



***Beyond Bars:***  
Jail sanctions for drug-related offenders are  
harmful and counterproductive

Justice Policy Institute Submission to the Little Hoover Commission  
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The Justice Policy Institute is a Washington, D.C.-based think tank dedicated to ending society's reliance on incarceration and promoting effective and just solutions to social problems.

## **I. Proposition 36 has been proven effective; measures proposing flash incarceration would undermine its successes.**

Proposition 36 allows people convicted of first- and second-time drug possession the opportunity to receive substance abuse treatment instead of incarceration. When Prop 36 was passed in November 2000, 61 percent of voters approved it. More recently, a 2004 survey of likely voters found that 73 percent would vote for Prop 36. Its popularity is well-founded, given its positive results.

Since 2000, the initiative has offered over 190,000 nonviolent low-level drug offenders the alternative of state-funded, community-based addiction treatment and probation instead of conventional sentencing and incarceration within the criminal justice system.<sup>1</sup> These diversions have made a substantial impact, reducing incarceration in jails and prisons, and resulting in thousands of treatment successes.

- Proposition 36 guides over 36,000 people into treatment each year.
- By 2006, roughly one in every 200 state residents will have been eligible to receive Prop 36 services.
- The law has been shown to save taxpayers between \$2.50 and \$4 for every \$1 invested in the program and in its first six years, Prop 36 has saved taxpayers nearly \$1.8 billion and graduated over 70,000 people.<sup>2</sup>
- According to a 2003 Little Hoover Commission report, “The preliminary success of Proposition 36 shows the potential of drug treatment to reduce the demand on prisons and address addiction among offenders.”<sup>3</sup>

Despite these clear successes, a series of proposals in recent years have undermined the initiative’s purpose and eliminate the gains we have achieved. In the past five years, a “Three Strikes” reform initiative failed to be enacted, parole reform was defeated, SB1137’s addition of jail sanctions was proposed, and California signed into law a \$7.4 billion prison expansion plan that designated a mere \$50 million for new inmate programs such as addiction treatment – less than 1 percent of the budgeted amount.<sup>4</sup>

**Imposing jail sanctions, in particular, would be especially harmful: it would contribute to growing jail and correctional populations in the state at a time of budget constraints and jail overcrowding, and it would do so despite the lack of proof as to its effectiveness.**

As California faces the daunting task of relieving prison overcrowding, it is important to remember that treatment is less expensive and more cost effective than locking up nonviolent offenders. There are numerous negative side effects of incarceration, both at the community and individual level. Diverting nonviolent offenders to community supervision and drug treatment is the best way to lower crime rates, stop the unnecessary prison expansion and save taxpayers money.

## **II. Jail Sanctions for Substance Abusers in Treatment has serious negative impacts and there is no evidence of their efficacy**

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>5</sup> Despite the complete lack of evidence indicating that jail sanctions yield positive treatment outcomes, California lawmakers are seriously contemplating the use of jail sanctions (“flash incarceration”). Aside from the simple fact that if jail sanctions were enacted, it would require counties, and thus taxpayers, to make fiscal outlays neither authorized nor envisioned by Prop 36 as originally enacted.

An evaluation of other programs managed through the criminal justice system has shown them to be less effective than Prop 36. These results raise the serious question of why a new program without jail sanctions outperforms its smaller more selective and punitive drug-court predecessor.

- In 2005, the U.S. Government Accountability Office reviewed 16 drug court programs and found completion rates ranging from 27 percent to 66 percent.<sup>6</sup>
- A 2001 study of 10 California drug court evaluations, published in the *Journal of Psychoactive Drugs*, found treatment completion rates ranging from 11 to 61 percent, with most at or below 38 percent.<sup>7</sup>
- The latest evaluation shows Prop 36 completion rates were 34.4 percent in year one, and 34.3 percent in year two. Overall, 41.6 percent of Prop 36 clients completed treatment or made satisfactory progress.<sup>8</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.
- In contrast, all non-Prop 36 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>9</sup>

The decision to enact jail sanctions as part of drug treatment is not an “impact neutral” policy decision. That is to say, jail sanctions carry significant costs, at the individual, family, community, and societal levels. A growing body of research shows that imprisoning or jailing people carries with it negative consequences for the people incarcerated, their families, and communities. Expanding the use of jail sanctions to include people in treatment could contribute to the growing costs of jails in county corrections budgets, worsen the mental health problems of some recovering drug users, contribute to unemployment, and expose people to a higher risk of suicide.

## **Jails cost counties millions of dollars annually**

Despite budget crises in many California counties, expenditures on corrections have been increasing. 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 public parks. 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>10</sup> 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 one 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).

Counties have to pay for the housing, clothing, feeding and supervising of the growing incarcerated population. In addition, they must pay for the enormous medical costs associated with running a jail. Furthermore, when jails are charged with million-dollar lawsuits, for inhuman conditions or overcrowding, the county must pay the bill. Jail alternatives are both less expensive and more cost-effective than locking people up and can save counties millions of dollars annually.

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>11</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.

## **Jails are harmful for communities and for the people incarcerated**

Recent research has illuminated the detrimental effects of incarceration on both individuals and their communities. Incarceration can exacerbate mental illness, increase a person's risk of suicide, hinder their employability and disrupt families. Jails are associated with disease, overcrowded and inhumane conditions and high costs for counties. Furthermore, incarceration makes a person more likely to recidivate upon release.

Prop 36 does not impose jail sanctions as a coercive measure with the understanding that relapses are a part of overcoming addiction. In accordance with this idea, the Little Hoover Commission recommended in 2003 that “The State should make better use of the resources currently spent re-incarcerating parole violators – and provide more public safety – by

developing a range of interventions for failing parolees.” Specifically, the state should “use alternative sanctions” rather than returning parole violators to prison.<sup>12</sup> This recommendation is directly counter to political attempts to allow judges to reincarcerate people who relapse during drug treatment through Prop 36. See SB 1137. In granting a preliminary injunction that prevents the implementation of SB1137, California’s lower court has reaffirmed the importance of upholding Prop. 36’s original intention: to treat addiction in medically-approved ways rather than incarceration.

The desire to use jail sanctions in California for people who would be better served in treatment through Prop 36 is an unacceptable waste of taxpayers’ money and the precious jail space available for serious offenders who may need to be detained. The research indicates that this sort of coerciveness is unnecessary and an ineffective method for curbing crime in communities.

### **Jails are harmful to communities**

*Jails are associated with an increased risk of disease, which can be passed on to communities*

The proximity of a jail to the community, the frequent comings and goings of people and prisoners in the jail, and the closeness of the inhabitants make it possible for disease to be easily transmitted. Serious infections and sexually transmitted diseases are highly concentrated in jail. 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>13</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>14</sup> The HIV/AIDS prevalence in jails is four to six times higher than the national population.<sup>15</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.

*Overcrowding jails with low-level drug offenders would almost certainly lead to the early release of more serious criminals in counties across the state.*

According to the latest available *Jail Profile Survey*, “California’s jails on average cannot fully meet the needs of the justice system due to population pressures and capacity constraints... On days when the statewide jail population is about average, it exceeds the number of beds by over 4,700 inmates.”<sup>16</sup> This poses a dilemma: for every drug-involved person put in a jail bed, either the county will have to come up with the funds to pay for a larger jail, or someone must be released – decisions that impact public safety and local resources for other services.

Diverting non-violent offenders, particularly drug offenders, into community programs would relieve the stress on over-crowded facilities, save money, and provide space for offenders charged with more serious, violent crimes. By allowing non-violent offenders to return to the

community, they will be less likely to commit crime in the future and more likely to return to work, family, and community obligations.<sup>17</sup>

### *Incarceration disrupts families and adds extra financial burdens to counties*

Families are deeply affected by the placement of a family-member in jail. With more than 11 million admissions to jail a year, there are many children whose parents are in jail. For example, in California Research Bureau estimated in 1998 that approximately 97,000 children have parents in jail and an additional 195,000 in state prisons.<sup>18</sup> In 1998, 43 percent of California's incarcerated women were in jail or prison for drug crimes, a number that has more than tripled since 1983.<sup>19</sup> About 25 percent of these children of incarcerated mothers will live in foster care while their mother is in prison or jail. The combined cost of foster care and other social services for those children greatly increases the cost of imprisoning women.<sup>20</sup> According to the Brennan Center for Justice at the New York University Law School, "When the related expenses of placing children of women who are incarcerated in foster care are considered, the cost of imprisonment more than doubles."<sup>21</sup>

Unlike those who are incarcerated, Prop. 36 participants remain connected with their family and communities and thus can be both supportive and supported.

### *Incarcerating nonviolent offenders exacerbates the impact of "mass incarceration"*

The United States has only 5 percent of the world's population, but almost 25 percent of all incarcerated people *worldwide* are incarcerated in the U.S.<sup>22</sup> California alone is responsible for 11.3 percent of all state prisoners in the U.S.<sup>23</sup> Incarcerating increasing numbers of people, many of them nonviolent, has not only not made Californians any safer, but also has additional negative consequences to communities.

Ernest M. Drucker, professor of epidemiology and social medicine and professor of psychology at Montefiore Medical Center and the Albert Einstein College of Medicine in New York has studied the impact of incarceration policies and notes that "when this phenomenon [of 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>24</sup>

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>25</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.

Communities face severe consequences when large numbers of its residents are incarcerated; incarceration leads to the loss of stable employees and county, state and federal taxpayers. A study by the *National Bureau of Economic Research* found that places that rely most heavily on incarceration reduce the employment opportunities in their communities compared to places that

rely on alternatives to incarceration. According to this report, “areas with the most rapidly rising rates of incarceration are areas in which youths, particularly African-American youths, have had the worst earnings and employment experience.”<sup>26</sup>

### **Incarceration is harmful to individuals**

#### *Jail traumatizes the mentally ill and often makes their condition worse*

On any given day, the Los Angeles County Jail holds as many as 3,300 individuals with mental illness—more than any state hospital or mental health institution in the United States.<sup>27</sup> Without adequate planning to transition inmates with mental illness back into the community, many will quickly return to jail or prison as recidivism rates for inmates with mental illness can reach over 70 percent in some jurisdictions.<sup>28</sup> Unfortunately, many programs to treat the mentally ill are not fully funded, leaving jail systems to pick up the slack without adequate resources and programs to treat these people. According to the *Sacramento Bee*, “California's abysmal failure to fund community mental health programs is directly related to the increasing number of seriously disturbed people in our jails and prisons.”<sup>29</sup>

According to the Criminal Justice/Mental Health Consensus Project, a coordinated effort of the Council of State Government’s Justice Center, “People with mental illness tend to decompensate in prisons and jails—environments that exacerbate the symptoms of mental illness—and there they are at especial risk of harming themselves or others.”<sup>30</sup> As previously mentioned, locking up people with mental illness can lead to disastrous consequences, including suicide. Diverting people with mental illness, who are often locked up for nonviolent offenses, into appropriate treatment facilities is both beneficial to the person involved and a more effective use of jail space and taxpayer money.

#### *Jailing people interrupts recovery from drug addiction*

Approximately 53 percent of people entering jails have some form of substance abuse addiction.<sup>31</sup> People with mental illness are even more likely to wrestle with addiction. Unfortunately, only 30 percent of jail inmates who met the criteria for substance dependence or abuse had participated in substance abuse treatment while under correctional supervision, and only 7 percent participated while incarcerated. Further, the jail system is ill-equipped to detoxify people admitted to jail with an addiction. The U.S. Substance Abuse and Mental Health Services Administration (SAMHSA) has found that almost all jails in the country report that they never detoxify arrestees.<sup>32</sup> Many people struggling with addiction will begin to feel symptoms of withdrawal before they are formally charged with a crime.<sup>33</sup>

#### *People in jails are at a high risk of suicide*

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, such as substance abuse. 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>34</sup> Overcrowding and the concentrated needs of those that are jailed make it difficult for counties to provide adequate services for these people. 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 found that the suicide rate in local jails is 47 per 100,000 people.<sup>35</sup> This rate is even higher in California’s largest jails, where suicide rates can reach 81 per 100,000 people, nearly double the national rate.<sup>36</sup>

**In California, where 11 of the country’s 50 largest jail jurisdictions are located, the number and rate of suicides in custody dwarf other jail systems.<sup>37</sup>**

	Number of Inmate Suicides, 2000-2002	Inmate suicide rate, per 100,000 inmates, 2000-2002
<b>50 Largest U.S. Jails</b>	<b>180</b>	<b>29</b>
Los Angeles	12	21
San Bernardino	5	33
San Diego	6	39
Orange	1	7
Santa Clara	5	40
Alameda	4	34
Sacramento	8	81
Riverside	4	46
Kern	4	51
Fresno	3	44
San Francisco	4	73

*Incarceration can have a significant negative impact on employment upon release*

According to Richard Freeman of the London School of Economics and Harvard University, “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>38</sup> Jail disrupts the employment track and economic outcomes of a person who is admitted. Youth are especially impacted by time spent in jail. A study by Bruce Western and Katharine Beckett shows that youth that spent time in jail experienced three less weeks of work than youth who had not been in jail. The impact of incarceration was still felt fifteen years later. People formerly held in jail were still working between three and five weeks less a year than those who had never been in jail.<sup>39</sup>

Jails have a negative impact on employment in two main ways. First, incarceration can erode the job skills of inmates in comparison to those who continuously work.<sup>40</sup> Also, there is a severe social stigma associated with being incarcerated that often hinders a previously-incarcerated person’s ability to find meaningful employment.<sup>41</sup> Prop 36 has been shown to help those utilizing

treatment to gain and maintain jobs. Employment increased 83 percent for Prop 36 clients who completed treatment, and the number of average days worked actually doubled.<sup>42</sup> Helping people to get past their addiction in a productive and cost-effective manner promotes job skills and employment that will help the economy while saving the state and counties money on incarceration costs.

### **People who utilize drug treatment in the community have lower recidivism rates than people who are incarcerated**

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>43</sup>

Drug treatment has particular public safety benefits for communities. It has been shown to reduce the chance that a person will participate in criminal activity in the future and have the added benefit of being more cost-effective than incarceration. The RAND Corporation and the Washington State Institute for Public Policy (WSIPP) have both issued reports revealing the public safety and cost benefits of providing treatment over incarceration.

- In its 1997 study, RAND Corporation, one of the nation's leading research organizations, estimated that treating cocaine users reduces serious crime 15 times more effectively than incarceration.<sup>44</sup>
- WSIPP conducted a meta-analysis and cost-benefit analysis revealing that drug treatment in the community is the most beneficial in terms of costs as well as crime reduction. Drug treatment not only provided \$10,054 in benefits per participant after deducting costs of treatment, but also lowered the chance that a person will commit crimes in the future by 9.3 percent.<sup>45</sup>
- The WSIPP found that every dollar invested in incarcerating a drug user produced \$.37 in crime reduction benefits.<sup>46</sup> However, drug treatment in the community yielded \$18.52 in benefits per \$1 spent.<sup>47</sup>

### **III. Conclusion**

#### **Lawmakers should invest more money in treatment through Prop 36 and refrain from utilizing jail sanctions for low-level drug offenders**

*Prisoners and Jail Inmates at Midyear 2006*, a new survey from the Bureau of Justice Statistics tracking prison and jail growth, found that “*in both absolute numbers and percent change, the increase [in the incarcerated population] was the largest since midyear 2000.*” This new survey showed that one out of every five new people added to prison in the United States were in California.

However, like all states, California still has a choice. It can continue to rely on the failed policies of the past, and simply keep adding more people to prison and jails, bankrupt the state and counties, and continue to see violence fester because it is investing all of its public safety dollars in the most expensive, least effective part of the system. Or, California could choose a different course:

Recommendations:

- Invest more in addiction treatment. Proposition 36 has proven to decrease drug use, decrease crime and save money. Increasing funding for this program will only add to this progress.
- Embrace sentencing and parole reform measures to better address the larger framework of criminal justice and public safety.

**Respectfully submitted by Jason Ziedenberg, Executive Director, Justice Policy Institute**

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<sup>1</sup> All statistics relating to number of offenders offered treatment, choosing treatment, and graduating from treatment are culled from UCLA's four definitive reports to date spanning 2001-2005.

<sup>2</sup> University of California Los Angeles, Integrated Substance Abuse Programs, *Evaluation of the Substance Abuse and Crime Prevention Act, Final Report*, April 13, 2007, p. 6.

<sup>3</sup> Little Hoover Commission. 2003. *Back to the community: Safe & sound parole policies*.

<sup>4</sup> Martin, Mark. 2007. State's \$7.4 billion prison expansion is signed into law. *San Francisco Chronicle*, May 4.

<sup>5</sup> "Proposition 36 Revisited," California Society of Addiction Medicine. Online at: <http://www.csam-asam.org/prop36article.vp.html>.

<sup>6</sup> *Adult drug courts: Evidence indicates recidivism reductions and mixed results for other outcomes*, Government Accountability Office, February 2005, p. 62.

<sup>7</sup> Joseph Gwydish, et al. 2001. "Drug court effectiveness: A review of California evaluation reports, 1995-1999," *Journal of Psychoactive Drugs*, vol. 33(4), p. 374.

<sup>8</sup> *Evaluation of the Substance Abuse and Crime Prevention Act: 2004 Report*, UCLA Integrated Substance Abuse Programs, July 22, 2005, p. 32

<sup>9</sup> *Evaluation of the Substance Abuse and Crime Prevention Act: 2004 Report*, UCLA Integrated Substance Abuse Programs, July 22, 2005, p. 33.

<sup>10</sup> Counties Annual Report, Fiscal Year 2002-03 [1998-1999]. Sacramento, CA: California State Controllers.

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