



**LEGISLATION & PUBLIC  
INFORMATION UNIT**

1029 J Street, Suite 150  
Sacramento, CA 95814

Tel: (916) 497-0331

TTY: (916) 497-0835

Fax: (916) 497-0813

[www.disabilityrightsca.org](http://www.disabilityrightsca.org)

*California's protection and advocacy system*

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## **Disability Rights California Supports Proposition 5**

Sponsored by the Drug Policy Alliance and the Campaign for New Drug Policies, Proposition 5 aims to revitalize the substance abuse treatment field and the state prison system. The measure attempts to provide drug rehabilitation through the criminal justice system because budget cuts and incomplete links with mental health treatment have prevented the provision of such services for many who are dually diagnosed with substance abuse problems and psychiatric disabilities. Proposition 5 provides for better coordination between the use of Proposition 63 and Proposition 36 funds to serve those individuals with psychiatric disabilities in the criminal justice system who need drug rehabilitation services because of substance abuse problems related to their disabilities. Streamlining current programs and providing the necessary funding for the streamlined programs enable more individuals with disabilities to receive necessary treatment rather than languish in the California correctional system.

### **Current Drug Treatment Diversion Programs:**

State law authorizes three main types of drug treatment, diversion programs:

- **Penal Code 1000.** Under Penal Code 1000, certain drug possession offenders who have no prior drug offenses can be diverted to drug education or treatment programs, usually at their own expense, under a “deferred entry of judgment” arrangement. This means that the offender must plead guilty to the drug possession charges but that sentencing for the crime is suspended. If, after 18 months to three years, the offender successfully completes a drug treatment program and stays out of trouble, the charges against the offender are dismissed and the offense does not go on his or her record.

- **Proposition 36.** Proposition 36, a ballot measure approved by the voters in November 2000, established drug treatment diversion programs in-lieu-of incarceration. Prior to the passage of this initiative, California followed national trends by relying increasingly on prisons and jails as its primary response to illicit drug use. Proposition 36 now provides community-based treatment to individuals convicted of nonviolent, low-level drug offenses.
- **Drug Courts.** Under drug court programs operated for adult felons, certain offenders charged or convicted of various types of crimes, including drug offenses, are diverted to treatment in lieu of incarceration. Drug court participants are subject to regular monitoring by a court (as well as by probation officers and drug treatment providers), with judges generally given discretion as to when and how to impose sanctions if participants do not comply with drug program rules or commit new crimes.

### **This Initiative:**

Creates a new streamlined and unified three-track drug treatment, diversion program and provides \$385 million per year to pay for treatment and related costs.

- **Track I** much like the current Penal Code 1000 statute, provides treatment in nonviolent drug possession cases, with a plea held in abeyance during treatment. (The existing PC 1000 is left intact; however, many who qualify will wind up in Track I, because treatment is funded.) Defendants who wash out go to Track II.
- **Track II** is a modified version of the Proposition 36 statute that provides for treatment after a conviction. A longer treatment period is possible (up to 24 months). Graduated sanctions are permitted upon the first probation violation; jail sanctions are permitted later. Defendants who fail can be sentenced to county jail or transferred to Track III.
- **Track III** encompasses all current drug court programs for adult felons, and expands those programs by more than doubling funding. Generally, eligibility for Track III is discretionary with the judge. Judges could place anyone convicted of a nonviolent offense in

treatment under Track III, if the offender's behavior is primarily motivated by substance abuse problems, and could require defendants to serve a part of their sentences before beginning treatment.

All persons in the three tracks will generally receive the same types of drug treatment services that assessments determine they need. This could include treatment in clinics or residential facilities, the dispensing of medication or the provision of mental health services.

### **Other Key Provisions of the Initiative:**

- **Youth programs.**
  - The measure invests about \$65 million per year into drug treatment programs for youth to build a system of care for people under the age of 18 where none exists now. Additional money for youth treatment will come from fines paid for low-level drug possession offenses.
  
- **Certain prison system and parole reforms.**
  - Prison inmates whose crimes are nonviolent (with no prior strikes) will be able to earn time off their sentences for good behavior and for participating in rehabilitation programs.
  - Parole periods for qualifying nonviolent offenders will be limited to between 6-12 months, compared with up to 3 years under current law, with earlier discharge upon completion of a rehabilitation program.

### **Proposition 5 and the Provision of Mental Health Services:**

#### *Coordination with Proposition 63-Mental Health Services Act (MHSA)*

- Clearly stipulates that persons who have dually diagnosed in court-supervised treatment programs are to be considered for mental health services paid for by Proposition 63 funds.

- Many dually diagnosed people are currently eligible and receiving services under both Proposition 36 and Proposition 63. Clarifies by making an express reference to those who are dually diagnosed under this new system as people who may have a qualifying “serious mental disorder” or “severe mental illness” that qualifies them for MHSA funds.
- Requires a clinical assessment of each person’s needs in terms of addiction treatment and mental health care, and requires the court to place the person in appropriate treatment matched to the assessment.
- Forbids the denial of care to a person due to a psychiatric or developmental disability.
- While the measure requires other funding sources be used first, the Proposition 5 treatment funds can be used directly for mental health services when necessary. This is a major change from current law, under which neither Proposition 36 funds nor drug court funds are available to assist with clients’ mental health needs.

## **Rehabilitative Mental Health Care for Prisoners and Parolees Paid by the State**

- Requires that the California Department of Corrections and Rehabilitation (CDCR) provide appropriate, individually tailored rehabilitation services at least 90 days before an inmate’s release from prison.
- Requires the prison agency to provide services, specifically including mental health services, to every person on parole “tailored to the parolee’s needs as defined by... case assessment.”
- Requires CDCR to pay for rehabilitation, including mental health services, for up to one year for any person discharged from parole that needs and requests services.

- Consistent with the terms of Proposition 63, states that CDCR cannot supplant funds and use Proposition 63 funds to pay for services for parolees; CDCR funds must be used.

## **Stakeholder Involvement in Implementation and Oversight**

The measure creates two separate oversight commissions, one devoted to the corrections system, and one devoted to treatment diversion programs for which funding is to be administered by the Department of Alcohol and Drug Programs (ADP). Key stakeholders comprise the membership of both commissions, with health and social services professionals playing prominent roles. Membership on the boards will include drug treatment providers, counselors, mental health (dual diagnosis) care providers and county alcohol and drug administrators. Both oversight panels are chartered to “review, direct and approve the implementation” of Proposition 5 by the lead agencies.

## **Savings on State Capital Outlay Costs**

According to the LAO Analysis, this measure will result in state savings on capital outlay costs for new prison facilities that could exceed \$2.5 billion.

## **Analysis:**

Many individuals with psychiatric disabilities have substance abuse problems related to their disability. More often than not, these individuals end up as part of the prison system, languishing in jails, and not receiving appropriate mental health services and rehabilitation treatment for their substance abuse.

Proposition 5 creates a streamlined and unified drug treatment diversion program. It provides for better coordination between the use of Proposition 63 and Proposition 36 funds to serve individuals with psychiatric disabilities in the justice system. It also increases necessary funding for these needed programs. Finally, appropriate diversion from prison for substance abuse treatment not only results in a significant benefit to the individuals served, (including those served with disabilities), it is an overall net cost savings to the state.