

# Agenda Report

October 30, 2000

**TO:** CITY COUNCIL  
**FROM:** CITY MANAGER  
**SUBJECT:** OPPOSITION TO PROPOSITION 36 - DRUG TREATMENT DIVERSION PROGRAMS

## RECOMMENDATION

It is recommended that the City Council take a position opposing Proposition 36.

## EXECUTIVE SUMMARY

This measure changes state law so that certain adult offenders who use or possess illegal drugs would receive drug treatment and supervision in the community, rather than being sent to prison or jail or supervised in the community, generally without drug treatment. The measure also provides state funds to counties to operate the drug treatment programs. Staff is recommending opposition to this proposition as it presents a detrimental public safety policy by weakening current criminal drug enforcement capabilities and weakens current diversion programs.

Most significantly, diversion opportunities exist today in two forms; (1) Individuals who as a first drug offense, possess drugs for personal use, are allowed to enter a guilty plea as a Deferred Entry of Judgment. In effect, they plead guilty to the possession charge and are immediately placed into a (non-custodial) diversion program. This program does not result in the arrestee being placed in a closely monitored environment, rather it demands that the individual take the initiative to successfully complete the diversion program. Upon the successful completion of that program, their case is dismissed, and (2) individuals who have repeat arrests for drug possession offenses may have their cases heard within the "Drug Court". This again is a (non-custodial) diversion program. This program is much more closely monitored and involves regular court appearances for progress updates. Successful completion of the program again results in dismissal of the charges. Offenses which involved violence or drug sales allegations are not eligible within either program.

In calendar year 1999, 1052 drug possession arrests were made. Of that number approximately 50% were entered into the diversion program while the rest went on to criminal prosecution as repeat offenders. Staff believes that the current diversion programs provide those offenders who genuinely desire assistance in combating drug abuse the opportunity to do so. These programs, which provide the court discretion based on the history of the offender, present a better public safety policy than Proposition 36 which significantly reduces prosecution and sentencing options even for frequent offenders.

The most significant provisions of the measure and their fiscal effects are discussed below.

## **BACKGROUND**

***Three Types of Crimes.*** Under current state law, there are three kinds of crimes: felonies, misdemeanors, and infractions.

A felony is the most severe type of crime and can result in a sentence in state prison or county jail, a fine, or supervision on county probation in the community. Current law classifies some felonies as "violent" or "serious." The state's "Three Strikes and You're Out" law provides longer prison sentences, in some cases 25 years to life, for offenders who have prior convictions for violent or serious felonies.

Misdemeanors are considered less serious and can result in a jail term, probation, a fine, or release to the community without probation but with certain conditions imposed by the court. Infractions, which include violations of certain traffic laws, cannot result in a prison or jail sentence.

***Drug Offenses.*** State law generally makes it a crime to possess, use, or be under the influence of certain drugs, including marijuana, cocaine, heroin, and methamphetamine.

Some drug-related offenses are classified as felonies and some as misdemeanors. Whether a drug-related crime is classified as a felony or misdemeanor, as well as the punishment imposed upon conviction, depends primarily upon the specific substance found to be in the possession of an offender. Drug offenses are not classified by law as violent or serious offenses.

State law generally provides more severe punishment for offenders convicted of possessing illegal drugs for sale rather than for their own personal use.

***Probation Violators.*** With some exceptions, an offender convicted of drug use or possession can be sentenced to county probation supervision in the community instead of jail or prison, or to probation supervision after a term in jail. A probationer found to have committed a new crime while on probation such as using or possessing an illegal drug, or who violated any condition of probation, could be sent to state prison or county jail by the courts.

***Parole Violators.*** After release from prison, an offender imprisoned for felony drug possession is subject to up to three years of state parole supervision in the community. A parolee who commits a new crime, such as using or possessing an illegal drug, could be returned to prison by the courts based on new criminal charges, or by the administrative action of the Board of Prison Terms based on a finding of a parole violation.

## **Proposal**

### **Drug Offenders Convicted in Court**

***Changes in Sentencing Law.*** Under this proposition, effective July 1, 2001, an offender

convicted of a "nonviolent drug possession offense" would generally be sentenced to probation, instead of state prison, county jail, or probation without drug treatment. As a condition of probation, the offender would be required to complete a drug treatment program.

The measure defines a nonviolent drug possession offense as a felony or misdemeanor criminal charge for being under the influence of illegal drugs or for possessing, using, or transporting illegal drugs for personal use. The definition excludes cases involving possessing for sale, producing, or manufacturing of illegal drugs.

Offenders convicted of nonviolent drug possession offenses would be sentenced by the court for up to one year of drug treatment in the community and up to six additional months of follow-up care. The drug treatment programs must be licensed and certified by the state and could include various types of treatment methods, including residential and outpatient services and replacement of narcotics with medications, such as methadone. A court could require offenders to participate in vocational training, family counseling, literacy training or community service, and could impose other probation conditions. The measure requires that offenders who are reasonably able to do so help pay for their own drug treatment.

***Some Offenders Excluded.*** This measure specifies that certain offenders would be excluded from its provisions and thus could be sentenced by a court to a state prison, county jail, or probation without drug treatment. This would be the case for an offender who refused drug treatment, or who possessed or was under the influence of certain (although not all) illegal drugs while using a firearm. This measure also excludes offenders convicted in the same court proceeding of a misdemeanor unrelated to drug use or any felony other than a nonviolent drug possession offense. Also, an offender who had two or more times failed the drug treatment programs required under this measure, and who was found by the court to be "unamenable" to any form of drug treatment, would be sentenced to 30 days in county jail.

In addition, offenders with one or more violent or serious felonies on their record, and thus subject to longer prison sentences under the Three Strikes law, would not be sentenced under this measure to probation and drug treatment, unless certain conditions existed. Specifically, during the five years before he or she committed a nonviolent drug possession offense, the offender (1) had not been in prison, (2) had not been convicted of a felony (other than nonviolent drug possession), and (3) had not been convicted of any misdemeanor involving injury or threat of injury to another person.

***Court Petitions.*** An offender placed on probation who successfully completes drug treatment and complies with his or her probation conditions could petition the court to dismiss the charges and to have that arrest considered, with some exceptions, to have never occurred.

***Sanctions.*** An offender sentenced by a court to participate in and complete a drug treatment program under this measure would only be subject to certain sanctions if it were determined that he or she was unamenable to treatment or had violated a condition of probation. The sanctions could include being moved to an alternative or more intensive form of drug treatment, revocation

of probation, and incarceration in prison or jail. In some cases involving repeat drug-related violations, return to prison or jail would be mandatory.

### **Parole Violators**

***Changes in Parole Revocation.*** Under this proposition, effective July 1, 2001, a parole violator found to have committed a nonviolent drug possession offense or to have violated any drug-related condition of parole would generally be required to complete a drug treatment program in the community, instead of being returned to state prison. The Board of Prison Terms could require parole violators to participate in and complete up to one year of drug treatment and up to six additional months of follow-up care.

Parolees could also be required to participate in vocational training, family counseling, or literacy training. Parolees reasonably able to do so could be required to help pay for their own drug treatment.

***Some Parole Violators Excluded.*** Under the measure, the Board of Prison Terms could continue to send to prison any parole violator who refused drug treatment, or had been convicted of a violent or serious felony. The measure also excludes parole violators who committed a misdemeanor unrelated to the use of drugs or any felony at the same time as a nonviolent drug possession offense.

***Court Petitions.*** Unlike drug offenders placed on probation by the courts, parolees would not be eligible under this measure to submit petitions for dismissal of the charges or to have their arrest considered to have never occurred.

***Sanctions.*** Parolees who fail to comply with their drug treatment requirements or violate their conditions of parole would only be subject to sanctions similar to those for drug offenders on probation, including modification of their drug treatment program or revocation of parole and return to state prison.

### **Other Provisions**

The measure provides state funds to counties to implement the measure and requires a study of its effectiveness and fiscal impact. County governments would be directed to report specified information on the implementation and effectiveness of the drug treatment programs to the state, and their expenditures would be subject to audits by the state.

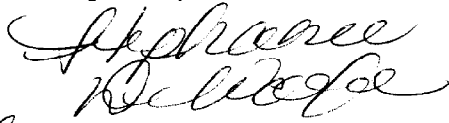
### **FISCAL IMPACT**

The fiscal impacts of Proposition 36 on the City of Pasadena are unclear. It is believed that increases in crime rates will occur as a result of repeat drug abusers being placed back into the community rather than being incarcerated. This will result in increased service demands upon the police department and indeterminable dollar losses to residents.

Opposition to Proposition 36  
October 30, 2000

Respectfully submitted,

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Approved by:



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