

# **Comparing California's Proposition 36 (SACPA) with Similar Legislation in Other States and Jurisdictions**

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## Introduction

Several states and jurisdictions have current, quite recent legislation similar in scope to the California post-conviction drug offender diversion and treatment initiative called Proposition 36. The states with similar initiatives include the following: **Arizona** (Proposition 200 1996), **Maryland** (SB 194, HB 295, May 2004), **Hawaii** (SB 1188, 2002), **Washington State** (SB 2338, 2002); **Kansas** (HB 2309, April 2003); In **Washington, DC** Proposition 62 (2002) was overturned in January, 2005 through a court order requested by Mayor Anthony Williams. The treatment in lieu of incarceration initiatives in the 5 states noted here are compared below in the Key Elements Framework.

Like some other states, **Indiana** (HB 1892, 2001) focused on methamphetamine abuse in a 2001 bill, increasing penalties for possessing and manufacturing methamphetamines, but also eliminating 20-year sentences for many drug dealers and giving judges discretion to sentence dealers to substance abuse treatment in lieu of incarceration. **Alabama** (1990) has a court referral diversion program for eligible drug and alcohol offenders run by its Administrative Office of the Courts, pursuant to its Mandatory Treatment Act of 1990 (NCSL Health Policy Tracking Service, Allison C. Colker, Esq., December 2004). **Colorado's** (HB02-1404) bill similar to Proposition 36 was vetoed by Governor Owens in 2002.

Other states that have considered or are considering initiatives similar to Proposition 36 include **Michigan** (rejected); **Ohio** (rejected); **Florida** (rejected Proposition 36-type law but passed diversion for drug offenders in 2002, as did **Oregon**), **Massachusetts** (defeated 2000); **New Mexico** (legislation pending). **Louisiana** (reduced sentences for minor drug offenses among juveniles) and **Wyoming** reportedly both passed some diversion legislation in 2002, according to the National Conference of State Legislatures 2003 Mid-Year Report. **Wisconsin** and Oregon are amongst a number of states that have considered medical marijuana and other drug reform legislation.

**California, North Carolina, Texas, Minnesota, Illinois** and many other states also have well established community drug courts, sentencing reform and/or TASC offender management programs (Treatment Alternatives for Safer Communities). Some of these initiatives are local, some statewide or available in the preponderance of a state's counties. They move post-conviction, typically pre-incarceration non-violent addicted offenders into community-based supervision and substance abuse treatment in lieu of 24-hour incarceration. Some states, including California, offer pre-incarceration or post-incarceration offender diversion or re-entry initiatives that have state and/or Federal support. However, the purpose of this particular study is to focus on Proposition 36 and similar comprehensive treatment vs. incarceration initiatives in other states, not at this time to examine the drug court movement, sentencing reform, correctional substance abuse treatment or TASC programs. For a comprehensive look at the subject of drug law reform see Allison Cooker's NCSL Health Policy Tracking Service (December 2004) report, " Proposition 36 and Other State Diversion Programs."

## How the Propositions or Laws Similar to Proposition 36 Were Passed

As in California, in many of the states with propositions or legislative bills most like SACPA, a coalition of interested parties sponsored and wrote many of the initiatives and supported the bills

(compared below) in Arizona, California, Hawaii, Kansas, Washington State and Maryland. Partners in passing such initiatives typically included the Drug Policy Alliance, the Open Society Institute, the Justice Policy Institute, the Lindesmith Center/Drug Policy Foundation, and certain other criminal justice advocacy groups and foundations, as well as some treatment professionals, legislators and medical societies. In Maryland, supporters included the Black Caucus and the Women's Caucus of the legislature, especially after a study was published that alleged that discriminatory practices had resulted in many minority offenders with relatively minor drug offenses being incarcerated or sentenced to long periods of confinement without treatment. The collaborators in most states were relatively well funded in their efforts to pass and/or defend or amend these initiatives. However, the funding for initiatives and legislation has not, however, supported the implementation of treatment vs. incarceration or the analysis and evaluation of the initiatives considered here. Evaluation of Proposition-36 type initiatives in other states has been either spotty or not funded at all. Implementation investments have largely fallen to the states themselves, with some external Federal technical assistance and foundation support. State reauthorization of the original 1996 initiative has occurred (despite some strong opposition) so far only in Arizona, which was the first state to pass a treatment in lieu of incarceration proposition and which has had some evaluations done under the auspices of the Administrative Office of the Courts. In most of the other states except California, the initiatives are too recent to require reauthorization at this time and even too recent to have been evaluated. However, the beginning stages of a reauthorization and initiative refinement campaign for Proposition 36, which ends in 2006, are now occurring in California, and the evaluation process is well underway in California.

### **Key Policy Elements of the Laws Similar to Proposition 36 (SACPA)**

While there are local evaluations occurring in some California counties and a state-funded long term evaluation being conducted by UCLA, these evaluations do not focus on the outcomes of legislation and initiatives similar to Proposition 36 in other states. Other than the descriptions published by the National Conference of State Legislatures, surprisingly little up-to-date published Proposition 36-type comparative material exists outside of law reviews. Legal reviews tend to focus on how the law is being interpreted in each state, not in doing state by state outcomes evaluations. For a review of appellate court decisions regarding Proposition 36 see Abrahamson and Abbasin, "SACPA's Sophomore Year: The Second Annual Review of Proposition 36 in California's Courts" posted on the Drug Policy Alliance website. Also see the California Public Defender Association's publication, *An Analysis of Proposition 36* (April 2001).

Comparative policy frameworks that identify key policy elements of the Proposition 36-type of laws have not yet been published. Therefore, the Avisa Group developed such a framework examining the state laws by chronological order of passage, after assessing state legislative comparison frameworks typically used in law reviews and on state-oriented websites and reports such as those from the National Conference on State Legislatures/National Governors' Association ([www.ncsl.org](http://www.ncsl.org)). It is important that legislators and other policymakers understand how Proposition 36 compares to similar laws in other states, in order to see how other states have amended or constructed the features of their Proposition-36 type of initiatives. A comparison of how Proposition 36 compares in terms of outcomes and program status to the other states' initiatives is beyond the scope of this review but it could be done.

The following Key Policy Elements Framework for Comparison is used below for comparative and summary purposes amongst the states:

## Key Policy Elements Framework for Comparison

*Legislation Enacted Date in Chronological Order*

*Purpose and Intent of Legislation*

*Client Eligibility Under the Legislation*

*Participant Accountability Provisions*

*Scope and Duration of Treatment to be Provided in Lieu of Incarceration*

*Terms of Successful Program Completion*

*Assessment of Offender Treatment Needs: Who Determines*

*Treatment Funding/Appropriation (if relevant under the law)*

*Evaluation of the legislation : Annual Process and External Evaluation Requirement*

*Legalization of Controlled Substances Included or Not Included*

The comparative analysis of Arizona, California, Hawaii, Kansas and Maryland below is presented in brief bulleted form by key element for purposes of brevity and simplicity.

### I. Legislation Enacted Date In Chronological Order

- . State: ARIZONA  
Type of Legislation: Initiative  
Title of Legislation: Drug Medicalization, Prevention, and Control Act of 2000  
Date Enacted: 1996, 2000  
Previous Legislation: Drug Medicalization, Prevention, and Control Act of 1996
  
- . State: CALIFORNIA  
Type of Legislation: Initiative (Proposition 36)  
Title of Legislation: Substance Abuse and Crime Prevention Act of 2000  
Date Enacted: November 2000  
Previous Legislation: Does not appear to be an amendment of a previous law.
  
- . State: HAWAII  
Type of Legislation: Senate Bill 1188 of 2002  
Title of Legislation: Senate Bill 1188 of 2002. A Bill for an Act Relating to Sentencing for Drugs and Intoxicating Compounds Offenses.  
Date Enacted: Act 161. Enacted June 14, 2002.  
Previous Legislation: Does not appear to be an amendment of a previous law.

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. State: WASHINGTON STATE  
 Type of Legislation: Initiative 685  
 Title of Legislation: An act relating to the Drug Medicalization and Prevention Act of 1997.  
 Date Enacted: 1997.  
 Previous Legislation: The Drug Medicalization and Prevention Act of 1997.

. State: KANSAS  
 Type of Legislation: Senate Bill  
 Title of Legislation: Senate Bill No. 123  
 Date Enacted: November 1, 2003  
 Previous Legislation: Does not appear to be an amendment of a previous law.

. State: MARYLAND  
 Type of Legislation: Senate Bill  
 Title of Legislation: Senate Bill No. 427  
 Date Enacted: May 2003  
 Previous Legislation: Does not appear to be an amendment of a previous law.

## II. Purpose and Intent of Legislation

. State: ARIZONA

### Purpose and Intent

Drug treatment and prevention efforts will be paid for by the criminals themselves.

Tougher punishments for serious drug felons, but mandatory minimum sentences will be removed for non-violent drug users. The maximum penalty for drug crimes – both fines and sentences -- will be increased by 20%.

Possession of small amounts of marijuana will be changed to a violation with a fine.

Medical Provisions of the Drug Medicalization, Prevention and Control Act of 1996 will be updated

Ensure that treating doctors can not be sanctioned by the federal government; and,

Qualified patients get access to medical marijuana through a program supervised by the Arizona Attorney General.

Sentencing provisions of the 1996 Act requiring mandatory treatment and probation/parole for those convicted of drug possession will be clarified. Currently courts have not understood that the original Act stated first- and second-time offenders should not be incarcerated in jail or prison.

Prosecutors have been trying to circumvent mandatory treatment provisions of the 1996 Act by invoking drug paraphernalia laws.

Restore the parole provisions repealed by the 1997 legislature.

1996 Act Created Arizona Parents' Commission

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9 Members appointed by Governor.

Purpose: To fund programs that will increase and enhance both parental involvement and education about the risks and public health problems caused by the abuse of alcohol and controlled substances.

. State: CALIFORNIA

To divert from incarceration into substance abuse treatment programs nonviolent defendants, probationers and parolees charged with simple drug possession or drug use offenses.

To halt unnecessary expenditure on incarceration—and reincarceration—of nonviolent drug users.

To enhance public safety by reducing drug-related crime and to preserve jails and prison cells for serious and violent offenders, and to improve public health by reducing drug abuse and drug dependence through drug treatment.

. State: HAWAII

To require first time non-violent drug offenders, including probation and parole violators, to be sentenced to participate in and complete drug treatment as opposed to incarceration.

. State: WASHINGTON STATE

To require that any person who commits a violent crime under the influence of drugs serve one hundred percent of his or her sentence and not be eligible for parole or any form of early release.

To permit doctors to recommend a limited category of controlled substances to treat a disease or to relieve the pain and suffering of both seriously ill and terminally ill patients.

Require nonviolent persons convicted of personal possession or use of drugs to successfully undergo court-supervised drug treatment programs and probation.

Requires nonviolent persons currently in prison for personal possession or use of illegal drugs, and not serving a concurrent sentence for another crime, or previously convicted, or sentenced, or subject to sentencing under any habitual criminal statute in any jurisdiction the United States, to be eligible for immediate parole and drug treatment, education, and community service.

To free up space in prisons to provide more room for violent offenders  
Expand the success of pilot drug intervention programs that divert drug offenders from prison to drug treatment, education and counseling.

. State: KANSAS

(0) Establishes a non-prison sentence or sanction of drug abuse treatment

(0) Amends the current criminal statutes related to drug possession

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- (0) Reduces all criminal penalties involving illegal drug possession (except marijuana possession which remains a class A misdemeanor) regardless of the second, third, or subsequent possession conviction to a level 4 drug offense.

*The above material is extrapolated from the Supplemental Notes prepared by the Kansas Legislative Research Department. The original text contains a note indicating that the Supplemental notes do not express legislative intent. Supplemental Note on Senate Bill No. 123, Session of 2003, As Amended by House Committee of the Whole, p. 1-123.*

. State: MARYLAND<sup>1</sup>

- (1) This Administration Bill provides for the evaluation of nonviolent offenders for drug or alcohol dependency and for the diversion of such defendants to treatment services rather than incarceration.

### III. Client Eligibility

State: ARIZONA

Any person convicted of personal possession or use of a controlled substance, or who is convicted of the personal possession or use of paraphernalia associated with possession or use of a controlled substance.

The following offenses are not included.

Possession for sale, production, manufacturing, or transportation for sale of any controlled substance.

Any person convicted or indicted for a violent crime is not eligible for probation.

b. State: CALIFORNIA

Any person convicted of a nonviolent drug possession offense shall receive probation.

“Nonviolent drug possession offense”: unlawful possession, use, or transportation for personal use of any controlled substance identified in Section 11054, 11055, 11056, 11057 or 11058 of the California Health and Safety Code, or being under the influence of a controlled substance in violation of Section 11550 of the Health and Safety Code. This definition does not include the possession for sale, production, or manufacturing of any controlled substance.

As a condition of probation the court shall require participation in and completion of an appropriate drug treatment program. The court may also impose, as a further condition, participation in vocational training, family counseling, literacy training and/or community service. A court may not impose incarceration as an additional condition of probation. The trial court is not otherwise limited in the type of

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<sup>1</sup> The following data in this report regarding Maryland’s legislation is derived from, House Bill 295 Fiscal and Policy Note (Revised), Department of Legislative Services Maryland General Assembly 2004 Session, Analysis by Guy G. Cherry.

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probation conditions it may impose. In addition to any fine assessed under other provisions of law, the trial judge may require any person convicted of a nonviolent drug possession offense that is reasonably able to do so to contribute to the cost of his or her own placement in a drug treatment program.

Defendant previously convicted of one or more serious or violent felonies, unless the nonviolent drug possession offense occurred after a period of five years in which defendant remained free of both prison custody and the commission of an offense that results in (A) a felony conviction other than a nonviolent drug possession offense, or (B) a misdemeanor conviction involving physical injury or the threat of physical injury to another person.

Defendant who, in addition to one or more nonviolent drug possession offenses, has been convicted in the same proceeding of a misdemeanor not related to the use of drugs or any felony.

Any defendant who:

While using a firearm, unlawfully possesses any amount of (i) a substance containing either cocaine base, cocaine, heroin, methamphetamine, or (ii) a liquid, non-liquid, plant substance, or hand-rolled cigarette, containing phencyclidine.

While using a firearm, is unlawfully under the influence of cocaine base, cocaine, heroin, methamphetamine or phencyclidine.

Refuses drug treatment as a condition of probation.

Has two separate convictions for nonviolent drug possession offenses, (B) has participated in two separate courses of drug treatment pursuant to subdivision (a), and (C) is found by the court, by clear and convincing evidence, to be unamenable to any and all forms of available drug treatment. Notwithstanding any other provision of law, the trial court shall sentence such defendants to 30 days in jail.

c. State: HAWAII

Any person convicted for the first time for any offense involving possession or use of any dangerous drug, detrimental drug, harmful drug, intoxicating compound, marijuana, or marijuana concentrate, or involving possession or use of drug paraphernalia who is non-violent as determined by the court and does not have a conviction for any violent felony for five years preceding the offense for which defendant is being sentenced.

This does not include possession or use to distribute or manufacture any dangerous drug, detrimental drug, harmful drug, intoxicating compound, marijuana, or marijuana concentrate.

d. State: WASHINGTON STATE

Parole Non-eligibility

Any person convicted of a violent offense while under the influence of a controlled substance is not eligible and must serve one hundred percent of his or her sentence in prison.

Those previously convicted, sentenced, or subject to sentencing under any habitual criminal statute in any jurisdiction in the United States are not eligible for parole under this initiative.

Parole Eligibility

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If a person has been convicted of the personal possession or use of a controlled substance and is incarcerated in a Washington state prison and is not currently serving another sentence the person is eligible for parole. Personal possession or use of a controlled substance does not include possession for sale, production, manufacturing, or transportation for sale of any controlled substance. Includes persons previously convicted of personal possession or use of a controlled substance and provides for treatment and education.

Probation Eligibility

Any person convicted of personal possession and use of a controlled substance is placed on probation that does not include incarceration as a condition. Possession for personal use does not include possession for sale, production manufacturing, or transportation for sale of any controlled substance. Any person convicted of or indicted for a violent offense is not eligible for probation under the legislation but is subject to sentencing. As a condition of probation the sentencing judge may require participation in an appropriate drug treatment or education program administered by a qualified agency or organization that provides programs to persons who abuse or are addicted to controlled substances.

e. State: KANSAS

Offenses that allow participation in treatment are classified by Kansas' sentencing guidelines grid for drug crimes.

Offenders whose offenses fall under the sentencing guideline grid for drug crimes and who have no felony conviction or any substantially similar offense from another jurisdiction.

*The exclusion of those offenders who have a substantially similar offense to a Kansas felony from another jurisdiction differs from Proposition 36, which does not expressly address extra-jurisdictional eligibility. The Kansas Bill thereby broadens the scope of eligibility in treatment vs. incarceration legislation.*

The court may determine for felony offenses of a limited severity or non-grid offenses of the sentencing guidelines grid for non-drug crimes that the public will not be jeopardized by placement in a drug abuse program and are thereby eligible.

*Here the Kansas Bill provides judges with broader authority in determining eligibility for felony or non-grid non-drug offenders than Proposition 36 provides for California judges. Whereas in California Proposition 36 eligibility requirements are defined by the statute amendments, court and appellate decisions and /or additions provided in the proposition itself.*

f. State: MARYLAND

*Maryland's legislation, thereby its eligibility requirements, is focused only on both post-conviction and post-incarceration substances abusers, i.e. parolees, whereas other states' legislation, thereby their eligibility requirements, focuses*

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*on post-conviction and pre-incarceration populations as well as post-incarceration populations, i.e. both parolees and probationers.*

An inmate who has been determined amenable to drug or alcohol treatment by the Department of Health and Mental Hygiene (DHMH) or a private provider may be released on parole prior to serving one-fourth of the sentence in order to undergo drug or alcohol treatment if the person is not serving a sentence for:

- A violent crime or for abuse and other offensive conduct;
- A fourth offense of a narcotic or hallucinogenic violation;
- As a volume dealer, a kingpin, or a controlled dangerous substance (CDS) importer;
- Use of a weapon as a separate crime in connection with CDS;
- Possession of a firearm as a convicted felon;
- Use of a minor to manufacture or distribute CDS; or,
- Person convicted of a crime of violence within the previous five years.

Defendant must accept the offer of treatment and sign a consent to disclosure of such treatment information as may be necessary to allow the disclosure of the disposition to criminal justice units.

A State's Attorney must dismiss the charge and enter it on the docket which indicates the State's intent not to prosecute defendant for that charge upon completion of the drug or alcohol treatment program.

Non-eligibility:

- A court may not place a defendant on probation:
  - For certain drunk or drugged driving offenses if within the preceding five years defendant has been convicted of a drunk or drugged driving offense; or,
  - If defendant has been placed on probation under the bill after being charged with a drunk or drugged driving offense.

#### IV. Participant Accountability Provisions

State: ARIZONA

- (0) The court shall not impose any sanction which includes incarceration in prison or jail as a condition of probation.
- (0) If court determines a participant is in violation of probation then new conditions of probation are established by the court. Those conditions may include.
  - ( ) Intensified drug treatment
  - ( ) Community Service
  - ( ) Intensive probation
  - ( ) Home arrest
  - ( ) Any other sanctions short of incarceration in prison or jail.
- (0) Second conviction of personal possession or use: The court may add conditions to probation as described in (b).
- (0) Third conviction of personal possession or use: The person is not eligible for probation under the act.

State: CALIFORNIA

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If at any point during the course of drug treatment the treatment provider notifies the probation department that the defendant is unamenable to the drug treatment being provided, but may be amenable to other drug treatments or related programs, the probation department may ask the court to modify the terms of probation to ensure that the defendant receives the alternative drug treatment or program.

If during the course of drug treatment the treatment provider notifies the probation department that the defendant is unamenable to the drug treatment provided and all other forms of drug treatment, the probation department may move to revoke probation. At the revocation hearing, the defendant must prove by a preponderance of the evidence that there is a drug treatment program to which he or she is amenable or the court may revoke probation.

The client has three chances to succeed in drug treatment, which is voluntary. If after the third attempt, the client is not able to comply with the conditions of treatment, the probationer/parolee may be declared in violation of probation or parole and is immediately subject to incarceration, as previously specified prior to drug treatment.

The client's lawyer must petition the court to have the charges dismissed or expunged, after successfully completing treatment, satisfying all conditions of probation or parole, and, to the extent reasonable, paying any remaining fees due to the state or treatment agencies for the substance abuse treatment.

c. State: HAWAII

Probation

Probation shall be revoked if the defendant has inexcusably failed to comply with a substantial requirement imposed as a condition of the order or has been convicted of a felony.

The court may revoke the suspension of sentence or probation if the defendant has been convicted of another crime other than a felony.

Upon revocation of probation the court may impose on defendant any sentence that might have been imposed originally for the crime of which the defendant was convicted.

d. State: WASHINGTON STATE

None specified by legislation. See, [Text of Initiative 685](http://www.secstate.wa.gov/elections/initiatives/text/i685.htm), <http://www.secstate.wa.gov/elections/initiatives/text/i685.htm>.

e. State: KANSAS

Offenders in drug abuse treatment programs are discharged if they are convicted of a new felony, not including two felonies K.S.A 65-4160 and 65-4162, or have a pattern of intentional conduct demonstrating a refusal to comply with or participate in the treatment program as determined by a judicial finding.

*Whereas under Proposition 36, the drug treatment provider must notify the parole or probation authority that the client is unamenable to the drug treatment provided and all other forms of drug treatment. In addition the*

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*appropriate authority must move to have parole or probation revoked at a revocation hearing. Furthermore parole or probation may be revoked unless defendant can prove by a preponderance of the evidence that there is a drug treatment program to which he or she is amenable.*

f. State: MARYLAND

Prior to the revocation of any probation, in addition to any other factors the court considers in connection with determination of an appropriate sentence, the court must consider any evaluation or recommendation of any licensed health care professional, and relevant information about the defendant's drug or alcohol abuse, and make a finding on the record as to the defendant's amenability to treatment and the interest of justice.

**V. Scope and Duration of Treatment to be Provided in Lieu of Incarceration**

State: ARIZONA

Same for both Parole and Probation

Drug treatment or drug education administered by a qualified agency or organization that provides such treatments to persons who abuse controlled substances.

State: CALIFORNIA

Drug treatment services provided as a required condition of probation may not exceed 12 months, however additional aftercare services as a condition of probation may be required for up to six months.

"Drug treatment program" or "drug treatment": a licensed and/or certified community drug treatment program, which may include one or more of the following: outpatient treatment, half-way house treatment, narcotic replacement therapy, drug education or prevention courses and/or limited inpatient or residential drug treatment as needed to address special detoxification or relapse situations or severe dependence. These definitions do not include drug treatment programs offered in a prison or jail facility.

State: HAWAII

Drug or substance abuse services provided outside a correctional facility.

d. State: WASHINGTON STATE

To be carried out by a qualified agency or organization that provides programs to persons who abuse or are addicted to controlled substances.

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e. State: KANSAS

Sentencing court commits offender to treatment in a drug abuse treatment program until the offender is determined suitable for discharge by the court but the term is not to exceed 18 months.

Drug Abuse Treatment Programs shall provide:

Pre-sentence drug abuse assessments

One or more treatment options in the continuum of services necessary to reach recovery:

Detoxification

Rehabilitation

Continuing Care and Aftercare

Relapse prevention

Family and auxiliary support services; and,

Options for alcohol abuse when indicated by the assessment of the offender or required by the court.

Treatment may include community-based and faith-based programs.

f. State: MARYLAND

(0) A court's commitment of a defendant to treatment must be for at least 72 hours and not more than one year.

(0) Treatment recommendations are made by the Department of Health and Mental Hygiene (DHMH). A report is submitted by DHMH to the court that must include the name of a specific program able to provide the recommended treatment and an actual or estimated date when the program can begin treatment of the defendant.

## VI. Terms of Successful Program Completion

a. State: ARIZONA

Parole

Person shall remain on parole unless the board revokes parole or grants an absolute discharge from parole or until the prisoner reaches his or her individual earned release credit date, his or her parole shall be terminated and he or she shall no longer be under the authority of the board.

Probation

None specified. See, Drug Medicalization, Prevention, and Control Act of 2000, <http://www.azsos.gov/election/2000/info/pubpamphlet/prop9%2Di%...>

b. State: CALIFORNIA

After completion of drug treatment, a defendant may petition the sentencing court for dismissal of the charges.

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Upon a finding by the court that defendant has successfully completed drug treatment, and substantially complied with the conditions of probation, the conviction on which the probation was based shall be set aside and the court shall dismiss the indictment or information against the defendant. In addition, the arrest on which the conviction was based shall be deemed never to have occurred. Except as provided in paragraph (2) or (3), the defendant shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted.

“Successful completion of treatment”: a defendant who has had drug treatment imposed as a condition of probation has completed the prescribed course of drug treatment and, as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future.

c. State: HAWAII

If a drug program participant fails to complete the program and no other suitable treatment is amenable to the offender, the person shall be returned to court and subject to sentencing.

A participant must write an application to the court which issues an order expunging the record of the arrest for the particular conviction by which the participant entered and completed the drug treatment program.

d. State: WASHINGTON STATE

Each drug treatment participant remains on parole until the sentencing judge revokes parole or grants an absolute discharge from parole or until the person completes the sentence imposed.

e. State: KANSAS

None specified by legislation. See, Kansas, Senate Bill No. 123 for Session of 2003, As Amended by House Committee of the Whole, As Amended by House Committee, As Amended by Senate Committee of the Whole, As Amended by Senate Committee.

f. State: MARYLAND

Upon successful completion of any treatment ordered as a condition of probation, the court will enter probation before judgment.

A State's Attorney must dismiss the charge and declare on the record the State's intention not to prosecute a charge or to indefinitely postpone trial for a charge.

Defendant may file a petition listing relevant facts for expungement of a police record, court record or other record maintained by the State or a political subdivision if one of nine specified conditions is met, including a declaration on the record of the State's intention not to prosecute a charge or an indication to indefinitely postpone the charge.

A person is not entitled to expungement if:

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The petition is based on the entry of probation before judgment, a declaration on the record of the State's intention not to prosecute a charge or an indication to indefinitely postpone the charge, or the grant of a pardon by the Governor; and,

The person, since the full and unconditional pardon or entry, was convicted of a crime, excluding minor traffic violations, or the person is a defendant in a pending criminal proceeding.

**VII. Assessment of Offender Needs: Who Determines**

State: ARIZONA

Probation Authority

Has no role in assessment.

Parole Authority

Has no role in assessment.

Board of Executive Clemency

Parole

Determines whether an eligible prisoner would be a danger to the general public.

If yes then prisoner not released on parole.

May revoke parole or grant absolute discharge from parole.

Court

Drug treatment program eligibility is determined by the type of offense.

Treatment Provider

Has no role in assessment.

State: CALIFORNIA

Probation Authority

Refers participant to a treatment provider after screening

Parole Authority

Refers participant to a treatment provider after screening.

Court

Probation: Determines offenses and if eligible offender is sentenced to drug probation conditioned upon drug treatment.

Parole: If parolee is eligible as determined by the offense he or she is convicted of then parole is conditioned upon participation and successful completion of drug treatment.

Treatment Provider

Determines participant's drug treatment needs and reports this information to either the parole or probation authority and/or to the Court.

State: HAWAII

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- (0) Establishes Interagency Coordinating Body to oversee development and implementation of offender substance abuse treatment programs.

Coordinates the following parties.

Department of Public Safety

Hawaii Paroling authority

Judiciary

Department of health

Department of human services

Representative from a community based prisoner advocacy group

A substance abuse treatment provider selected by the Director of Health.

An ex-offender selected by the director of public safety subject to the approval of the chairperson of the Hawaii paroling authority and the chief justice.

The Department of Health is the lead agency for interagency coordination of substance abuse treatment.

Probation Authority

Not specified by legislation. See, Senate Bill No. 1188 Twenty-First Legislature, 2002, [http://www.capitol.hawaii.gov/session2002/bills/SB1188\\_cd1\\_.htm](http://www.capitol.hawaii.gov/session2002/bills/SB1188_cd1_.htm).

Parole Authority

Not specified by legislation. See, Senate Bill No. 1188 Twenty-First Legislature, 2002, [http://www.capitol.hawaii.gov/session2002/bills/SB1188\\_cd1\\_.htm](http://www.capitol.hawaii.gov/session2002/bills/SB1188_cd1_.htm).

Court

An assessment of a participant's needs is a condition of probation.

The Department of Health certifies people to carry out the assessment upon which probation is conditioned.

Treatment Provider

Not specified by legislation. See, Senate Bill No. 1188 Twenty-First Legislature, 2002, [http://www.capitol.hawaii.gov/session2002/bills/SB1188\\_cd1\\_.htm](http://www.capitol.hawaii.gov/session2002/bills/SB1188_cd1_.htm).

State: WASHINGTON STATE

- (0) Creates the Washington Parents' Commission on Drug Education and Prevention.

9 members appointed by the Governor.

5 are parents with children currently enrolled in a Washington school.

1 is a member of a law enforcement agency.

1 is an educator in a local school district.

One is a representative of a county probation department.

One is a representative of the drug education and treatment community.

Commission funds programs that will increase and enhance parental involvement and will increase education about the serious risks and public health problems caused by the abuse of alcohol and controlled substances.

Probation Authority

Not specified by legislation. See, Text of Initiative 685, <http://www.secstate.wa.gov/elections/initiatives/text/i685.htm>.

Parole Authority

The secretary of the department of corrections shall prepare a list that identifies each person who is eligible for parole under the initiative and shall notify the sentencing judge in the county of conviction of the eligibility.

Court

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Judge may require as a condition of probation participation in an appropriate drug treatment or education program administered by a qualified agency or organization that provides the programs to the persons who abuse or are addicted to controlled substances.

Treatment Provider

Not specified by legislation. See, Text of Initiative 685,  
<http://www.secstate.wa.gov/elections/initiatives/text/i685.htm>.

State: KANSAS

Includes a statewide mandatory, standardized risk assessment tool, an instrument validated for drug abuse treatment program placements and a clinical interview with a mental health professional.

"Mental health professional" includes licensed professional counselors or registered alcohol and other drug abuse counselors licensed or certified as addiction counselors who have been certified by the secretary of corrections to treat offenders.

Includes assignment of a high or low risk status to the offender and a recommendation concerning drug abuse treatment for the offender.

Pre-sentence criminal risk-need assessment is conducted by a court services officer or a community corrections officer.

The pre-sentence drug abuse treatment program placement assessment is conducted by a drug abuse treatment program certified by the legislation to provide assessment and treatment services.

A drug abuse treatment program shall be certified by the Secretary of Corrections.

The Secretary may establish qualifications for the certification programs. These may include:

Requirements for supervision and monitoring of clients

Fee reimbursement procedures

Handling of conflicts of interest

Delivery of services to clients unable to pay.

To be eligible for certification the secretary shall determine that a drug abuse treatment program:

Meets the qualifications established by the secretary

Is capable of providing the assessments, supervision and monitoring

Has employed or contracted with certified treatment providers.

The secretary shall require of any provider employed by or who has a contract with a certified drug abuse treatment program and who provides services to offenders' education and training, which includes case management and cognitive behavior training.

f. State: MARYLAND

Before a court commits a defendant to the Department of Health and Mental Hygiene (DHMH) for evaluation, the court must consult with ADAA.

Except in a capital case, the court:

May require or permit an examination in an outpatient setting.

In custody examination:

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Defendant may be confined in a detention facility until DHMH is able to conduct the examination; or,  
If the court determines it appropriate for the health or safety of the defendant the court may order confinement of the defendant in a medical wing or other secure unit of a detention facility.

## Treatment Funding/Appropriation

State: ARIZONA

Amount and what fund(s) are appropriated from

Asset forfeiture

All funds obtained as a result of forfeiture shall be transferred to the drug treatment and education fund.

75% of these funds are designated for drug treatment.

25% of these funds are designated for drug prevention and gang prevention.

Treatment covered by funds

Each person enrolled in drug treatment or education is required to pay for participation in the program to the extent of the person's financial ability.

Surplus Funds

Not addressed by the legislation. See, Drug Medicalization, Prevention, and Control Act of 2000,

<http://www.azsos.gov/election/2000/info/pubpamphlet/prop9%2Di%...>

Excess Funds

Not addressed by the legislation. See, Drug Medicalization, Prevention, and Control Act of 2000,

<http://www.azsos.gov/election/2000/info/pubpamphlet/prop9%2Di%...>

State: CALIFORNIA

Amount and what fund(s) are appropriated from

\$60,000,000 appropriated from the General Fund to the Substance Abuse Treatment Trust Fund for fiscal 2000-01.

An additional \$120,000,000 shall be appropriated from the General Fund for each subsequent fiscal year concluding with 2005-06.

Treatment covered by funds

Same as scope of treatment.

Surplus Funds

Funds remaining in the Substance Abuse Treatment Trust Fund at the end of a fiscal year may be used to pay for drug treatment programs to be carried out in the subsequent fiscal year, subject to ADP's reallocation of those funds if appropriate, should they be more than 20% of the allocation.

Excess Funds

A county may retain unspent funds and upon approval by the department (ADP) may spend those funds on drug treatment programs, unless required to refund the money to the state under a reallocation formula.

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c. State: HAWAII

Amount and what fund(s) are appropriated from

The court may require the participant to contribute to the cost of the drug treatment.

Treatment covered by funds

No services requiring expenditure of state moneys beyond the limits of available appropriations.

Surplus Funds

Not specified by the act. See, Senate Bill No. 1188 Twenty-First Legislature, 2002, [http://www.capitol.hawaii.gov/session2002/bills/SB1188\\_cd1\\_.htm](http://www.capitol.hawaii.gov/session2002/bills/SB1188_cd1_.htm).

Excess Funds

Not specified by the act. See, Senate Bill No. 1188 Twenty-First Legislature, 2002, [http://www.capitol.hawaii.gov/session2002/bills/SB1188\\_cd1\\_.htm](http://www.capitol.hawaii.gov/session2002/bills/SB1188_cd1_.htm).

d. State: WASHINGTON STATE

(0) Amount and what fund(s) are appropriated from

( ) Participants enrolled in a drug treatment or education program is required to pay for his or her participation in the program to the extent of his or her financial ability.

( ) Creates the Drug Treatment and Education fund.

( ) \$6,000,000 appropriated from the general fund.

(0) Treatment covered by funds

( ) The Department of Corrections receives payment for the administrative and treatment expenses incurred in implementing the parole provisions of the legislation up to a limit of 20% of the monies deposited in the drug treatment and education fund.

( ) 50% of the remaining amount covers the costs of county probation departments in placing persons in drug education and treatment programs administered by a qualified agency or organization that provides such programs to persons who abuse controlled substances.

( ) Allocated to the county probation departments by a formula based on the numbers of person placed on probation under the legislation.

( ) 50% of the remaining monies are transferred to the Washington Parents' Commission on drug education and prevention established by the legislation.

(0) Surplus Funds

(a) Not specified by legislation. See, Text of Initiative 685, <http://www.secstate.wa.gov/elections/initiatives/text/i685.htm>.

(0) Excess Funds

(b) Not specified by legislation. See, Text of Initiative 685, <http://www.secstate.wa.gov/elections/initiatives/text/i685.htm>.

e. State: KANSAS

The cost for all drug abuse assessments and treatment is paid by the Kansas sentencing commission from funds appropriated for this purpose.

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The sentencing court shall determine the extent, if any, that a program participant is able to pay for assessment and treatment.

If there is no funding for the non-prison sanction of certified drug abuse treatment and supervision programs then the act will not take effect and be in force.

To provide a mechanism for community correctional services to participate in the department of corrections annual budget planning process, a community corrections advisory committee will be established by the secretary of corrections. This committee will identify new or enhanced correctional or treatment interventions designed to divert offenders from prison.

Surplus Funds

No relevant provisions. See, Kansas, Senate Bill No. 123 for Session of 2003, As Amended by House Committee of the Whole, As Amended by House Committee, As Amended by Senate Committee of the Whole, As Amended by Senate Committee.

Excess Funds

No relevant provisions. See, Kansas, Senate Bill No. 123 for Session of 2003, As Amended by House Committee of the Whole, As Amended by House Committee, As Amended by Senate Committee of the Whole, As Amended by Senate Committee.

f. State: MARYLAND

Creates the Maryland Substance Abuse Fund.

For the first year the legislation goes into effect \$3 million is to be appropriated from the State General Fund to be expended only for substance abuse treatment as an alternative to incarceration.

After the fiscal year for 2005 the funding will be determined yearly by available treatment slots and the extent to which State spending can aid in the elimination of waiting lists at appropriate treatment providers.

## Evaluation of the Legislation: Annual Process and External Evaluation Requirement

State: ARIZONA

(0) Annual Evaluation Process

( ) State Administrative Office of the Courts.

(0) Outside Evaluation Process

(a) Not addressed by the legislation. See, Drug Medicalization, Prevention, and Control Act of 2000,

<http://www.azsos.gov/election/2000/info/pubpamphlet/prop9%2Di%...>

State: CALIFORNIA

Annual Evaluation Process

Who

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The department (Alcohol and Drug Programs) conducts an internal evaluation of Proposition 36 operations

What

Evaluation of effectiveness and financial impact of the programs that are funded by the Act.

Outside Evaluation Process

Who

A public California university carries out this study (UCLA was selected).

What

Evaluation of effectiveness and financial impact of the programs that are funded by the act, as specified in the Proposition.

State: HAWAII

(0) Annual Evaluation Process

( ) Who

( ) Department of Health

( ) What

( ) Report to the Legislature on the status and progress of the interagency cooperative agreement that forms the interagency coordinating body.

(0) Outside Evaluation Process

( ) Not specified by the act. See, Senate Bill No. 1188 Twenty-First Legislature, 2002, [http://www.capitol.hawaii.gov/session2002/bills/SB1188\\_cd1\\_.htm](http://www.capitol.hawaii.gov/session2002/bills/SB1188_cd1_.htm).

State: WASHINGTON STATE

Annual Evaluation Process

Who

State auditor.

What

Accountability report card that details the cost savings realized from the diversion of persons from prisons to probation.

A copy is submitted to the Governor and deposited in each public library in the state.

State: KANSAS

Annual Evaluation Process

Who

The Community Corrections Advisory Committee.

What

A report is sent to the Secretary of Corrections in order for enhanced or new interventions to be considered for inclusion in the Department of Corrections budget request for community correctional services.

Outside Evaluation Process

None specified by the legislation. See, Kansas, Senate Bill No. 123 for Session of 2003, As Amended by House Committee of the Whole, As Amended by

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House Committee, As Amended by Senate Committee of the Whole, As Amended by Senate Committee.

f. State: MARYLAND

Who

The County Alcohol and Drug Abuse Councils created in each county by the legislation.

What

At the beginning and end of the first year a summary report is given to the Governor regarding council membership, organization, rules, progress in developing a plan, and compliance with the bill's provisions applicable to a council.

Every two years thereafter a council must submit a local plan to the Governor and report every six months to ADAA on its plan implementation progress.

Outside evaluation Process

None specified by the legislation. See, House Bill 295 Fiscal and Policy Note Revised, Department of Legislative Services Maryland General Assembly 2004 Session, Analysis by Guy G. Cherry.

## X. Legalization of Controlled Substances Included or Excluded

a. State: ARIZONA

Any medical doctor licensed to practice in the state can prescribe a limited category of controlled substances to treat a disease or to relieve pain and suffering of seriously ill or terminally ill patients.

b. State: CALIFORNIA

(0) None. See, Proposition 36: Drugs, Probation and Treatment Program, [http://www.adp.cahwnet.gov/SACPA/Proposition\\_36\\_text.html](http://www.adp.cahwnet.gov/SACPA/Proposition_36_text.html).

c. State: HAWAII

(0) None. See, Senate Bill No. 1188 Twenty-First Legislature, 2002, [http://www.capitol.hawaii.gov/session2002/bills/SB1188\\_cd1\\_.htm](http://www.capitol.hawaii.gov/session2002/bills/SB1188_cd1_.htm).

d. State: WASHINGTON STATE

(0) Legalization of the receipt, possession, or use of controlled substances in a limited category by seriously ill or terminally ill patients.

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- e. State: KANSAS  
None. See, Kansas, Senate Bill No. 123 for Session of 2003, As Amended by House Committee of the Whole, As Amended by House Committee, As Amended by Senate Committee of the Whole, As Amended by Senate Committee.
  
- f. State: MARYLAND  
(1) None. See, House Bill 295 Fiscal and Policy Note Revised, Department of Legislative Services Maryland General Assembly 2004 Session, Analysis by Guy G. Cherry.