

California Prop 36 - Drug Treatment Instead of Jail

Proposition 36, passed in 2012, and known as the Substance Abuse and Crime Prevention Act, is defined in Penal Code sections 1210-1210.1 PC and 3063.1 (as it relates to people on parole).

Drug Diversion

Section 1210 provides for California drug diversion for substance abuse related crimes. Prop 36 changed California law to require that first and second-time defendants who have been convicted of nonviolent drug possession offenses **receive up to twelve (12) months of substance abuse treatment instead of time in jail or prison.** This period may be extended by up to two (2) more six (6)-month periods if necessary.

Santa Rosa, Napa, San Rafael, Lakeport, Ukiah and Eureka criminal lawyers generally prefer the Prop 36 treatment because, in essence drug use should be used as a medical problem as opposed to a disciplinary problem.

"Nonviolent drug possession offenses" include unlawfully using and/or being under the influence of any of the drugs listed in the United States "Controlled Substances Act", and/or possessing or transporting any of these narcotics for personal use. These drugs include, though are not limited to:

Marijuana,
Ecstasy ("X"),
Ketamine ("Special K"),
Methamphetamines,
Cocaine,
Heroin,
Peyote,
Gamma-hydroxybutyric acid ("GHB"),
Hallucinogenic substances, such as phencyclidine ("PCP"), and
Prescription drugs such as codeine and hydrocodone ("Vicodin")

Qualifying nonviolent drug possession offenses typically include, though are not limited to:

1. Health and Safety Code 11377 HS and Health and Safety Code 11350 (personal possession of a controlled substance);
2. Health and Safety Code 11357 (possession of less than one ounce of marijuana); and,
3. Health and Safety Code 11550 (being under the influence of a controlled substance).

The following crimes do not qualify for California Proposition 36 sentencing, as their activities go beyond simple "possession, use or personal transportation":

1. Health and Safety Code 11358 (cultivating marijuana, even if for one's own use);

2. Health and Safety Code 11370.1(a) (possessing a controlled substance while armed with a loaded, operable firearm); and,
3. Health and Safety Code 11368 (forging or presenting a forged prescription to obtain drugs).

"Drug diversion" is the practice of allowing eligible defendants to have their criminal charges or conviction dismissed if they successfully complete a court-approved drug treatment program that includes one or more of the following:

1. Drug education;
2. Outpatient services or residential treatment;
3. Detoxification services or narcotic replacement therapy; or,
4. Aftercare services

Following successful completion of the Proposition 36 drug treatment, the defendant may petition the court to dismiss the conviction, subject to satisfaction of the court that the treatment was completed and probationary terms were complied with.

Criminal attorneys in Sonoma, Napa, Marin, Lake, Mendocino and Eureka counties are convinced that this type of resolution is far more beneficial to their clients than imprisonment.

If the defendant qualifies for Proposition 36, the drug diversion program is available, even if convicted at trial, and thus avoid imprisonment.

Proposition 36 additionally applies to many parolees who violate their parole by committing a nonviolent drug possession offense. In many cases, a parolee who commits a nonviolent drug possession offense while on parole, or violates a drug-related condition of parole, will not be returned to prison but will instead be required to participate in a drug treatment program.

Treatment options may include state-licensed outpatient facilities or residential rehabilitation centers. For six months after completing treatment, the defendant must receive follow-up care in the community, which may involve vocational programs, mentorship training and relapse prevention education.

Effect of Proposition 36 Upon the Three Strikes Law

The principal portion of Proposition 36, set forth in Penal Code section 1210.1, has as its main goal permission for first- and second-time nonviolent offenders to go to drug and alcohol treatment rather than go to jail. Proposition 36 modified elements of California's "Three Strikes" Law so as to impose life sentence only when the new felony conviction is "serious or violent."

Specifically, Proposition 36 changed California law to require that first and second-time defendants who have been convicted of nonviolent drug possession offenses receive up to twelve (12) months of substance abuse treatment instead

of time in jail or prison. This period may be extended by up to two (2) more six (6)-month periods if necessary.

Further, it authorizes re-sentencing for offenders serving life sentences if their third strike conviction was not serious or violent and if the judge determines that the re-sentence does not pose unreasonable risk to public safety.

It continues to impose a life sentence penalty if the third strike conviction was for "certain non-serious, non-violent sex or drug offenses or involved firearm possession." And Proposition 36 maintained the life sentence penalty for felons with "non-serious, non-violent third strike if prior convictions were for rape, murder, or child molestation."

If the defendant has two or more previous serious or violent felony convictions, the sentence for any new felony conviction (not just a serious or violent felony) is a life term with the earliest possible parole after 25 years. Offenders convicted under this provision are referred to as "third strikers."

While the law requires the sentences described above, in some instances the court may choose not to consider prior felonies during sentencing. When this occurs, an offender who would otherwise be sentenced as a second or third striker could be sentenced to a lesser term than required under the three strikes law.

Shorter Sentences for Some Third Strikers

Proposition 36 reduces prison sentences served under the three strikes law by certain third strikers whose current offenses are non-serious, non-violent felonies. The measure also allows resentencing of certain third strikers who are currently serving life sentences for specified non-serious, non-violent felonies. Both of these changes are described below.

Proposition 36 requires that an offender who has two or more prior serious or violent felony convictions and whose new offense is a non-serious, non-violent felony receive a prison sentence that is twice the usual term for the new offense, rather than a minimum sentence of 25-years-to-life as is currently required.

For example, a third striker who is convicted of a crime in which the usual sentence is two to four years would instead receive a sentence of between four to eight years—twice the term that would otherwise apply—rather than a 25-years-to-life term.

Proposition 36, however, provides for some exceptions to these shorter sentences. Specifically, the measure requires that if the offender has committed certain new or prior offenses, including some drug, sex, and gun-related felonies, the offender would still be subject to a life sentence under the three strikes law.

Resentencing of Some Current Third Strikers

Proposition 36 permits certain third strikers to apply to be resentenced by the courts. The measure limits eligibility for resentencing to third strikers whose current offense is non-serious, non-violent and who have not committed

specified current and prior offenses, such as certain drug-, sex-, and gun-related felonies.

Courts conducting these resentencing hearings first determine whether the offender's criminal offense history makes them eligible for resentencing. The court is required to resentence eligible offenders unless it determines that resentencing the offenders would pose an unreasonable risk to public safety.

In determining whether an offender poses such a risk, the court could consider any evidence it determines is relevant, such as the offender's criminal history, behavior in prison, and participation in rehabilitation programs. Proposition 36 requires resented offenders to receive twice the usual term for their most recent offense instead of the sentence previously imposed. Offenders whose requests for resentencing are denied by the courts will continue to serve out their life terms as they were originally sentenced.

Prison Release Determination

Under current law, most second strikers are automatically released from prison after completing their sentences. In contrast, third strikers are only released upon approval by the state Board of Parole Hearings (BPH). After third strikers have served the minimum number of years required by their sentence, a BPH panel conducts a parole consideration hearing to consider their possible release.

For example, BPH would conduct such a hearing for a third striker sentenced to 25-years to-life after the third striker served 25 years. If BPH decides not to release the third striker at that hearing, the board would conduct a subsequent hearing in the future.

Post Release Supervision

All second and third strikers are required under current law to be supervised in the community after release from prison. If a second striker's most recent conviction was for a non-serious, non-violent crime, he or she will generally be supervised in the community by county probation officers. Otherwise, the second striker will be supervised in the community by state parole agents. All third strikers are supervised in the community by state parole agents following their release. When second or third strikers violate the terms of their community supervision or commit a new offense, they could be placed in county jail or state prison depending on the circumstances.

Plea Required for Proposition 36 Sentences

Prior to entering into a Prop 36 arrangement, everyone should speak to a **drug attorney in Santa Rosa, Napa, Marin, Lake, Mendocino and Eureka**. This is a complicated procedure but is well understood by drug lawyers.

In order to receive a Proposition 36 sentence:

1. The defendant must plead guilty or no contest to a nonviolent drug possession charge; or,

2. Be convicted of such an offense following a judge or jury trial; or,
3. Be a parolee and, while on parole, either commit a nonviolent drug possession offense or violate a drug-related term of the parole.

The judge then places the defendant on probation or, in the alternative, or modifies the parole, with a requirement that the defendant successfully completes a drug treatment program. The court may also impose additional terms of probation or parole, such as participation in vocational training, family counseling, and/or community service. However, the court is prohibited from imposing any period of incarceration as a condition of probation, unless the terms of probation are violated.

The Law Itself: Proposition 36 - Penal Code Section 1210, et. al.

As used in Sections 1210.1 and 3063.1 of this code, and Division 10.8 (commencing with Section 11999.4) of the Health and Safety Code, the following definitions apply:

(a) The term “nonviolent drug possession offense” means the unlawful personal use, possession for personal use, or transportation for personal use of any controlled substance identified in Section 11054, 11055, 11056, 11057 or 11058 of the Health and Safety Code, or the offense of being under the influence of a controlled substance in violation of Section 11550 of the Health and Safety Code. The term “nonviolent drug possession offense” does not include the possession for sale, production, or manufacturing of any controlled substance and does not include violations of Section 4573.6 or 4573.8.

(b) The term “drug treatment program” or “drug treatment” means a state licensed or certified community drug treatment program, which may include one or more of the following: drug education, outpatient services, narcotic replacement therapy, residential treatment, detoxification services, and aftercare services. The term “drug treatment program” or “drug treatment” includes a drug treatment program operated under the direction of the Veterans Health Administration of the Department of Veterans Affairs or a program specified in Section 8001. That type of program shall be eligible to provide drug treatment services without regard to the licensing or certification provisions required by this subdivision. The term “drug treatment program” or “drug treatment” does not include drug treatment programs offered in a prison or jail facility.

(c) The term “successful completion of treatment” means that a defendant who has had drug treatment imposed as a condition of probation has completed the prescribed course of drug treatment as recommended by the treatment provider and ordered by the court and, as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future. Completion of treatment shall not require cessation of narcotic replacement therapy.

(d) The term “misdemeanor not related to the use of drugs” means a misdemeanor that does not involve (1) the simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or (2) any activity similar to those listed in (1).

(Amended by Stats. 2006, Ch. 63, Sec. 6. Effective July 12, 2006. Note: This section was added on Nov. 7, 2000, by initiative Prop. 36.)

Remember, Ronald Dinan and Associates, is a firm of experienced and aggressive criminal defense lawyers, who can help in achieving the best outcome in your case. Many times criminal case dispositions will include reduction or outright dismissal of the number and/or severity of criminal charges, diversion programs, probation, reduced fines with installment payments, alternatives to jail, etc.

To get immediate help with your criminal matter, we invite you to call us to discuss your case. We answer all telephone calls in a polite, professional and helpful manner.

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