

September 27, 2005

TO: Board of Supervisors

FROM: Jerry M. Harris, Chair
Alcohol and Drug Advisory Board

SUBJECT: PROPOSITION 36 GRAND JURY REPORT RECOMMENDATIONS

Members of the Alcohol and Drug Advisory Board have carefully reviewed the recently published Fiscal Year 2004/2005 Proposition 36 Grand Jury Report. The report contains what seem to be many harsh criticisms of the Proposition 36 program and concludes with a list of twelve recommendations to remedy what the Grand Jury perceives as weaknesses in the program. The primary recommendation is the replacement of the Behavioral Health Department's Alcohol and Drug Programs as the lead agency and designation of the Probation Department as the new lead agency. Many of the subsequent conclusions flow from the apparent belief that the Probation Department would in fact be designated as the lead agency.

While the Grand Jury report makes many clear and valid points, it seems to presume that assigning the Probation Department as the new lead agency will serve to resolve the other issues related to the operation of the program. Unfortunately, we do not agree ✓ that anything will change just because a new lead agency is assigned. In our opinion, the Grand Jury does not realize that regardless of which department is the lead agency, the Proposition 36 Program, by law, must be a collaborative among a variety of County and local agencies. Thus, regardless of who leads the program, that department will still be faced with many, if not all, of the issues currently being faced by Behavioral Health. Taking action to simply switch the lead agency, in our opinion, will not, in fact, resolve any of the other issues. Furthermore, doing business in this manner does not represent sound management practice. To this extent we recommend that the Behavioral Health Department's Alcohol and Drug Programs remain as the lead agency.

Members of our board have reviewed Title 9, Division 4, Chapter 2.5, Section 9520 of the California Code of Regulations, which sets out the guidelines and responsibilities for the lead agency of a Proposition 36 Program. Additionally, we have spoken with Ventura County Proposition 36 contract service providers and also participated in the Proposition 36 Operations Committee. We have seen many changes that have come about as a result of last year's Proposition 36 Grand Jury report. Those changes have

- i) included significantly reducing the number of positive test results for drug usage to create a zero tolerance for habitual offenders. A strengthening of the criteria for 2)

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admission to the Proposition 36 treatment program to eliminate the habitual and unamenable offenders from participation and the transfer of the obligation of identifying non-compliant participants from treatment providers to the District Attorney's office. The last improvement mentioned has corrected a huge problem in that many treatment providers felt they were being utilized as a law enforcement component by having to report positive tests. This responsibility now lies with law enforcement where it rightfully should be. All of these changes have been implemented as a result of the last Grand Jury review and it is quite evident to the members of the Alcohol and Drug Advisory Board that the County and Behavioral Health are working toward correcting deficiencies and are not turning a presumed deaf ear to the Grand Jury.

The California Code of Regulations very clearly defines the role of the lead agency for a Proposition 36 Program. Part of that definition is that the lead agency shall "Directly provide and/or contract for the provision of authorized services specified in the Act." It is our judgment that this can best be done by an agency whose primary responsibility is the provision of treatment. While the Probation Department is a very capable agency, they are more oriented to maintenance and control services rather than treatment. It is our belief that the nature of the Proposition 36 program and the applicable State requirements make it incongruent to assign anyone other than a treatment provider or treatment oriented program as the lead agency. We strongly believe that if problems exist, they should be corrected rather than transferring lead agency designation to another Department along with the problems.

The Alcohol and Drug Advisory Board recommends that your Board continue to work with the Oversight body to complete the systems review of the Proposition 36 program that they had begun last year. We firmly believe that a viable approach to address many of the concerns expressed by the Grand Jury would be to continue this comprehensive systems review of the program with the focus on the identification and elimination of process and procedure problems. Any items found to need to be revised should have the expectation that corrective action is taken within 90 days of the identification of the systems issue. We believe this is a prudent and responsible way to improve the program and work toward effectively achieving the goals envisioned by Proposition 36 legislation.

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The Alcohol and Drug Advisory Board agrees with the Grand Jury that it would be ideal to put all Proposition 36 participants on formal probation, however, we are aware that this would be cost prohibitive and difficult to enforce. We feel that this is a decision more properly left to the courts as it is completely within their discretion. It is interesting to note that the AVISTA Group was retained to review ten Proposition 36 programs throughout the State and their report highlights the majority of the issues presented in the Grand Jury's report. It appears that Ventura County is not the only county struggling with the issues presented in the Grand Jury report and that the actions recommended by this board are consistent with the actions recommended by the AVISTA Group.

In conclusion, it is our opinion that the Probation Department should continue to be a significant partner and continue to do that which it does best, but treatment should be left to treatment professionals.

Should you have any questions or require additional information, please let me know.

BM/JH

