Proposed Cure Heals Nothing

Proposition 36 is the reverse of “three strikes” mandatory sentencing laws. Drafted by defense attorneys, the ballot measure would force judges to prescribe lenient drug treatment even when they think a tougher sanction would be more beneficial. They’re both bad ideas forced upon California’s electorate.

What’s needed is not a tit-for-tat in which lawyers use voters to play out their courtroom battles statewide, but a coordinated effort to effectively reform the state’s drug treatment and sentencing system. Voters should reject Proposition 36.

In recent years, liberal and conservative crime experts have compiled a mountain of evidence supporting the same conclusion: The nation’s war on drugs has been a failure, punishing addicts with long imprisonment only to have them resume their drug habits after release—likely guaranteeing a return to jail.

The latest such study, an examination of California drug policy enforcement released Tuesday by the Justice Policy Institute, finds counties that sharply increased their drug offender imprisonment rates in the last two decades saw less decline in the most serious felony offenses than counties with more lenient drug sentencing practices. The bottom line? There are many factors that influence crime, and simply imprisoning drug users is no cure.

Proposition 36 responds by requiring judges to sentence nonviolent drug offenders to treatment instead of prison. Unfortunately, the initiative is too rigidly worded. By severely limiting judges’ sentencing options, it deprives them of the carrots and sticks they need to ensure that drug offenders remain where they belong: in treatment.

The ballot measure is hardly the threat to public safety that its fear-mongering opponents portray. For example, Proposition 36 opponents claim that it would benefit sex offenders who use “date rape” drugs, even though the initiative excludes drugs used to rape or otherwise harm others.

Blatant scare tactics aside, Proposition 36 rightly troubles state drug court judges because it would bar them from using effective sanctions like “shock incarceration”—immediately jailing offenders who test positive for drugs during treatment. Superior Court Judge Stephen Mark, who pioneered drug courts in Los Angeles County in 1994, says such “shock incarcerations” are vital to successful treatment: “You need to intervene at the earliest possible time and let them know there are consequences for lapsing.

In 1994, California voters inappropriately tied judges’ hands by passing the “three strikes” initiative written by district attorneys, which forced judges to impose unduly harsh sanctions on people convicted of minor offenses, like stealing a soft drink.

Now the pendulum swings back, and voters face another inappropriate “reform.” Real reform would start with expansion of the state’s existing drug courts, which put offenders into treatment and then closely supervise their treatment compliance with counseling and drug tests. Drug courts are highly effective but poorly funded; only about 7% of nonviolent drug offenders in California are lucky enough to be sent to them.

Specifically, California Supreme Court Chief Justice Ronald George should follow the lead of the chief judge of New York’s Court of Appeals, Judith Kaye, who in July ordered that drug courts in the state be dramatically expanded to serve all nonviolent drug offenders.

Proposition 36 has usefully highlighted the need to reform California’s failed drug sentencing system. But the specific reforms it proposes would likely do more harm than good.