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OFFICE OF THE DISTRICT ATTORNEY

County of Ventura, State of California

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August 26, 2005

The Honorable John R. Smiley
Presiding Judge of the Superior Court
County of Ventura
800 S. Victoria Avenue
Ventura, California 93009

Re: **Response to the Ventura County 2004-2005 Grand Jury report entitled, *Ventura County Proposition 36: Administrative Reforms Examined***

Dear Judge Smiley:

As required by California Penal Code section 933.05, this letter is a response to the findings and recommendations of the Ventura County 2004-2005 Grand Jury report entitled, *Ventura County Proposition 36: Administrative Reforms Examined* (hereinafter "Grand Jury Report").

As to the findings pertaining to matters under the control of the District Attorney, I offer the following comments.

Response to Findings

F-60: The D.A. has frequently documented the lack of statistical reporting on Prop 36 treatment outcomes. Requests have been made in writing that Prop 36 develop or compile statistics or measure the success of various treatment protocols that have been implemented.

I concur. To date, anecdotal claims of success on behalf of Prop 36 defendants should be received with caution. Many have been deemed successful in the program merely because they completed the treatment program, without regard to the fact that they continued to use drugs while in the program. The statutory definition of "successful completion of treatment" includes that there must be a finding that there is reasonable cause to believe that the defendant would not abuse controlled substances in the future. It has been openly conceded by the various department representatives familiar with the defendants and their histories that there is no reasonable cause to believe that many who

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MICHAEL D. PLANET
Executive Officer
Clerk and Jury Commissioner
BY: _____, Deputy

MICHAEL K. FRAWLEY, Chief Deputy
Criminal Prosecutions

JEFFREY G. BENNETT, Chief Deputy
Special Prosecutions

R. THOMAS HARRIS
Special Assistant District Attorney

have completed treatment will not abuse controlled substances again. These conclusions were reached largely due to the fact that the defendant continued to use drugs while on Prop 36 probation.

F-105: With Board approval, for fiscal year 2005-2006, the D.A. has established positions funded by \$150,000 in Prop 36 money to review client treatment information in order to file non-compliances.

I concur.

Response to Recommendations:

In reference to the Grand Jury Report's recommendations:

R-01: Immediately remove BHD/ADP as Lead Agency of Prop 36. Contact the State Department of Alcohol and Drug Programs to coordinate an emergency halt to the submitted County Plan.

I concur that a different agency is probably better able to address the challenges facing the lead agency of Prop 36. BHD/ADP has tried for four years to lead the program but it is clearly neither organizationally nor culturally suited to the task.

R-02: Immediately designate Probation as the Lead Agency for Prop 36.

I concur. The Probation Department has a fine history of supervising drug offenders and monitoring treatment services.

R-03: Immediately disband the Prop 36 Oversight Committee and establish guidelines for the Operations Committee to operate in an organized fashion and make decisions, with provisions to obtain approvals from department heads when necessary.

I concur. With a new and experienced lead agency, it is presumed there would be clear communication regarding Prop 36 operations and no need for an oversight committee.

R-04: Immediately initiate action to close the BHD/ADP Prop 36 CAC and free the funding and other resources for more direct treatment use.

I concur. Findings 164 and 165, if correct, indicate that the work of the CAC is of no value and expensive. If the figures in the Grand Jury report are accurate, it does appear that an alarming amount of Prop 36 funds are used for non-treatment purposes. A new lead agency should explore a reorganization of the program that will allow more funds to be used for meaningful and useful assessments and to treat offenders who demonstrate a sincere interest in becoming drug-free.

R-05: Formally request through the courts that all Prop 36 offenders be placed on formal probation.

I agree that more Prop 36 offenders should be on formal probation. It is a fact that many Prop 36 participants with misdemeanor convictions have much more serious drug problems than do some felony participants. While it is clearly a significant funding issue for the probation department, formal probation supervision is ideal for every defendant participating in Prop 36 and the most effective way to ensure the safety of the community.

R-06: Allow Probation, as Lead Agency, to make arrangement for assessment and treatment referral at a location of their choosing, immediately after Court sentencing.

I concur. Immediate assessment sets the proper tone for the program and lets the defendant know that Prop 36 is indeed intended to be a serious treatment program rather than merely an alternative to jail.

R-07: As the Lead Agency, allow Probation and treatment providers to determine, with input from the Operations Committee, the best delivery model for treatment services and required communications.

I concur that Probation and the Operations Committee should solicit the input of treatment providers regarding the best delivery model for treatment services and communications. However, lack of communication from treatment providers to the court and the District Attorney has resulted in numerous defendants continuing to regularly use drugs and commit crimes while in the Prop 36 program. The treatment providers should be held strictly accountable for timely reporting according to protocols worked out by Probation and the Operations Committee.

R-08: Move the addiction specialists from the CAC to the county-operated treatment centers and establish additional DMC reimbursed treatment capacity.

I concur.

R-09: Under Probation leadership, provide financial accountability and oversight of all Prop 36 funds. Bring funding allocation decisions back to the Operations Committee.

I concur.

R-10: Encourage the Operations Committee to abandon the pursuit of the perfect protocol and leave treatment decisions to treatment providers with Lead Agency oversight. Instead, focus Operations Committee efforts on obtaining actionable metrics so that recommendations can be made based on reality instead of perception and spin.

I concur in part. Treatment providers should focus solely on treatment but accept the protocols put in place by the Operations Committee. "Treatment decisions" by treatment providers should be understood to not include a treatment provider deciding when or under what circumstances a dirty test or failure of a client to perform as directed will be reported to Probation. Treatment providers should concern themselves only with treatment, not the consequences to a client who fails to do as directed or abide by the law. In the history of the Prop 36 program, significant risks to public safety have been created by treatment providers deciding, contrary to protocol, not to timely report a defendant for testing dirty or failing to test. Defendants continually allowed to test positive for drug use without consequences are in fact committing crimes while on probation. Many of these defendants are unemployed and are affording their drug use only by theft or drug dealing.

R-11: Evaluate the contracts of the treatment providers to ensure that the county is not taking advantage of treatment partners. Consider using hoarded BHD/ADP Prop 36 funds to reimburse the accounts receivable that these providers have accrued by being from ordered to treat Prop 36 clients on a pro bono basis.

I concur. Not only should the county not take advantage of treatment providers, but treatment providers should be required to perform precisely according to protocols, with special emphasis on the timely reporting to all failures to test and dirty tests, before they are paid with taxpayer dollars for services.

R-12: In the interest of cost, efficiency, and treatment delivery, BHD/ADP should not be encouraged or even allowed to participate in leadership of any future court-ordered treatment program.

Neutral response. The leadership needs of a program should be determined on an individual basis.

Very truly yours,



GREGORY D. TOTTEN
District Attorney

GDT/cb