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Prop. 47 may keep addicts from using drug court's treatment program



As Judge Michael A. Tynan watches, drug court graduate Mariann Avery says her life is no longer ruled by drugs. (Rick Loomis)

By [Marisa Gerber](#) *contact the reporter*

A lawyer calls the impact on drug courts the 'largest unintended consequence' of Prop. 47

A woman with pink highlights in long, blond hair leaned onto a lectern at the front of the courtroom and smiled at her father in the front row. He was crying. She told the packed courtroom that for the first time since she was 13, her life wasn't run by meth and cocaine.

Later came a middle-aged man with close-cropped hair who said he'd finally learned to stop hating everyone he knew, including himself. Another man cried as he explained a recent realization: His life wouldn't end with an overdose.

Mothers, fathers and friends brought balloons and bouquets of flowers to celebrate the graduation of 18 people from one of Los Angeles County's drug courts, a program that offers drug addicts treatment instead of simply locking them up.

Similar graduation scenes have played out in Los Angeles since the county's program started in the 1990s. But some fear that the passage of Proposition 47 last month has thrown the future of California's drug courts into doubt.

I'm afraid it may be the last large graduation.- Superior Court Judge Michael A. Tynan

In the downtown L.A. courtroom, Superior Court Judge Michael A. Tynan addressed the 16 men and two women, his eyes filling with tears as he congratulated the graduates. This was one of the largest drug court graduations he'd seen, he said proudly. Then he paused.

"I'm afraid it may be the last large graduation," he said, his voice dropping off.

Drug court, long backed by legal experts as a cheaper and more effective alternative to prison sentences for people with addictions, provides substance abuse treatment for defendants who face low-level felony drug or theft cases. The program relies upon collaboration among addicts, their lawyers, prosecutors and judges. (During the graduation, a lawyer quipped: "We don't slug it out in here, we hug it out.")

But at the heart of the program is the threat of a felony sentence if participants flunk out.



That threat was sharply reduced last month when California voters approved Proposition 47. The measure turned several felonies, including drug possession, into misdemeanors, reducing their maximum punishments from several years to up to a year in jail. Since 2011, many nonviolent-felony sentences are served in county jails.

With jails in L.A. and other California counties releasing inmates early after serving only a fraction of their sentences, many drug defendants are looking at spending weeks behind bars for a misdemeanor.

The new law changed the calculus of drug courts, Tynan told the graduates, adding that some of them probably wouldn't have agreed to the program without the threat of a "felony hanging over your head."



Mariann Avery of Tarzana spent 15 months in the drug court program before graduating. She described to the crowd how it changed her life. Watching is Judge Michael Tynan. (Rick Loomis / Los Angeles Times)

Judge Tynan gets choked up while speaking to the graduates. He thinks the graduating group of 18 will be the last big one because of Proposition 47. (Rick Loomis / Los Angeles Times)

Judge Tynan hugs a graduate. (Rick Loomis / Los Angeles Times)

Roses, as well as certificates, were given out to the graduates. (Rick Loomis / Los Angeles Times)

Doug Marlowe, of the National Assn. of Drug Court Professionals, said it's unrealistic to expect addicts to sign on to the program without some legal coercion. A [recent study](#) of drug courts in New York found that the more leverage the court system has to force addicts into compliance the better they do. Another [study](#) compared drug court to non-drug court mandated treatment in California and found lower recidivism rates among drug court participants.

"It's a disorder of now, it's a disorder of compulsions," Marlowe said. "Without some substantial stick and carrot, the outcomes are quite poor."

Others have a less gloomy view of the future of the state's drug courts but believe change is inevitable.

Some counties are examining whether to expand their programs to new types of defendants who are addicts but weren't previously given the opportunity because their crimes were considered too serious. And some supporters of Proposition 47 argue that the initiative will ensure that treatment beds are available for addicts who want them, not those trying to avoid incarceration.

"The treatment isn't going to be meaningful if that's their incentive," said retired Superior Court Judge George Eskin, who campaigned for November's ballot measure and occasionally heard drug court cases in his old job on the bench in Santa Barbara County.

Carroll Cone, 54, who graduated from drug court a year ago and attended the recent Los Angeles County graduation to support a friend, said he agrees. He thinks that although Proposition 47 might make it tougher to encourage people into the program, most addicts will eventually hit a personal breaking point and realize they need treatment.

"Addicts don't fear dying; they fear living. You get in enough pain, and all the regret comes back and eventually they'll seek treatment," he said. "There comes a time when you've had too much."

The treatment isn't going to be meaningful if that's their incentive. - Former Superior Court Judge George Eskin

L.A. County has more than 10 drug court programs at courthouses scattered throughout the region, including the sentenced-offender drug court program in Tynan's courtroom. That program targets the most serious of addicts and spans 12 to 15 months, requiring a roughly 100-day stint in a county jail module focused on drug treatment — "the pod," in drug court lingo. During that time, participants check in with Tynan every 30 days. Women spend the second part of the program in residential housing, and men get outpatient treatment.

About 1,680 people have been screened for the intensive program in L.A. since it started in 1998. Deputy Public Defender Mark DeWit, who represents many participants, described the completion rate

— 605 people have graduated from the program — as "really high," stressing that some of the people screened for the program opt out, and others are weeded out during an initial two-week observation phase.

Some of the recent graduates said they joined the program halfheartedly, hoping for an easier out than regular time behind bars. They didn't expect it to change them, they said. But then they went to the pod.

One man said that's where he opened up for the first time in his life. Another said it's where he learned empathy — a wordless language, he called it.

All of the graduates said the program had transformed their lives, but some questioned whether they would have had the foresight to do drug court without the threat of a felony sentence.

DeWit, who represented nearly all of the recent graduates, called the impact on drug courts the "largest unintended consequence" of Proposition 47.

He knows some of his clients will take jail time instead of the program, he said, because even if they are sentenced to the maximum misdemeanor sentence of a year, they're likely to serve only a portion of it because of jail overcrowding.

"They'll figure, 'What the heck, I'll go do my time and get right back out,'" he said.

DeWit said he voted for Proposition 47 because it's "a touch medieval" to subject addicts to a state prison sentence. Drug court can serve only "a small sliver of the population that needs help," he said.

Still, he worries about the future of the program he loves. More than 70% of the drug court population were charged with crimes listed in Proposition 47, DeWit said, adding that half of the recent graduates had their charges reduced to misdemeanors the day of the ceremony.

"Things are in a great deal of flux," he said, "and the program is in jeopardy."



Judge Michael A. Tynan hugs one of the drug court graduates. (Rick Loomis)

Raymond May, the drug court liaison for IMPACT — the treatment center that staffs the jail pods with drug counselors and provides the residential housing — said he's noticed a stark drop off in clients since the law passed.

IMPACT used to get about 10 new drug court clients per week, May said, but in the four weeks immediately after the law passed, the center only had nine.

"We're going to miss a big chunk of people," he said. "I'm just hoping that it doesn't end up being the death of the program."

Drug courts across the state are grappling with some of the same issues.



In Judge Peter Gallagher's San Diego County courtroom, all of the potential drug court candidates also eligible for Proposition 47 relief that he saw in the first few weeks after the law passed made the same decision.

"They said, 'Nope,'" Gallagher said. "They'll go back and take misdemeanor punishment."

Everyone who was already in the program, however, decided to continue instead of asking to have their charges dropped down to misdemeanors under Proposition 47.

In Santa Clara County, Superior Court Judge Stephen Manley, who has held drug court for 18 years, has spent the past few weeks toying with ways to fine-tune the program. One idea: use the same model but apply it to a slightly different population. It would still include addicts, he said, but those charged with crimes that remained felonies, such as first-degree burglary, felony vandalism and low-level drug sales.

The idea of expanding the types of defendants eligible to keep the program alive is also being discussed in L.A., DeWit said.

Even before Proposition 47, the L.A. program in Tynan's courtroom made some exceptions to its rules by accepting people whose crimes would normally disqualify them from the program. (During the graduation, one man joked that he'd taken more trips to the penitentiary than most people have taken to the grocery store. Another said his record stretches from L.A. to Ethiopia.)

Asked about Proposition 47 and its potential impact on the program, Mariann Avery, the recent graduate with pink highlighted hair, said she's now glad she felt she had had little choice but to go through drug court.

She's afraid she would have picked the path of least resistance and continued using drugs, and she says she knows how things would have ended then: "I'd be dead right now."