

S.B. 1909 vs. Proposition 36

S.B. 1909 applies only to offenders who are charged with possession of less than 4 grams of crack/cocaine, 20 hits of LSD, or 2 ounces of marijuana. Furthermore, it is limited to those who have not had a prior non-drug-related offense (even a misdemeanor).

Proposition 36 allows each court (with input from the defense and prosecuting attorneys) to decide whether a possession offender is eligible for the program, regardless of the amount of substance possessed.

S.B. 1909 will allow courts to employ temporary incarceration punishments (including county jails, intermediate sanction facilities, and community corrections facilities) as sanctions for probation violators.

Proposition 36 forbids the use of incarceration sanctions for individuals on probation. Even for three-time repeat offenders, California courts are required to impose only a 30-day jail term.

S.B. 1909 gives greater discretion to judges to make case-by-case determinations of the appropriateness of continued treatment, and allows for revocations any time a judge determines an individual is dangerous, a drug dealer, or not amenable to treatment; defendants do not have to trigger certain conditions prior to revocation.

Under **Proposition 36**, revocations must be invoked according to a rigid scale based on prior violations; judicial discretion is not fully exercisable until a defendant's third violation.

S.B. 1909 provides positive incentives that encourage offenders to successfully complete their substance abuse program and supervision term, which in turn increases their likelihood of obtaining and keeping a job and housing.

Proposition 36 does not provide for these measures.

S.B. 1909 would be an act of the Legislature, and subsequent amendments by the Legislature would not be subject to constitutional limitations.

Proposition 36 was a ballot initiative, and constitutional issues have limited lawmakers' ability to correct its flaws.