

Policy-Related Proposition 36 Questions and Answers

Substance Abuse and Crime Prevention Act of 2000 (SACPA): Offender Eligibility

1. **Question:** What violations are included in the term “nonviolent drug possession offense,” the major criterion for establishing Proposition 36 eligibility?

Reference: Penal Code Section 1210

Answer: Under Penal Code 1210, added by the Substance Abuse and Crime Prevention Act of 2000 (SACPA), the term “nonviolent drug possession offense” means the unlawful possession, 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.

Courts have also determined that possession of drug paraphernalia may be an eligible offense. An appellate court has held that a theft of drugs for personal use may not be a disqualifying offense.

2. **Question:** Who determines Proposition 36 client eligibility?

Reference: Penal Code Sections 1210.1, 3063.1

Answer: For referrals under PC 1201.1 the court typically relies on officers of the court, most often prosecutors, to screen cases for Proposition 36 eligibility. Defense counsel, law enforcement, probation, parole, and assessment personnel may all participate. The court makes the final determination.

For referrals under PC 3063.1, referrals are made directly by a state parole agent, after consultation with a parole unit supervisor. The Board of Prison Terms makes the final determination.

3. **Question:** Are Proposition 36 offenders allowed a “second chance” if they initially fail to cooperate with probation and treatment personnel, and face incarceration as a consequence?

Reference: Penal Code Sections 1210.1, 3063.1

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Answer: The application of the law to a given offender is primarily under the control of the court. 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 provided and all other forms of drug treatment programs pursuant to subdivision (b) of Section 1210.1, the probation department may move to revoke probation. At the revocation hearing, if it is proved that the defendant is unamenable to all drug treatment programs pursuant to subdivision (b) of Section 1210.1, the court may revoke probation.

4. **Question:** Does a client continue on probation after successfully completing treatment?

Reference: Penal Code Section 1210.1

Answer: The full terms of probation, including but not limited to drug treatment, are under the jurisdiction of the court and do not automatically end upon completion of drug treatment unless so ordered by the court.

Assessment & Treatment Services

1. **Question:** What mechanisms are established to allow for easy identification of county treatment providers certified and/or licensed by ADP to provide Proposition 36 services?

Reference: California Code of Regulations (CCR), Section 9510 (Administration of the State Substance Abuse Treatment Trust Fund)

Answer: For the convenience of counties working with the residents of neighboring counties, ADP maintains a listing of local treatment assessment contacts, including a Parole Unit contact listing, at this web address:

<http://www.adp.ca.gov/SACPA/prop36.shtml>

The SACPA/Local Treatment Assessment Contacts web page has been found to be particularly helpful to criminal justice personnel who are

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unfamiliar with local alcohol or other drug treatment system(s).
With regard to identification of providers, that can be accomplished by using ADP's web-based resources for identifying licensed or certified programs: www.adp.ca.gov/help/aod_help.shtml. However, licensure or certification does not assure that a provider is participating in the county's plan.

Allowable Costs

1. **Question:** Can Proposition 36 funds be used for prevention activities?

Reference: CCR, Section 9530 (Allowable Costs and Activities)

Answer: Section 9530 of the SACPA regulations restricts use of SACPA funds to drug treatment and additional services supplemental to treatment.

2. **Question:** Can Proposition 36 funds be used to remodel a building?

Reference: SACPA Regulations, Section 9530 (Allowable Costs and Activities)

Answer: SACPA funds cannot be used to build or add on to facilities. However, remodeling costs are acceptable, up to a maximum of \$150,000 for each project.

Drug Testing

1. **Question:** If the county has budgeted all or most of its SB 223/SATTA funds for drug testing, and toward the end of the fiscal year determines that the county will be unable to expend all of the funds, can the county redirect the funds to other purposes?

Reference: 42 U.S.C. Section 300x-62

Answer: SB 223 funds are SAPT Block Grant funds that can be used for any purpose consistent with federal SAPT law. The county can

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make line item changes (e.g., from "drug testing" to "other purposes") of up to ten percent. A cumulative or singular change of more than ten percent requires submission of an update to the county plan to ADP. In Fiscal Years 2001-2002 and 2002-2003 it was important that counties track their expenditures of SB 223 funds throughout the fiscal year toward spending 100 percent of their allocations, as the allocations in those years could not be rolled forward. In contrast, up to 75% of the FY 2003-04 SAPT SB 223 allocations can be spent through FY 2004-05, up to June 30, 2005. The remaining 25% will need to be spent by the end of the fiscal year in which it was allocated, by June 30, 2004.

2. **Question:** SAPT funds can be used to contract only with 501(c)(3) nonprofits. SB 223 funds are SAPT funds. Does the same apply?

Reference: Title 42, United States Code (USC), Section 300x-31(a)(1)(E), and Title 45, CFR Part 96, Section 96.135 (general restrictions on SAPT Block Grant expenditures)

Answer: Yes. A county cannot provide financial assistance in the form of SAPT Block Grant funds to a for-profit organization. A county may contract with a for-profit organization to provide drug abuse treatment services utilizing SACPA funds, but it cannot provide SAPT Block Grant funds to that entity. A for-profit drug testing vendor may be utilized to provide services for a not-for-profit treatment provider.