Proposition 36

Purpose

The purpose of this Training Bulletin is to help officers understand Proposition 36 and to establish an approach to handle the new sentencing law in continuing our proactive stance in the enforcement of narcotic laws.

Introduction

Proposition 36 was created to provide probation, including drug treatment, to those convicted of “non-violent drug possession offenses” as an alternative to incarceration. These offenses include “the unlawful possession, use, or transportation for personal use of any controlled substance,” as well as being under the influence of a controlled substance in violation of H & S 11550. There is no jail time assessed under this law unless the defendant fails to comply with the terms of probation. The new law became effective July 1, 2001 and applies to crimes committed on or after that date. Because this is a new and somewhat complex law, certain aspects of it are likely to be subject to interpretation by the courts. Proposition 36 does not diminish or change the way officers should enforce the law. Proposition 36 only changes the way defendants are sentenced by the court. There are several exceptions to Proposition 36 of which officers should be aware.

I. Exceptions to Proposition 36

1. If it can be shown that the defendants possessed or transported the drugs for anything other than personal use, they do not qualify for Proposition 36. (The suspect’s statements could be used to argue that a defendant who claims to be holding or transporting drugs for someone else does not qualify because it is not for his personal use.) Manufacturing or production of a controlled substance also disqualifies the defendant.

2. If defendants, in addition to one or more non-violent drug possession offenses, are convicted in the same proceeding, of any misdemeanor that is not drug related, or any felony, they are not eligible for Proposition 36. (e.g. an additional charge of PC 148.9, - false information or CVC 14601, - suspended license, disqualifies them.)

3. If the defendants violate the terms of their probation, the judge retains the discretion to revoke probation. (Add probation or parole violation charge when applicable.)
4. Juveniles are not eligible for Proposition 36. Proposition 36 requires a “conviction” and juveniles are adjudicated, not convicted.

5. Certain drug related crimes do not qualify for Proposition 36 such as bringing, sending or possessing drugs or drug paraphernalia in a jail or prison (PC 4573 – 4573.9); and driving under the influence of drugs (CVC 23152 – 23153) (do not add H & S 11550 to the DUI drugs charge);

6. If the defendants are arrested for any crime in which another person is victimized or threatened with harm, or a misdemeanor crime that indicates a potential for future violence, they are not eligible for Proposition 36.

7. If the defendants have a previous “strike”, under the three strikes law, they do not qualify for Proposition 36, unless they have been free from all of the following for five years: (1) prison custody; (2) a felony conviction, other than for a non-violent drug possession charge; and (3) a misdemeanor conviction for a crime involving the physical injury or the threat of physical injury to another person.

8. If the offense involved a firearm, the defendant is not eligible for Proposition 36.

9. If the defendants have been through two separate Proposition 36 sentences and are unamendable to treatment, they must be sentenced to 30 days in jail.

10. If the defendants refuse drug treatment, their probation shall be revoked.

Summary

It is important that officers are familiar with the exceptions to Proposition 36 in order to ensure that only those who truly qualify are allowed to take advantage of the new law. It is incumbent upon the officer to include the arrestee's statements regarding “personal use” and file all applicable charges against the arrestee especially non-drug related ones. For purposes of the booking process, officers should handle all arrests in the same manner as was done before July 1, 2001.

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