, JPI estimates that Proposition 36 saved the state more than \$350 million from reduced prison admissions since its enactment. This estimate is based on a presumption that persons diverted from prison would have served the average prison sentence for drug possession, which was 1.48 years in 2004, and that the cost of incarceration is \$34,150 per year, the average per inmate in 2005. It also takes into account the cost of treatment and probation under Proposition 36—\$660 million over five years.

These estimates do not include any savings due to any reductions in parolees returned to prison without a new term (i.e. returned for a parole violation that isn't a new conviction). Returns to prison for these parolees has dropped 20 percent since 2000.

### Savings Due to Reduced Jail Admissions

Unlike admissions to prison, admissions to jail are not categorized by offense category. To estimate jail savings, the researchers examined the court dispositions of adult felony drug convictions to see how Proposition 36 might have impacted the number of people convicted of drug possession who would have been sentenced to serve time in jail.

All felony drug conviction dispositions were displayed in chart on the preceding page. The chart below calculates the total number of fewer "probation with jail" sentences that were handed out since 2000, when Proposition 36 passed. We assumed that all

reductions in this sentencing category were due to the diversions to straight probation and treatment, as required by the initiative.

**An estimated 45,000 fewer people sentenced to jail since 2000  
Cumulative Reduction in "Probation with Jail Sentences"  
for Drug Offenses Since 2000**

	2000	2001	2002*	2003	2004	2005*	Jan. 1-June 30, 2006*	Total Reduced Jail Sentences Since 2000
<b>Probation with Jail Sentences for Drug Offenses</b>	36,740	28,892	28,126	27,359	28,864	28,864	14,432	
<b>Reduction from Year 2000 Baseline</b>		-7,848	-8,615	-9,381	-7,876	-7,876	-3,938	<b>-45,534</b>

\* ESTIMATES: 2002: data is not available, estimate based on average of 2001 and 2003; 2005: data is not available, estimate is based on same number of sentences for 2004; Jan. 1-June 30, 2006: estimate equals one-half sentences for 2004. Source: California Department of Justice, Criminal Justice Statistics Center, Crime in California, 2004, Table 41, p. 149.

Below is the estimated cost-savings due to the reduced number of persons serving jail time pursuant to Proposition 36. From mid-2001 to mid-2006, it is estimated that the initiative will have saved more than \$62 million in jail costs, or about \$12.5 million per year.

**An estimated \$62 million in jail costs saved since 2000  
Estimated Savings Due to Reduced "Probation with Jail" Sentences**

Total Est. Reduced Sentences to "Probation with Jail," 2001-June 30, 2006	Avg. Length of Stay in Jail, in Days	Total Est. Jail Days Saved, 2001-2005	Avg. Cost Per Day	Total Est. Jail Cost Savings, 2001-2006
45,534	22	1,001,737	\$62.60	<b>\$62,708,736.20</b>

SOURCE: Est. reduced sentences to "probation with jail": calculation in figure 20, based on data from California Department of Justice, Criminal Justice Statistics Center, Crime in California, 2004, Table 41, p. 149; avg. length of stay in jail: based on average length of stay for 2004, California Board of Corrections, Facilities Standards and Operations Division, Jail Profile Survey: Annual Report 2004, p. 8; avg. cost per day: California Board of Corrections, Average Daily Cost to House Inmates in Type II & III Facilities: Synopsis (revised effective January 2004). Online at: [http://www.cdcr.ca.gov/divisionsboards/csa/average\\_daily\\_cost\\_survey.htm](http://www.cdcr.ca.gov/divisionsboards/csa/average_daily_cost_survey.htm).

*When there were discussions about the prison's closure, a spokesperson from the California Department of Corrections said, "There are a lot of reasons the [prison] population is down ... but we think the biggest factor with the women's numbers is Proposition 36."*

**Savings accrued by avoiding prison construction costs**

*"We estimate that the state will run out of bed space by as soon as 2001 and would need additional space for as many as 27,000 inmates by June 30, 2004. That is the equivalent of five to six state-operated prisons carrying a one-time construction cost of \$1.6 billion and annual ongoing operational costs of more than \$500 million."*

- California Legislative Analyst's Office, February 16, 1999

Around the time Proposition 36 was placed on the ballot, there were discussions of building anywhere from two to six new prisons in California.<sup>61</sup> In its analysis of the impact of Proposition 36, the state Legislative Analyst predicted that the state would be able to "delay the construction of additional prison space" if Proposition 36 passed, saving the state between \$475 and \$575 million.<sup>62</sup> After the initiative passed, the Kern Valley State Prison, also known as Delano II, was built, though that prison had been approved for construction in 1999,<sup>63</sup> prior to Proposition 36's passage. Since only one prison has been built, it appears that the Legislative Analyst's prediction that California would be able to avoid or delay building a prison has come to fruition.

## **Prison savings from closing the Northern California Women's Facility**

In February 2003, the Northern California Women's Facility closed. When there were discussions about the prison's closure, a spokesperson from the California Department of Corrections said, "There are a lot of reasons the [prison] population is down ... but we think the biggest factor with the women's numbers is Proposition 36."<sup>64</sup> The Department of Corrections and then-Gov. Gray Davis' office estimated that the savings would amount to approximately \$1 million for fiscal year 2002-3, and \$10.2 million in future years.<sup>65</sup> By the end of fiscal year 2005-6, that will amount to \$31.6 million.

## **Additional Savings**

The cost savings that come from the expanded availability of treatment instead of incarceration are beyond the scope of this paper to quantify. These estimates do not include any savings due to reductions in parolees returned to prison without a new term (i.e. parolees returned for a parole violation that is not a new conviction). Returns to prison for these parolees has dropped by over 14,000, or 20 percent since 2000, but it was not possible to determine how many of these parolees were not returned because of the initiative.

Other outcomes have been reported from Proposition 36 participants that could reduce recidivism, increase tax revenues, and reduce government expenditures. These outcomes include:

- An estimated 60,000 people will have successfully completed drug treatment under SACPA by mid-2006.<sup>66</sup> It is not likely that these people would have had access to the drug treatment services made available by the initiative's annual \$120 million appropriation.
- Employment increased 83 percent for Proposition 36 clients who completed treatment, and the average number of days worked more than doubled.<sup>67</sup>
- Drug use by Proposition 36 completers dropped by 71 percent and by 60 percent by persons who entered but did not complete treatment.<sup>68</sup>

## CONCLUSION

*“There are clear, evidenced-based pathways that could lead us out of the hole we have dug. But we need to stop digging. California may yet find its way to a rational correctional policy, but it will take public courage and truthfulness about what is not working.”*

- Barry Krisberg, president of the National Council on Crime and Delinquency, writing about California correctional policy in the San Francisco Chronicle, February 28, 2006

*In a state which continues to fail to live up to the public will to find better ways of increasing public safety rather than investing in prison expansion, Proposition 36, enacted by the voters of California, stands out against the discouraging failure to enact other corrections reforms.*

In a state which continues to fail to live up to the public will to find better ways of increasing public safety rather than investing in prison expansion, Proposition 36, enacted by the voters of California, stands out against the discouraging failure to enact other corrections reforms. This analysis shows that since Proposition 36 passed, the state has reduced the number and rate of people incarcerated for drug crimes. Since 2000, there has been an increase in treatment funding, treatment capacity, and treatment clients. Fears that people diverted to drug treatment would engage in violent crime have not been witnessed in the violent crime rate. While the true extent of cost savings cannot be fully known, prisons that were expected to be built did not break ground, and a reasonable method for calculating the savings from reduced prisons and jail admissions for drug possession suggest the state saved hundreds of millions of dollars. A recent cost analysis on Proposition 36 by UCLA's Integrated Substance Abuse Programs found that the state saved at least \$2.50 for every dollar spent on the program each year, \$4 for every person who successfully completed treatment, and represented a net savings to government of \$173.3 million in the first year of the program. The initiatives treatment outcomes compare favorably to other substance abuse treatment programs, both voluntary and those associated with the criminal justice system, but do not carry the impacts that jail sanctions and increased use of imprisonment have on individuals and communities.

Despite these findings, there are some indications that the criminal justice system is “backsliding” and sending increasingly higher numbers of drug possession offenders to prison. For the first time since the initiative was enacted, the drug possession prison population increased during one six-month period. From June 30 to December 31, 2005, the drug possession prison population increased by about 900 prisoners, from 13,457 to 14,325.<sup>69</sup> Drug possession admissions to prison are also on the rise: From their all-time low in 2002 of 6,456, prison admissions for drug possession proceeded to creep up in 2003, and hit 9,141 admissions in 2004.<sup>70</sup> Sentences to prison are also driving the drug-possession prison population higher: Adult felony drug sentences to prison hit a low of 10,416 in 2003 and went up to 11,606 in 2004.<sup>71</sup> While these admissions and sentences are lower than when the initiative was enacted, the trend right now is that drug possession admissions are on the rise.

Why are drug possession prison sentences, admissions, and the prison population rising? Part of the reason may be increased law enforcement efforts: from the year 2000 to 2004, felony drug arrests increased over 18 percent from 121, 909 to 144,437.<sup>72</sup> Another reason may be that drug offenders are being sent to prison for violating their terms of probation and parole under Proposition 36: over 23 percent of SACPA probationers had their probation revoked in the third year; 56 percent of SACPA parolees had their parole revoked in the 12-month period after referral to SACPA.<sup>73</sup>

### **How can the state of California build on the successes that Proposition 36 has achieved thus far?**

One improvement would be to make Proposition 36 treatment more accessible to the target group of drug-involved individuals in the criminal justice system. According to the latest available data, about 66 percent of SACPA-eligible offenders did not participate

in the program in its first year.<sup>74</sup> One reason may be that many of these people may be charged with low-level marijuana possession offenses who do not want or need to participate in the rigors of the initiative's treatment and probation. Or they may be other types of possession offenders who prefer lower-intensity drug diversion or jail time to the time commitment that Proposition 36 requires.

One way to continue to build on the trends shown here might include expanding treatment availability to drug-involved property offenders. Right now only people convicted of drug possession and drug involved nonviolent parolees are eligible. By expanding substance abuse treatment opportunities to people convicted of property offenses who are drug-involved, California could reap additional reductions in the prison population while reducing recidivism. While violent crime rates went down in California from 2000 to 2004, property crime rates rose slightly.<sup>75</sup> One way to get at the challenge of reducing property crime rates would be to make eligible those people for whom addiction is a core issue relating to their criminality.

Other suggested improvements by such organizations as the California Society of Addiction Medicine include:<sup>76</sup>

- Increase funding for drug treatment. According to county drug treatment administrators, \$184 million per year is needed, and, adjusting for inflation, \$140 million is needed to keep the level of funding equal to 2001.
- Improve matching treatment needs with services delivered.
- Improve coordination between the courts, assessment, probation, and treatment.
- Expand the use of methadone and buprenorphine for opiate-addicted patients.
- Require counties to focus more resources on substance abuse treatment instead of the criminal justice system.

### **About the authors**

Scott Ehlers was the lead author of two previous Justice Policy Institute reports: *Still Striking Out: Ten Years of California's Three Strikes Law*, and *Racial Divide: California's Three Strikes Law*. He is the State Legislative Affairs Director of the National Association of Criminal Defense Lawyers.

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### **About the organization**

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- <sup>61</sup> California Legislative Analyst's Office, "Analysis of the 1999-00 Budget Bill, Judiciary and Criminal Justice Chapter," February 16, 1999, p. D-68, Online at: [http://www.lao.ca.gov/analysis\\_1999/crim\\_justice/crim\\_just\\_anl99.pdf](http://www.lao.ca.gov/analysis_1999/crim_justice/crim_just_anl99.pdf)
- <sup>62</sup> Legislative analyst's review of the Substance Abuse and Crime Prevention Act of 2000, File No. SA 1999 RF 0040, Amendment No. 2-NS, December 6, 1999, p. 5.
- <sup>63</sup> "Critics say new state prison defies logic," *San Francisco Chronicle*, January 5, 2004.
- <sup>64</sup> "Changing Population Behind Bars: Major Drop in Women in State Prisons," *San Francisco Chronicle*, April 21, 2002.
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- <sup>66</sup> Calculation based on 34.4 percent of 30,469 first-year clients completing treatment (10,481), 34.3 percent of 35,947 second-year clients completing treatment (12,330), 34 percent of 37,103 third-year clients completing treatment (12,615), and 34 percent of 36,000 treatment clients in years four (12,240) and five (12,240). Source: *Evaluation of the Substance Abuse and Crime Prevention Act: 2002 Report*, UCLA Integrated Substance Abuse Programs, July 7, 2003, p. 5; *Evaluation of the Substance Abuse and Crime Prevention Act: 2003 Report*, UCLA Integrated Substance Abuse Programs, September 23, 2004, p. 9; *Evaluation of the Substance Abuse and Crime Prevention Act: 2004 Report*, UCLA Integrated Substance Abuse Programs, July 22, 2005, p. 32.
- <sup>67</sup> *Evaluation of the Substance Abuse and Crime Prevention Act: 2004 Report*, UCLA Integrated Substance Abuse Programs, July 22, 2005, p. 66-67.
- <sup>68</sup> *Ibid*, p. 66.
- <sup>69</sup> *Prison Census Data as of June 30, 2005*, California Department of Corrections and Rehabilitation, September 2005, Table 2; *Prison Census Data as of December 31, 2005*, California Department of Corrections and Rehabilitation, February 2006, Table 2.
- <sup>70</sup> *Characteristics of Felon New Admissions and Parole Violators Returned with a New Term*, calendar years 2002 to 2004, California Department of Corrections and Rehabilitation, Data Analysis Unit.
- <sup>71</sup> *Crime in California, 2004*, California Department of Justice, Criminal Justice Statistics Center, Table 41, p. 149.
- <sup>72</sup> *Crime in California, 2004*, California Department of Justice, Criminal Justice Statistics Center, Table 22, p. 121.
- <sup>73</sup> *Evaluation of the Substance Abuse and Crime Prevention Act: 2004 Report*, UCLA Integrated Substance Abuse Programs, July 22, 2005, p. v.
- <sup>74</sup> *Ibid*, p. 59.
- <sup>75</sup> Between 2000 and 2004, California's property crime rate rose 9.65 percent.
- <sup>76</sup> "Proposition 36 Refunding (SB 803); CSAM Position: Oppose unless amended," California Society of Addiction Medicine. Online at: [http://www.csam-asam.org/pdf/misc/Prop36\\_Summary.pdf](http://www.csam-asam.org/pdf/misc/Prop36_Summary.pdf).

