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## Prop. 5 is no boon to violent offenders: Opponents have misled voters into thinking the measure would go easy on drug offenders.

By Alex Kreit

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As a law professor who teaches criminal law and procedure in California, I feel compelled to weigh in on the debate over Proposition 5, the Nonviolent Offender Rehabilitation Act. I write not as a supporter of Proposition 5 but as a law professor concerned that voters are provided correct information. A poor interpretation of Proposition 5, promoted by some biased parties, has so taken hold that several large newspapers ([including The Times](#)) have come out against the measure based on this view. I will propose what, in my view, is an accurate reading of Proposition 5 and its likely effect on California's criminal justice system.

**Misleading claim:** Proposition 5 gives criminals a "get out of jail free" card.

This is political messaging, not accurate analysis. According to the California Legislative Analyst's Office, Proposition 5 would expand existing programs that offer treatment in lieu of incarceration, making probation-supervised treatment an option for tens of thousands of nonviolent drug offenders each year. These treatment programs include a system of graduated sanctions designed to ensure that defendants who have the potential to succeed remain in treatment and punish those who fail to meet the requirements. Similar criminal justice-treatment partnerships exist now and are widely recognized as a viable and cost-effective alternative to incarceration. Proposition 5 simply expands these successful programs.

**Misleading claim:** Criminals could escape imprisonment by saying "drugs made me do it."

There is no such magic phrase to qualify for treatment instead of prison. Under Proposition 5, only nonviolent drug offenders with minimal criminal histories are eligible for treatment in lieu of incarceration. Judges would have the discretion to put a limited category of other nonviolent offenders in probation-supervised treatment, but only if the judge finds that the offense was nonviolent, that the nonviolent offender has a drug problem and that it is in the best interests of public safety to put that nonviolent offender on probation and in community-based treatment.

**Misleading claim:** Proposition 5 would allow violent criminals to escape prison terms and receive treatment instead.

Any offense involving any form of violence, threat of violence or harm to another -- or any offense dubbed serious under the "three strikes" law -- would be disqualified from eligibility under Proposition 5. This would include burglary and arson, for example -- two offenses often listed by opponents.

**Misleading claim:** Judges would be unable to jail someone.

This is false. Only nonviolent drug offenders with suitably minor criminal histories would be diverted to probation-supervised treatment. Other nonviolent offenders would be diverted only at the judge's discretion. If offenders violate probation, judges could temporarily remove program participants and jail them -- or terminate offenders from the programs entirely.

**Misleading claim:** Participation in treatment and abstinence from drugs would be voluntary.

When offenders receive treatment under Proposition 5, they would do so with a conviction hanging over their heads. Failure to complete treatment would result in jail or prison time. This is the definition of coerced treatment. Moreover, Proposition 5 is clearly designed to direct resources into the state's existing abstinence-based treatment programs.

**Misleading claim:** Proposition 5 provides "no funding for courts."

Proposition 5 specifically provides funding that may be used for court costs. Up to 20% of funds for Track I and II programs (the lower levels of treatment under Proposition 5) and an unlimited amount of Track III funds (the highest level) may be used "for non-treatment costs including probation department costs, court monitoring costs and any other costs made necessary by this act." Up to \$68 million a year of Tracks I and II funds and a portion of the \$45 million allocated to Track III annually could go to probation, the courts and "other costs made necessary."

**Misleading claim:** Increased hearings will overwhelm courts.

Proposition 5 requires only one new hearing for individuals who are "no shows" to probation-supervised treatment after 30 days. The legislative analyst has suggested there could be 84,000 people in probation-supervised treatment under Proposition 5. Even if every one of them required a "no show" hearing, that would amount to far fewer hearings than some have suggested and less of an overall burden to the criminal justice system than our current approach.

**Misleading claim:** Drug dealers get "preferred" parole under Proposition 5.

The measure would do no such thing. Instead, the initiative would increase the time served under parole for violent offenders while decreasing the amount for nonviolent offenders. The claim is a mischaracterization of this reallocation of parole resources mandated by the measure. Currently, nonviolent and violent offenders both serve 36-month terms on parole supervision in the community after they are released from prison. Under Proposition 5, nonviolent offenders who have served their full sentence behind bars would serve 12 months on parole; violent offenders would serve up to 60 months.

There are legitimate reasons to vote for or oppose Proposition 5, but the debate is not furthered by misinformation. I urge voters to consider the legitimate claims on both sides when they cast their ballot on Nov. 4.

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