County of Santa Clara

Office of the District Attorney

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George W. Kennedy
District Attorney

MEMORANDUM

To: Alice Foster
Deputy County Executive

From: Karyn Sinunu
Assistant District Attorney

Date: April 11, 2001

Re: **Proposition 36**

Before the passage of Proposition 36 (Penal Code Section 1210), defendants eligible for Deferred Entry of Judgement (DEJ) were diverted to treatment. All others were subject to incarceration. After the passage of Proposition 36 additional defendants will be diverted to treatment.

I. Defendants eligible for Deferred Entry of Judgement (Penal Code Section 1000) are diverted from custody to treatment.

A. Crimes covered:

1) **possession of cocaine, heroin, methamphetamine, phencyclidine, MDMA (ecstasy), LSD, steroids, and other narcotics;**
2) **possession of Marijuana;**
3) **possession of drug paraphernalia (e.g. glass pipes, straws);**
4) **presence in a place during unlawful drug use;**
5) **under the influence of narcotics;**
6) **cultivation of marijuana for personal use;**
7) **false prescriptions;**
8) **solicitation directed to the personal use of narcotics;**
9) **possession of toluene or substance containing toluene with intent to ingest.**

B. Defendant is eligible if:

1) defendant has no previous drug convictions;
2) the charged offense does not include violence;
3) the defendant is charged with no drug offenses other than those listed above;
4) probation and/or parole has never been revoked without later being

5) defendant has had no prior diversion in the past 5 years;
6) defendant has had no felony conviction within 5 years of the new offense.

II. Defendants convicted under by Prop 36 shall be placed on probation and shall not be incarcerated. Before Prop 36, they were subject to incarceration upon conviction.

A. Prop 36 ("nonviolent drug possession offenses")
1) possession for personal use
2) use
3) "transportation for personal use"

B. Defendant is eligible if:
1) the new charges include only the above-listed crimes;
2) defendant has no strikes (Penal Code Section 667(b)-(i)) within the past 5 years;
3) defendant has a strike, has been out of prison for the last 5 years and has not been convicted of a misdemeanor involving violence or a felony other that a nonviolent drug possession offense during that 5-year period;
4) defendant did not "use" a firearm while possessing or being under the influence of cocaine, cocaine base, heroin, methamphetamine or phencyclidine;
5) defendant does not refuse treatment;
6) defendant has not already had two separate courses of treatment under Penal Code Section 1210 such that the court now finds defendant unamenable to all forms of treatment.

III. Some basic distinctions between the two statutes:

A. In general, DEJ covers first-time offenders. A defendant is still eligible if he/she has been diverted more than five years ago or has a felony over five years old. If the defendant has any previous drug conviction he/she is not eligible.) In general, Prop 36 covers first-time offenders as well as defendants who have been convicted any number of times for drug possession and use-offenses and who have gone through any number of treatment programs in the past. There is no restriction on the timing of previous treatment under Prop 36.

B. If the new offense includes DEJ offenses and other offenses, the defendant can be diverted on the narcotics offenses, as long as the other offenses do not include violence. If the new offense covers Prop 36 offenses and other offenses, the defendant is not entitled to treatment under P.C. 1210.

C. Under both programs, if the defendant has a strike conviction over five years old, he/she is eligible for treatment. However, if the defendant fails DEJ he/she faces a prison term under the 3-strikes law while the Prop 36 defendant most likely faces more treatment. If a defendant fails DEJ, he/she can be sentenced to county jail or prison. If a defendant fails under P.C. 1210, the general sanction will be further treatment, with no incarceration absent specific findings that the defendant is a danger to society or unamenable to all treatment.

cy: George Kennedy
Stacie Lawson

Budget Development Matrix

ATTACHMENT 3

Proposition 36 Costs - Fiscal Year 2001-2002

	A	B	C	
Service Category	Approved By Board	Additional Needs	Steering Committee Recommendation	% of FY 2002 Allocation*
ASSESSMENT				
DADS - 3 Positions	$ 191,000		$ 191,000	3%
Probation - 6 Positions	$ 331,000		$ 331,000	5%
Subtotal	**$ 522,000**		**$ 522,000**	**8%**
TREATMENT				
Residential	$ 685,344	$ 201,133	$ 886,477	13%
Transitional Housing	$ 154,416	$ 387,898	$ 542,314	8%
Outpatient Treatment	$ 760,240	$ 847,630	$ 1,607,870	24%
Dual Diagnosis	$ 50,000	$ 100,000	$ 150,000	2%
Case Management		$ 500,000	$ 500,000	7%
Ancillary Services		$ 150,000	$ 150,000	2%
DADS Admin - 6 positions	$ 261,000	$ 332,000	$ 593,000	9%
Services and Supplies		$ 70,000	$ 70,000	1%
Subtotal	**$ 1,911,000**	**$ 2,588,661**	**$ 4,499,661**	**67%**
SUPERVISION				
Supervision - 7 positions		$ 496,115	$ 496,115	7%
Admin - 1 position		$ 53,470	$ 53,470	1%
Services and Supplies		$ 60,000	$ 60,000	1%
Subtotal	**$ -**	**$ 609,585**	**$ 609,585**	**9%**
TRAINING	$ -	$ 30,000	$ 30,000	0%
Subtotal	**$ -**	**$ 30,000**	**$ 30,000**	**0%**

EVALUATION				
Automation				
Software/Programming		$ 200,000	$ 200,000	3%
Data Entry		$ 200,000	$ 200,000	3%
Data Warehouse		$ -	$ -	0%
Data Analysis/Evaluation		$ 80,000	$ 80,000	1%
Subtotal	$ -	$ 480,000	$ 480,000	7%
FACILITIES				
Assessment/Supv. Lease		$ 450,000	$ 450,000	7%
Remodel Costs (1 time)		$ 150,000	$ 150,000	2%
Subtotal		$ 600,000	$ 600,000	9%
PROP 36 TOTAL	$ 2,433,000	$ 4,308,246	$ 6,741,246	100%
DRUG TESTING (No Prop 36 Funds)				
Collection	$ -	$ 181,842	$ 181,842	
Analysis	$ -	$ 426,852	$ 426,852	
Facility Remodeling	$ -	$ 100,000	$ 100,000	
OTHER FUNDS TOTAL	$ -	$ 708,694	$ 708,694	
GRAND TOTAL			$ 7,449,940	

***FUNDS AVAILABLE**

Fiscal Year 2001 Funds	$2,491,506
FY 01 Funds Committed	($556,849)
Subtotal: FY 01 Funds Remaining	$1,934,657
Fiscal Year 2002 Funds	$4,806,589
Total Funds Available in FY 2002	$6,741,246

FUNDING PERCENTAGES BY CATEGORY

Service Category	Approved	Recommended	% FY 02Funds $6,741,246
Assessment	$522,000		8%
Treatment	$1,911,000	$2,588,661	67%
Supervision		$609,585	9%
Evaluation		$480,000	7%
Facilities		$600,000	9%
Total	$2,433,000	$4,308,582	100%