

Ventura County Proposition 36: Administrative Reforms Examined

Summary

In June 2004, the Ventura County 2003-2004 Grand Jury (2003 Grand Jury) published a report critical of the county's three-year implementation of the Substance Abuse and Crime Prevention Act of 2000, also known as Proposition 36 (Prop 36).¹ The Board of Supervisors (the Board) dismissed, ignored or misinterpreted most of the 2003 Grand Jury's recommendations.

Overall, the Ventura County 2004-2005 Grand Jury (Grand Jury)- believes that the Board has failed to thoughtfully consider the recommendations of the 2003 Grand Jury and has failed to properly investigate and improve the leadership of Prop 36. Because of this failure, the Board has squandered state funds and has neglected to provide appropriate levels of treatment and oversight to addicted clients of Prop 36. The Board has neglected to protect the citizens of the county from associated crimes while many clients are unsupervised during the course of their treatment. The leadership has lost sight of treatment objectives and client considerations. Leadership has instead concentrated its efforts on belabored treatment protocols and spin.

The current Grand Jury's investigation revealed a number of areas where the Board of Supervisors, County Executive Officer, Director of the Health Care Agency, and the Director of Behavioral Health Department failed to take appropriate action in assessing and implementing the recommendations of the 2003 Grand Jury's report on Prop 36. The following are the result of last year's unresolved issues coupled with additional Grand Jury inquiries this year:

- Replace Behavioral Health Department's Alcohol and Drug Programs (BHD/ADP) as the Lead Agency for Prop 36
- Disband the Prop 36 Oversight Committee and establish appropriate policies and procedures for the Operations Committee
- Close the BHD/ADP Central Assessment Center (CAC)
- Request the courts to place all Prop 36 offenders on formal probation for enhanced supervision
- Reassess the cost effectiveness of the Prop 36 program
- Evaluate treatment provider contracts to ensure fairness

Fiscal year 2005-2006 may be the last remaining year of certain and adequate funding. Because it is fully state funded, this initiative presently costs the county very little. However, state funding for Prop 36 ends in the next fiscal year and, after that, funding may or may not be provided by the state. If this proposition becomes a county-funded

¹ Ventura County 2003-2004 Grand Jury, "Ventura County Proposition 36 Implementation," June 2004.

program, either wholly or partially, the Grand Jury believes the Board will finally be required to pay more attention to whether the funds are allocated in the most productive manner.

Background

The Substance Abuse and Crime Prevention Act of 2000 took effect on July 1, 2001. The 2003 Grand Jury conducted an inquiry into the effectiveness of Ventura County's implementation and leadership strategies for this law. In June of 2004, the 2003 Grand Jury published a report, "Ventura County Proposition 36 Implementation" (the 2003 Report), that was highly critical of the leadership provided by the BHD/ADP. The 2003 Report, submitted to the Board, provided twelve detailed recommendations designed to enhance public safety and help the program operate more efficiently.

The 2003 Report required that elected county officials respond to its findings and recommendations. The Grand Jury decided to evaluate those responses for adequacy and consistency. Additionally, the Grand Jury decided to review tangible changes that may have taken place since Prop 36 implementation concerns were made known to the Board. Finally, with the clear understanding that Prop 36 is a treatment initiative, the Grand Jury wished to more closely examine the various aspects of treatment and the services provided under this law.

Prop 36 funding is only guaranteed through fiscal year 2005-2006. Eventually the county may be required to provide the \$2.8 million annual cost of the program. The Grand Jury sought to quantify inefficiencies created by the implementation and leadership problems previously identified.

Methodology

The Grand Jury reviewed the 2003 Grand Jury's findings and recommendations as well as the responses provided by the county agencies. The Grand Jury interviewed county Executive Office (CEO) and Information Systems Division (ISD) staff, management and staff of BHD/ADP's Proposition 36 Central Assessment Services (CAS)², and various professionals in the field of addiction treatment. The 2003 Grand Jury analyzed the Ventura County "First Year Report, Substance Abuse Crime Prevention Act 2000, Proposition 36, July 1, 2001 – June 30, 2002" (the First Year Report).

The Grand Jury obtained and reviewed two reports: "FY 2005/06 Behavioral Health Department Alcohol and Drug Programs (BHD/ADP) County Plan for Proposition 36 Services," approved by the Board and the California Department of Alcohol and Drug Programs report, "Substance Abuse and Crime Prevention Act of 2000: Analysis of FY 2003/04 Plans from the 58 Counties" (the DADP Analysis).³ The Grand Jury obtained budget information from the Prop 36 Program Manager and accounting transaction

² For this report Central Assessment Services (CAS) and Central Assessment Center (CAC) may be used interchangeably to refer to the same organizational function or location.

³ Health Systems Research, Inc., "Substance Abuse and Crime Prevention Act of 2000: Analysis of FY 2003/04 Plans from the 58 Counties," http://www.adp.cahwnet.gov/SACPA/pdf/SACPA-AnalysisOf58CountyPlans_2003-04.pdf, September 30, 2004.

details from the office of the Auditor-Controller. Questioning the financial aspects of Prop 36 led to many of the findings in this report.

To discover why the Board determined to leave BHD/ADP as Lead Agency against the Grand Jury recommendation, the CEO analyst was interviewed to determine the factors that were considered. Seeing the result of this study, the Grand Jury decided to undertake the analysis the county might have conducted. In addition, the Grand Jury compared Prop 36 to different types of court-ordered treatment programs to determine if the value of BHD/ADP involvement justified the inefficiencies and management concerns documented in the 2003 Report.

The size, opulence and staffing of the CAS prompted the Grand Jury to question the cost of maintaining that facility. On further inquiry, the Grand Jury began to question the reason for its existence and the relative value of that service to the treatment providers throughout the community.

The Grand Jury interviewed the agency heads and staff of stakeholder organizations: Health Care Agency, Behavioral Health Department (BHD), District Attorney (D.A.), Probation Agency (Probation), Public Defender, the Sheriff, and the CEO.

Wanting to gain more insight into the types and quality of services defined by Prop 36 as “treatment,” the Grand Jury focused a great deal of its attention on treatment providers.

The findings in this report are determinations of the Grand Jury after deliberating on the evidence. As required by Penal Code Section 916, all findings in this report are supported by documented evidence.

Findings

Background

- F-01.** The Substance Abuse and Crime Prevention Act of 2000 (SACPA), also known as Proposition 36 (Prop 36), is solely a drug treatment initiative. There is neither provision nor funding in this initiative to perform drug testing on offenders sentenced to Prop 36 probation. In fact, using SACPA funds for drug testing is prohibited by law.
- F-02.** Prop 36 was designed to: (1) preserve jail and prison cells for serious and violent offenders, (2) enhance public safety by reducing drug-related crime, and (3) improve public health by reducing drug abuse through proven and effective treatment strategies.⁴
- F-03.** A separate bill, the Substance Abuse Treatment and Testing Accountability (SATTA), was passed by the California Senate in 2001. This law provides funding and guidance for drug testing during treatment under Prop 36.
- F-04.** The fiscal year 2004-2005 funding allocation for Ventura County Prop 36 treatment was \$2.86 million. There was an additional \$1.08 million carried over from unspent funds in the prior fiscal year. This brought the total available funds to approximately \$3.95 million.

⁴ State of California, Alcohol and Drug Programs, <http://www.adp.ca.gov/SACPA/prop36.shtml>

- F-05.** Ventura County has stayed well within its annual budget each year of Prop 36. The provided funding has been more than adequate. SATTA, however, does not have adequate funding for the level of drug testing required to support treatment.
- F-06.** Drug Medi-Cal (DMC) can provide reimbursement for drug treatment services through approved treatment providers. DMC cannot supplement Prop 36 funding, but it can be used instead of Prop 36 funds in some cases.
- F-07.** In Ventura County, the Prop 36 stakeholders are BHD/ADP, the Probation Agency, the Superior Courts, the Sheriff, the District Attorney, County Executive Officer, Public Defender, and drug treatment providers.

Lead Agency Designation

- F-08.** When Prop 36 was signed into law, each of California's 58 counties was required to designate a Lead Agency to receive the state funds and administer the program. On February 27, 2001, the Board approved BHD/ADP as Lead Agency in Ventura County for Prop 36.
- F-09.** When Prop 36 was initiated in Ventura County, the Implementation Committee was formed to plan and coordinate the initial activities. Because it was believed that clients would be first-time and second-time non-violent drug offenders, this committee decided to place most of the program's resources into direct treatment services with lesser emphasis on probation oversight and public safety.
- F-10.** In response to the 2003 Report, the Director/Chief Probation Officer for Ventura County stated, "Tripling the number of offenders placed on formal probation would require triple the resources to supervise. The Implementation Committee believed, and we agree, that more resources needed to be allocated for treatment rather than probation supervision for all but the highest risk offenders."⁵
- F-11.** The original assumptions regarding the client population were quickly proven incorrect. By the end of the first year, there was a state-wide recognition that, "What we are seeing in SACPA are clients who have severe drug histories, serious physical health problems, and extensive criminal justice backgrounds."⁶
- F-12.** The 2003 Grand Jury found that, "The majority of California counties designate Alcohol and Drug Programs or Behavioral Health as their Lead Agency."
- F-13.** The 2003 Grand Jury acknowledged that Ventura County was like other California counties in deciding that BHD/ADP should lead Prop 36, but that

⁵ Calvin C. Remington, Director/Chief Probation Officer in response to Ventura County 2003-2004 Grand Jury Final Report entitled "Ventura County Proposition 36 Implementation." Letter to the Presiding Judge of the Superior Court, dated August 13, 2004.

⁶ "Making It Work! 2002" Conference in San Diego, March 2002.

jury went on to describe numerous examples of management deficiencies that were specific to Ventura County's BHD/ADP.

- F-14.** Because of the specific Ventura County deficiencies and in spite of other counties' decisions, the 2003 Grand Jury recommended that a different agency be designated as lead.
- F-15.** On September 28, 2004, in reviewing its responses to the 2003 Grand Jury recommendations, the Board requested the CEO's office to prepare a comparative analysis to provide informed guidance regarding the Lead Agency.
- F-16.** The CEO's office undertook generally to study and compare counties with respect to Prop 36 and, specifically, to determine whether BHD/ADP should remain as the Lead Agency.
- F-17.** The analyst did not identify any factors to compare other than the one already provided in the 2003 Report, that is, which agency in other counties is designated as the Prop 36 lead.
- F-18.** The CEO's analysis found that, of the 12 largest counties, most designated Behavioral Health as the Lead Agency for Prop 36. Further, of the nine mid-sized counties, most designated Behavioral Health as the Lead Agency for Prop 36. Finally, of the 8 counties considered most similar to Ventura County, most designated Behavioral Health as the Lead Agency for Prop 36.
- F-19.** Based on counting various groups and categories of counties, the CEO's analysis confirmed the information reported by the 2003 Grand Jury, that most of the counties in California have designated Behavioral Health as the Lead Agency.
- F-20.** The CEO's analysis reported there is no other comparable data to compare counties because all counties implement Prop 36 differently. The analyst reported that counties screen candidates differently, that they have different treatment protocols and that they have different processes in place for implementing the program.
- F-21.** The CEO's analysis did not address the differences between the counties and the relative success rates.
- F-22.** The CEO's Memorandum dated January 18, 2005, included this statement, "There is a significant relationship between drug offenders and mental illness. The designation of the Behavioral Health Department as the Lead Agency allows the provider of several different related programs to administer treatment." The analysis did not address this relationship or determine if there was a similar relationship between any other criminal offenses and mental illness. The analysis did not state if there was any other Lead Agency arrangement that would allow the same access to related treatment programs.
- F-23.** In a memorandum to the CEO, the analyst recommended that BHD/ADP remain as the Lead Agency based on the investigative result that most other counties assign that function to Behavioral Health.
- F-24.** As of the date of this report, the Board has taken no action to replace BHD/ADP as the Lead Agency in the Prop 36 implementation in Ventura County.

Basis for Comparison

- F-25.** In September of 2003 UCLA published a report for the California Department of Alcohol and Drug Programs. The “Evaluation of the Substance Abuse and Crime Prevention Act 2003 Report”⁷ (the UCLA Report) states, “SACPA represents a major shift in criminal justice policy. Adults convicted of nonviolent drug-related offenses and otherwise eligible for SACPA can now be sentenced to probation with drug treatment instead of either probation without treatment or incarceration.”
- F-26.** The UCLA Report describes many aspects of Prop 36 that could be considered characteristics of a successful implementation. The UCLA Report states, “About one-third (34.4%) of offenders who *entered treatment* [emphasis added] in SACPA’s first year completed treatment.” It also reported, “Overall, about one-quarter (23.8%) of offenders who *agreed to participate* [emphasis added] in SACPA in its first year completed treatment.” There is a big difference between agreeing to treatment and actually entering treatment.
- F-27.** The UCLA Report describes “show rates” as indicators of how many clients referred into Prop 36 show up at various stages of treatment. It states, “Counties reported use of a variety of offender management strategies intended to raise show rates at assessment and treatment. In at least half of the counties, Probation and assessment staff were co-located, walk-in assessments were allowed, offenders had more than one day to report for assessment, and the assessment protocol required only one visit.”
- F-28.** The UCLA Report states, “Using drug-court procedures to manage offenders might lead to a higher show rate at either the assessment or treatment because the judge, case manager, and probation officer are providing close supervision.”
- F-29.** The UCLA Report states, “Both assessment and treatment show rates were lower in counties where the proportion of SACPA offenders with felony as opposed to misdemeanor convictions was higher.”
- F-30.** Ventura County has a higher rate of misdemeanor offenders than felony offenders, so the UCLA findings would imply that Ventura County should have a higher show rate than other California counties.
- F-31.** Any attendance advantage derived from the higher misdemeanor rate in Ventura County is negated by the fact that those misdemeanor offenders are not on formal probation.

Oversight Committee

- F-32.** County stakeholders (BHD/ADP, Courts, D.A., Public Defender, Probation, Sheriff, CEO, and treatment providers) needed an organized method of making decisions as a group. These group efforts would include making a decision on

⁷ Longshore, Douglas, Ph.D., et. al., “Evaluation of the Substance Abuse and Crime Prevention Act 2003 Report,” University of Southern California, Integrated Substance Abuse Programs, September 23, 2004.

what constitutes successful completion of a drug treatment program in Ventura County.

- F-33.** The 2003 Grand Jury described the committee that had evolved from the first year's Implementation Committee. The Implementation Committee had documented that "policy oversight would be vested in a committee." An Implementation Committee report stated, "the exact composition of the oversight committee was not agreed on."
- F-34.** The original Implementation Committee had stated its plan to publish a memorandum of agreement (MOA) or memorandum of understanding (MOU) to document the new committee's representation and authority as well as the charter or rules of voting and reaching decisions.
- F-35.** The 2003 Grand Jury found that the county stakeholders, including BHD/ADP personnel, called their committee either the Oversight Committee or the Operations Committee. Both terms were used frequently and interchangeably by the committee members.
- F-36.** The 2003 Grand Jury attempted to locate meeting agendas and minutes that might refer to the committee name, but those documents were not available.
- F-37.** Because there was no stakeholder consistency in the name and because of the documented intentions for this evolved committee, the 2003 Grand Jury arbitrarily referred to the existing committee as the "Oversight Committee" or the "Operations and Oversight Committee."
- F-38.** Regardless of the committee name, the 2003 Grand Jury reported problems it attributed to a lack of the intended MOA or MOU. The committee published no minutes, the exact composition of the committee was not agreed upon, and decisions were made informally by consensus if they were made at all. Committee members were unsure of the procedure for overcoming a committee deadlock.
- F-39.** Encompassing both names, the 2003 Grand Jury recommended that the "Operations and Oversight Committee be reconstituted as the representative body for all stakeholders." The recommendation was specific as to a "charter, guidelines, and by-laws," plus voting procedures to be approved and documented. The 2003 Grand Jury also recommended considering the "voice of all stakeholders," as well as carefully recording meeting minutes.
- F-40.** In the response to the recommendations of the 2003 Grand Jury, BHD/ADP generally concurred with the findings, but noted that the Implementation Committee had evolved into the Operations Committee, not the Oversight Committee. It stated that an "Oversight Committee was never formed."⁸
- F-41.** The BHD/ADP response includes this statement, "BHD/ADP believes that an Oversight Committee – which has never been designated – should be created. The Oversight Committee should then meet and officially create an MOU

⁸ Shulman, Linda, "2003-2004 Ventura Grand Jury Report Behavioral Health Department Response," Letter to Honorable Bruce A. Clark, Presiding Judge of the Superior Court, August 16, 2004.

which will provide clarity to the Operations Cabinet on implementation of this law.”⁹

- F-42.** The recommendation of the Oversight Committee was made by BHD/ADP. The 2003 Grand Jury did not make a recommendation that two committees were necessary for Prop 36 oversight and operations.
- F-43.** The 2003 Grand Jury did recommend that the single formed committee should establish a documented charter, guidelines, and by-laws “providing membership requirements, stakeholder authority, quorum, and voting procedures.” The recommendation stated, “Minutes should clearly document all decisions, action items, and discussions.”
- F-44.** The Board decided to continue the Operations Committee and add an Oversight Committee. In the Board’s response to the 2003 Grand Jury, it was stated, “Once the Oversight Committee is officially designated, an MOU should be created that defines the various roles of each agency in the operation of Prop 36.”
- F-45.** On July 28, 2004, the ongoing Operations Committee published a draft “Operational Procedures” that described the committee composition, the responsibilities and roles of the committee, and the meeting schedule and rules of governance. The rules included procedures for voting and taking minutes.
- F-46.** As there were no published minutes from this July 28 meeting or the four subsequent meetings, there is no public indication or clear stakeholder recollection that these recommended rules were decided or even fully discussed.
- F-47.** The newly formed Oversight Committee directed the Operations Committee to continue making decisions on consensus.
- F-48.** The “County of Ventura FY 2005-2006 County Plan” states, “In October 2004, an Oversight Committee consisting of the department heads of the CEO’s office, BH/ADP, Judge, Sheriff, District Attorney, Public Defender, and Probation Agency was formed to help establish protocols and give direction to the Operations Committee, along with strengthening collaboration.”
- F-49.** As of June 1, 2005, there have been three meetings of the Oversight Committee. There was no committee until after the Board reviewed the agency responses to the 2003 Grand Jury. The two October meetings were immediately after the September 28, 2004, Board meeting where the 2003 Grand Jury criticisms were discussed. The April 2005 meeting was scheduled within days of the Grand Jury asking the Director of BHD how many Oversight Committee meetings have taken place during the year.
- F-50.** In public comments before the Board on March 17, 2005, the Director of BHD suggested that frequent or regular meetings of the Oversight Committee had been unnecessary as business was being conducted by email or private conversations.

⁹ Ibid.

- F-51.** The MOU requested by the Board could not be created by the Oversight Committee because the Public Defender and the District Attorney would not sign a document that might create a conflict of interest with representation of their respective clients.
- F-52.** Ventura County now has a Prop 36 Operations Committee and a Prop 36 Oversight Committee, both chaired by BHD and run by consensus. If the Operations Committee cannot reach a decision, it will be referred to the Oversight Committee. If no Oversight consensus is reached, the individual members may or may not negotiate by email or private dialogues and decide to go forward without committee approval. These things might or might not be known because the minutes may or may not be published.
- F-53.** There is not yet an agreement or consensus as to what constitutes successful completion of a drug treatment program in Ventura County.

Completion Standard – Mischaracterized Statistics and Sliding Benchmarks

- F-54.** It is the responsibility of BHD/ADP, as the designated Lead Agency, to “coordinate evaluation of the services and treatment provided.”¹⁰
- F-55.** The 2003 Grand Jury recommended the “immediate establishment of a meaningful treatment completion standard in accordance with the spirit and intent of Prop 36.” The 2003 Grand Jury criticized BHD/ADP for attempting “to weave success from failure by mischaracterizing statistics, sliding benchmarks for successful drug treatment, and portraying program liabilities as assets.”
- F-56.** The law provides a definition of successful treatment completion in Penal Code section 1210(c):
- The term “successful completion of treatment” means that a defendant who has had drug treatment imposed as a condition of probation has completed the prescribed course of drug treatment and, as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future.
- F-57.** On September 28, 2004, Ms. Linda Shulman, Director of BHD, spoke before the Board regarding the success of Prop 36 clients,
- UCLA put out a second-year report that compared ten counties, so it’s not comprehensive, but in that report, they said that a third of the people referred into Prop 36 were succeeding in treatment, and that’s the same number that we have here in Ventura County.
- Ms. Shulman further explained,
- We have about 2500 clients referred into the program annually. Only 800 of them are in treatment. The other 1700 we have non-complied and sent back to the courts, and said, they’re not participating in the program, they’re having dirty drug tests,

¹⁰ Ventura County Implementation Committee, “Report of the Implementation Committee,” June 5, 2001.

whatever the reasons for the noncompliance are, so we're turning back two-thirds to the court system – we're only actively treating a third.

- F-58.** Rather than gauge success on the number of clients in treatment as suggested by Ms. Shulman, the UCLA Report actually states, “About one-third (34.4%) of offenders who entered treatment in SACPA's first year completed treatment. SACPA requires completion of treatment.” It goes on to clarify,
- Satisfactory progress and sustained participation in treatment are good signs, but SACPA requires completion of treatment. Clients who complete treatment may fail to comply with additional requirements, and clients who fail to complete treatment may or may not commit new crimes.
- F-59.** “One-third success” and “comparable to other counties” is often heard in relation to Prop 36.
- 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.
- F-61.** The 2003 Grand Jury recommended that Prop 36 should fund basic information systems and risk management systems to meet information objectives of the stakeholders.
- F-62.** There is no indication that requests for statistics and metrics have ever been addressed or that any Ventura County Prop 36 funds have ever been allocated for the purpose of quantifying treatment results.
- F-63.** There is no commonly understood meaning of “successful completion” in Ventura County.

Prop 36 Services Pipeline

- F-64.** The process whereby a drug offender is referred to treatment after sentencing was originally designed by the Prop 36 Implementation Committee. This process has not changed substantially over the past four years of Prop 36 implementation.
- F-65.** After sentencing in the courts, felony and high-risk misdemeanor Prop 36 offenders are referred to a Probation Officer for formal probation terms. The Probation Officer will maintain a case file for tracking and reporting purposes.
- F-66.** All Prop 36 clients, felony and misdemeanor, are referred to the BHD/ADP CAS for assessment and placement in treatment. The court currently allows the client up to five days to contact the CAS for an appointment.
- F-67.** After receiving an assessment appointment, the client is also told by CAS to attend an orientation meeting. Orientation is separate from assessment and is held at the CAC in groups of three clients, up to three times a day.
- F-68.** The client's transition from court to treatment is accomplished through the assessment process. The purpose of the assessment is to make a decision

about the client’s treatment placement. According to the County Plan, “The County BH/ADP is the single entity responsible for determining a client’s level of need for, placement in, and referral to drug treatment and other services.”

- F-69.** The assessment process currently takes place at the CAS with an Alcohol and Drug Treatment Specialist (ADTS) assigned to perform initial and exit assessments.
- F-70.** There are generally two considerations in treatment placement: the severity of the addiction and proximity to the treatment provider.
- F-71.** There are three levels of treatment determined by addiction severity:
 - Level 1 is for slight to problematic substance abuse
 - Level 2 is for problematic to moderate substance abuse/dependence
 - Level 3 is for serious to acute substance dependence
- F-72.** In the current fiscal year, approximately 3% of the assessed clients were referred to Level 1 treatment, 74% were referred to Level 2, and 6% were referred to Level 3. The remaining 17% of assessed clients were pending or transferring out of county, on leave of absence or refused treatment.
- F-73.** Level 1 treatment consists of 28 total outpatient program hours over a 6-month period. Fewer than 30 clients have been placed in Level 1 treatment during the first 11 months of the current fiscal year.
- F-74.** Level 2 treatment consists of 66 total outpatient program hours over a 12-month period. Approximately 600 clients were placed in Level 2 treatment during the first 11 months of the current fiscal year.
- F-75.** Level 3 treatment consists of residential care, for either 45 or 90 days, followed by outpatient care for the remainder of the program. Level 3 treatment consists of a total of 108 program hours over an 18-month period. Fewer than 50 clients have been placed in Level 3 treatment during the first 11 months of the current fiscal year.
- F-76.** Treatment depends on regular attendance at classes, and proximity is of primary concern during treatment placement as most clients do not have reliable transportation.
- F-77.** Clients have been known to specifically request treatment providers where they know drug testing is not observed, but this practice has recently been discouraged by CAS supervision.
- F-78.** There are two major outpatient treatment providers in Ventura County. One is in Oxnard and the other is in Thousand Oaks. The three smaller county-run facilities are in Ventura, Oxnard, and Simi Valley. As a practical matter, most clients are placed in the appropriate treatment facility closest to their home.
- F-79.** Prop 36 beds in residential treatment centers are frequently filled, and the decision of which residential treatment center is generally made based on gender and bed availability.
- F-80.** CAS assessment personnel will perform a clinical assessment and make

referrals to a treatment provider plus any ancillary services they believe will benefit the client.¹¹

- F-81.** Assessment personnel will then transfer the file to a CAS case manager for the duration of the client's treatment. The case manager will maintain a case file for tracking and reporting purposes.
- F-82.** Treatment begins when the client reports to the referred treatment provider. There is no substance abuse treatment at the CAS.
- F-83.** When the client reports to the designated treatment provider, the first step in the intake process can be described as a clinical assessment and treatment orientation.
- F-84.** CAS staff and supervision as well as treatment providers agree that a clinical assessment by the treatment provider is required in order to provide the appropriate treatment for the client.
- F-85.** Once the orientations and assessments are completed, the treatment counseling sessions begin.
- F-86.** Based on their own clinical assessments and frequent contacts with the client, treatment providers may recommend treatment level adjustments and other referrals to the CAS case manager. The County Plan states, "Once placed in outpatient treatment, it is the responsibility of the treatment provider to report the need for residential services and a treatment adjustment to the Assessment Center case manager."
- F-87.** Once in treatment, communication between the treatment providers and the courts is coordinated through the CAS case managers. Communication includes reporting of drug test results, session attendance, and levels of participation.

Criminal Justice (Probation) Services

- F-88.** Based primarily on the goal of keeping the majority of funding in treatment, Ventura County made a decision to place felons on formal probation under Probation supervision. Misdemeanants are placed on conditional release with no probation oversight or supervision.
- F-89.** When Prop 36 was initiated into this county, BHD/ADP assumed responsibility for treatment monitoring and reporting for all Prop 36 offenders. It was considered practical to allow Probation to supervise felony offenders with information provided by BHD/ADP.
- F-90.** The BHD/ADP CAS function would provide general oversight to misdemeanor offenders not on formal probation. The case managers were responsible for filing charges of non-compliance for misdemeanor clients. This function was considered practical because CAS has immediate access to compliance information for these clients.

¹¹ See findings F-123 thru F-148

- F-91.** In regard to this complementary oversight function of Probation and BHD/ADP, the Implementation Committee Report stated,
- It was recognized that the treatment sessions and drug testing performed as part of treatment will provide significant levels of monitoring, and therefore the overall supervision and monitoring of drug offenders will increase through the combined efforts of Probation and ADP under the plan.
- F-92.** Probation has no legal jurisdiction or authority over the Prop 36 misdemeanor offenders placed on conditional release. As the system is now implemented, if there is any court supervision of these particular clients, it must take place through the treatment process.
- F-93.** The division between felons and misdemeanants was chosen as a convenient way to manage the large number of clients. In retrospect, Probation acknowledges that many misdemeanor offenders require as much or more supervision than felony offenders. The arbitrary division between felons and misdemeanants does not appropriately address the criminality or actual need for probation supervision.
- F-94.** As described in the UCLA Report, the intention of Prop 36 is to provide “probation with drug treatment instead of either probation without treatment or incarceration.” For misdemeanor offenders, Ventura County created an additional alternative: drug treatment without probation.

Drug Treatment without Probation

- F-95.** For a variety of reasons, BHD/ADP CAS did not fulfill the Implementation Committee’s expectation of client supervision.
- F-96.** The transfer of information between treatment providers and CAS and between CAS and the courts has been slower than desired. There has been some loss of or miscommunication of information at different levels of the process.
- F-97.** Initially there was a “firewall” that prohibited the treatment providers from communicating directly with Probation. This firewall further increased the times for communication to flow from treatment through BHD/ADP and on to criminal justice.
- F-98.** Delays in obtaining assessments, delays in non-compliance communications, and delays in processing violations created large gaps in time where clients who were again using drugs were free in the communities.
- F-99.** Although statistics are unavailable, increases in crime rates coupled with many of the offenders’ criminal histories suggested to law enforcement that some of the unsupervised and unemployed drug users were committing property crimes to sustain their drug habits.
- F-100.** Prior to the 2003 Grand Jury report, BHD/CAS was solely responsible for reviewing treatment information, including attendance and drug testing results, and determining non-compliance of clients.
- F-101.** Faced with the 2003 Grand Jury’s criticism of client supervision, the BHD

response to the findings stated, “Probation and Parole are responsible for supervision. BHD/ADP and the treatment providers are responsible for case management.”¹²

- F-102.** In the cover letter to the BHD response, Ms. Shulman stated,
- At this time, BHD/ADP *and the contracted treatment providers* [emphasis added] are responsible for determining non-compliance of clients. BHD/ADP would propose that non-compliance be determined by the courts. BHD/ADP would report all activities of clients in treatment – including attendance and drug testing results. The courts would then be responsible for determining if these activities are violation and strikes or a normal part of treatment recovery. Recommendations from treatment, along with Probation and representation of the Public Defender and the D.A. would be included in this process. Details of implementation of this procedure could be determined in the MOU by the Operations Committee.
- F-103.** Although contract treatment providers pass treatment and compliance information to BHD/ADP case managers, contractors never had responsibility for making client non-compliance determinations. That responsibility, for misdemeanor offenders on conditional release, rests entirely with BHD/ADP.
- F-104.** Because BHD/ADP either failed to perform or determined that it was never required to perform supervision functions on clients of Prop 36, the Oversight Committee determined that the D.A.’s office could perform this Probation function.
- F-105.** With Board approval, for fiscal year 2005-2006, the D.A. has established positions funded by \$150 thousand in Prop 36 money to review client treatment information in order to file non-compliances.
- F-106.** This function was originally planned by the Implementation Committee to be a treatment function. Because the funding provided to Probation (25% of the total) was only adequate for felony supervision, the misdemeanor supervision and non-compliance filings were originally to be paid by the 75% directed toward treatment.
- F-107.** Despite the fact that the D.A. is taking on a function that was originally established with treatment funds at BHD/ADP, the Oversight Committee determined that the funding to replace that capability will be taken from Probation.
- F-108.** It is considered unusual for the D.A. to assume Probation functions.
- F-109.** In juvenile and adult court-ordered treatment programs other than Prop 36, Probation has maintained their own lists of approved treatment and service providers. In those programs, Probation provides assessments and referrals to treatment services for drug and alcohol abuse as well as domestic violence and

¹² Shulman, Linda, “2003-2004 Ventura Grand Jury Report Behavioral Health Department Response,” August 16, 2004. Response to finding F-35.

anger management. Probation provides supervision and case management and they assume responsibility to document and process probation violations and non-compliances for the courts.

- F-110.** With adequate funding, Probation could provide assessments, referrals, case management, supervision and violation processing for Prop 36 clients.
- F-111.** The 2003 Grand Jury recommended that an effective risk management system would assist Probation in supervising all Prop 36 clients, not just felony convictions.
- F-112.** Probation already assesses risk with their internal risk management system, but the process requires time and cannot be done continuously for such a large population of clients.
- F-113.** A probation officer will typically see a client once a month. Treatment providers have significantly more contact, as often as several times a week. Those providers are frequently evaluating the client's progress and risk to society.
- F-114.** The 2003 Grand Jury recommended that all Prop 36 offenders be placed on formal probation under the supervision of the Probation Agency and that an information system be developed to provide a regularly updated risk assessment. This recommendation was based on findings that a misdemeanor drug offender could often have serious and repetitive criminal behaviors.
- F-115.** The recommended risk management system would not have replaced existing systems, but could have been an additional source of information to Probation Officers. It could collect and prioritize Prop 36 client information from treatment providers without the added burden of data entry by Probation staff.
- F-116.** The Board declined the 2003 Grand Jury's recommendation due to budgetary considerations. The Board replied that it would "consider this recommendation when funding becomes available, but it must be considered along with other county priorities." This response suggests that Prop 36 funds would not be available for this type of oversight function. BHD seems to agree with the Board when it replies that it "has made this same Recommendation in prior Annual Reports to the Board."
- F-117.** The Board did not research this proposal or the funding source before citing the cost prohibition.
- F-118.** As a cost of providing supervision to Prop 36 offenders, this expenditure would be appropriate and justified for use of Prop 36 funds.
- F-119.** The Grand Jury queried treatment providers, and they all collect information that is useful in evaluating the risk to society presented by their clients. The data collected are basic risk assessment indicators such as employment status, family relationships, education involvement, adherence to program attendance and sobriety goals, etc.
- F-120.** The Grand Jury obtained a representative questionnaire, know as "Passport," from a local treatment provider and asked the ISD to provide a cost estimate for a two-part project: (1) develop an on-line, web-based form for treatment providers to fill in with risk information and (2) develop a screen at the

Probation office to display a scored, sorted listing so that any probation officer could review their cases for risk factors on a daily or weekly basis.

- F-121.** The cost to develop the system described to ISD was approximately \$3,900.
- F-122.** Based on the plan prepared by BHD/ADP, approved by the Board, and submitted to the State of California last year, Prop 36 had \$1 million of unspent funding to carry over into fiscal year 2005-2006. Prop 36 earned over \$33,000 in interest on carry over funds during the last fiscal year.

Central Assessment Services (CAS)

- F-123.** BHD/ADP maintains an office of Prop 36 CAS to provide orientation, assessment, referral, and case management for all Prop 36 clients.
- F-124.** Clients are not treated for addiction in the CAS. Clients are placed into treatment subsequent to assessment. The CAS does not provide drug treatment sessions.
- F-125.** A secondary purpose of the CAS is to refer clients to ancillary services that might enhance their recovery. Ancillary services include vocational services, educational services, medical treatment, psychiatric treatment, and family counseling. The DADP Analysis provides a table that compares “Planned Services by Type Using SACPA Funds in the 12 Large Counties in FY 2003/04” (see Attachment 1).
- F-126.** Prop 36 funds may be used to pay for these ancillary treatment services; however, BHD/ADP proposed and the Board approved through the annual plans to the state, that the existing public health system will be used to provide those services to Prop 36 clients in this county. In the most recent FY 2005-2006 County Plan, these ancillary services are referred to as, “currently leveraged with existing County-operated programs.”
- F-127.** The FY 2005-2006 County Plan states that, with regard to the county-financed ancillary services, “So far there has not been a capacity problem.”
- F-128.** Despite the statement to the contrary, the Grand Jury finds that budget cuts in county programs this fiscal year have forced CAS counselors to curtail many of their ancillary referral services.
- F-129.** Those free services that are still widely available, such as employment and vocational assistance, are still referred but are rarely followed up by Prop 36 clients. There is no requirement for the clients to follow up on any of the referrals other than substance abuse treatment.
- F-130.** One service considered vital by the CAS staff is the psychiatric evaluation and treatment. Over a year ago, a single psychiatrist was dedicated to Prop 36 treatment of clients with psychiatric needs. This psychiatrist would coordinate a client’s treatment as well as provide client feedback to the case managers. On his retirement, he was not replaced due to budget cuts.
- F-131.** CAS continued to refer clients to mental health services for a while after the dedicated psychiatrist left. Unfortunately, without a single dedicated psychiatrist who understood addiction medicine, those referred clients would

be assigned to various psychiatrists in the public system. Those clients were often not forthcoming about their addiction, and they were sometimes prescribed medications such as psychotropic drugs that would conflict with their substance abuse treatment.

- F-132.** In addition to prescription problems, the clients would be provided counseling that was in conflict with their court-ordered drug treatment. There was no coordination with the case managers, and the resulting chaos undermined the treatment providers and was detrimental to the client's overall treatment progress.
- F-133.** Since CAS management did not make arrangements for a dedicated psychiatrist, access to psychiatric services has been purposely limited to avoid future problems.
- F-134.** The County Plan characterizes this curtailment of services as, "The funding for mental health services (psychiatric evaluations and medications) is being decreased, since the need for these services has been decreasing."
- F-135.** In direct contradiction of the County Plan, the first stated priority for all counselors and court-team personnel is the requirement for mental health services. This need was communicated by members of the same organizations that signed the County Plan stating there was decreasing need for those services.
- F-136.** The CAS has overstated its workload. It claims to book about 50 client appointments per day. After deductions for "no shows" for assessments and orientation, the actual show rate is claimed to be about 35 clients per day. The Grand Jury's review of CAS scheduling calendars for a one-month period in May-June 2005 shows there were 286 total appointments, averaging about 12 appointments per day. Of those, about 55, or 18%, were no-shows.
- F-137.** The calendars also revealed that over half of the appointments, 163 of the 286, were not assessments but group orientation sessions. Based on the appointments and no-shows clients, the CAS is performing about four or five assessments a day.
- F-138.** CAS provides "telephone assessment" to clients who need to be re-assessed before returning to treatment after being non-complied. Staff members at the CAS describe telephone assessments with the admonition that, counselors have to listen really well if assessing by telephone.
- F-139.** Many of the staff may not feel qualified to use all of the assessment instruments appropriately. These instruments include the Global Assessment of Functioning (GAF), the Addiction Severity Index (ASI), and the American Society of Addiction Medicine (ASAM) criteria. The use of these instruments will produce numerical scores that describe, among other things, the need for treatment.
- F-140.** The CAS staff knows what range of assessment scores their supervisor will approve, and they frequently put those scores on the assessment to assure their supervisors' approval.

- F-141.** Contract treatment providers notice that most of the assessments from the CAS are very similar (like boilerplate) even for dissimilar clients.
- F-142.** The assessment result from CAS is a combination of the staff's interview with the client and the known expectations of the supervisor.
- F-143.** Drug addicted clients have a hard time dealing with many layers of government bureaucracy. CAS staff members and contract treatment providers all report that dealing with as few different people as possible is best for the clients.
- F-144.** In spite of client confusion caused by layers of bureaucracy, the CAS has further divided their duties so that staff members have specialties of assessment and case management. The client may see one counselor to be assessed and then might be assigned to a different counselor for case management. This is all before they go to a different facility and meet yet another counselor for substance abuse treatment.
- F-145.** There is a specific treatment bottleneck. The flow of information seems to stop at CAS. CAS has told the criminal justice side of the process that bottlenecks are caused by the treatment providers. CAS had told treatment providers the problem is caused by the criminal justice side.
- F-146.** The Grand Jury has found the consistent bottleneck is at the BHD/ADP CAS operation.

Assessment Timeliness

- F-147.** The 2003 Grand Jury was critical of the length of time that would elapse before a client would be required to report to the CAS for assessment. Prior to the 2003 Grand Jury report, it was not unusual to have a client wait two weeks or more to obtain an assessment.
- F-148.** With regard to assessment, the 2003 Grand Jury recommended, and all responding parties concurred, that a "goal of early and positive supervision experience should be pursued to initially set the tone for Prop 36 treatment." The recommendation was specifically to establish an office in the Hall of Justice or Probation for use in immediate assessments subsequent to sentencing.
- F-149.** The Probation Agency expressed in their response to the 2003 Grand Jury that their experience shows, "proximity and timeliness are key elements to success. For this population, allowing five days for a telephone contact and up to three weeks for an initial assessment will result in higher no-show rates."
- F-150.** In public response at the September 28, 2004 meeting of the Board, Ms. Shulman stated,
- We agree as far as being able to move assessment into the Courthouse. We think that would be great. Although now we have looked at the assessment process and I think that a client can get into an assessment within 24 hours of calling now. So that, at least now, the timeframe from which they're referred from the Courts and are able to get assessed, the turnaround

times are much quicker. So, you know, you'll see in our response to the Grand Jury, we pretty much agreed with most of what they had to say, a little taken aback by the tone of the report and do think there are some basic philosophical realities that we're all going to struggle with around whether this is the right way to be dealing with people with drug problems and certainly that'll continue to be an issue.

- F-151.** In the nearly nine months since Ms. Shulman's statement, there appears to be no documented improvement in the time between sentencing and assessment.
- F-152.** The Courts allow a client to take up to five days before calling CAS for an assessment. When a client does call CAS, the appointment could be two weeks or more in the future.
- F-153.** The Grand Jury randomly selected groups of client records (redacted for personally-identifiable client information) to calculate the number of days between sentencing and assessment. As late as May of 2005, dozens of client records show an average of 12 calendar days between sentencing and assessment. One client sampled was seen in two days, four clients were seen within three days, and dozens took nearly two weeks. A few of the sampled clients took more than 30 days to reach the assessment.
- F-154.** Ms. Shulman's statement (see F-152) is technically correct. With a staff of ten full-time addiction and drug treatment specialists, and an average of fewer than five actual assessments a day, it would be possible that a client walking in off the street could be assessed immediately, if the CAS operated in that manner.
- F-155.** In reality there is little or no likelihood of clients actually being assessed that quickly. The CAS appointment calendar, with initial assessments booked days and weeks into the future, contradicts the 24-hour suggestion of Ms. Shulman.
- F-156.** The County Plan approved on May 17, 2005, by the Board and submitted to the State of California states,
- Not all clients who are eligible and referred to Prop. 36 make it to the CAS; however, 90% of the clients assessed do enter treatment. In order to address this issue, for 2005-2006 we plan to have an assessment office in the Hall of Justice, and clients will be required to schedule an appointment or complete an assessment before reporting to Probation if so ordered.
- F-157.** At the Board meeting of May 17, 2005, Ms. Shulman reported that space had been identified to open an assessment center location in the courthouse, stating that she was working on a pilot program with the courts to begin assessments for Prop 36, but looking to use the assessment center for Domestic Violence (DV) Court. She stated that the goal was ultimately to do assessments in the courthouse for all the courtrooms that need referrals.
- F-158.** DV Court does not currently use BHD for assessment services. The current assessments and DV case management is through the Probation Agency.

- F-159.** The assessment process performed by CAS staff, sometimes taking two to two and a half hours, is too lengthy and unpredictable to perform routinely in the Hall of Justice.
- F-160.** After the assessment office is opened in the Hall of Justice, BHD/ADP plans to provide staff to greet new clients as well as schedule their assessment appointments at the CAS. There is a plan to conduct a few assessments to meet the requirements of the 2003 Grand Jury's recommendations, but the majority of the assessments will be conducted in the CAS.
- F-161.** It would be feasible for CAS staff to use this time in the court, after sentencing, to find out where the client lives and send him or her to the nearest treatment facility for assessment and to get started on a treatment program.
- F-162.** Funding for Prop 36 and CAS will be uncertain in the future after the sunset of Prop 36 next year. In addition, the Grand Jury has focused attention on the questionable necessity of BHD/ADP and the CAS assessment and case management functions.

Treatment Providers

- F-163.** It is the responsibility of BHD/ADP, as the designated Lead Agency, to "provide or contract for drug treatment programs."¹³
- F-164.** CAS sends Prop 36 clients to treatment providers to undergo their actual drug treatment services.
- F-165.** All treatment providers, even those operated by the county, reported that they must do their own assessment in order to properly treat a client. Both of the largest outpatient facilities reported that they also conduct an orientation for new clients.
- F-166.** Treatment providers do not rely on the assessments provided by the CAS. Treatment providers frequently disagree with the assessments of the CAS.
- F-167.** Treatment providers also make referrals to ancillary services in the interest of their clients.
- F-168.** The County Plan states, "Once placed in outpatient treatment, it is the responsibility of the treatment provider to report the need for residential services and a treatment adjustment to the CAS case manager."
- F-169.** Treatment providers have been presented with clients who have severe mental illness who have not been referred to mental health treatment by the CAS
- F-170.** The CAS staff members maintain the client files and provide case management functions. The majority of information in the client files is duplicated from files created and maintained at the treatment provider.
- F-171.** Probation and contract treatment providers are capable of providing case management functions. In fact, as the primary contact with the clients, the

¹³ Ventura County Implementation Committee, "Report of the Implementation Committee," June 5, 2001.

treatment providers are required to complete a great deal of duplicative paperwork intended to keep the CAS staff informed of the clients' progress.

- F-172.** When the CAS refers clients to treatment in the county-run facilities in Ventura, Oxnard, and Simi Valley, treatment for those clients can be provided with Drug Medi-Cal (DMC) funds versus Prop 36 funds. Since treatment cannot be billed to Prop 36 for services where DMC is billed, Prop 36 funds are saved when a client is funded by DMC, and county-treated clients do not generally expend Prop 36 funds.
- F-173.** BHD/ADP and the CAS staff do not make recommendations as to treatment methods. Each treatment provider determines its own methods, even within the county-operated facilities.
- F-174.** When the Prop 36 law was placed in effect, the county contracted with treatment providers for substance abuse treatment services. These services can be compared to the services already being provided to drug courts and other court-ordered treatment scenarios.
- F-175.** Treatment providers signed contracts whereby the client is required to pay directly to the treatment provider a co-payment for the major portion of their treatment services. This is an expected part of treatment so that the client has an investment in recovery.
- F-176.** For outpatient services, the county has written contracts that refer to "units of service" that can be billed to the county for Prop 36 treatment. The treatment contracts reimburse the providers only for group and individual counseling hours. There is no reimbursement for assessment, case management, special ancillary treatment services, compliance tracking and reports required by the county. The treatment providers conduct interim assessments throughout the treatment process and those are not compensated either.
- F-177.** In addition to the compensated units of service, the contract treatment providers are required to perform specific case management functions for BHD/ADP CAS such as progress reports, non-compliance reports, termination and discharge reports, attendance summary tracking, drug testing compliance tracking, records preparation for subpoena, job search verifications, and certificates of completion. None of these activities are compensated under the terms of the contracts.
- F-178.** In addition to paperwork required by CAS case managers, treatment providers have daily telephone conferences with CAS personnel answering requests for information such as client whereabouts, non-compliance issues and treatment adjustments. None of these activities are compensated under the contracts.
- F-179.** Written into the formal Probation terms, as well as the treatment provider contracts, is the requirement for clients to make a co-payment for treatment. A client should not be allowed to complete treatment without paying his or her fees. Also, the protocols describe the procedure to non-comply clients who are able to pay but refuse to pay a co-payment.
- F-180.** Treatment providers see the clients more frequently than Probation, the courts, and the CAS case managers. They come to know the clients well

during the course of treatment. The treatment providers can tell when a client is serious about recovery and whether the client shows signs of being unable to pay.

- F-181.** Treatment providers provide services to clients at reduced rates or for free when the client is dedicated to recovery. Treatment providers will report a client to the courts when they appear to have the ability to pay but refuse to do so.
- F-182.** There are times when the treatment providers determine a client can pay, but the courts determine that the client cannot pay. When the courts determine the client cannot pay, the treatment provider may be ordered to perform pro-bono (free) services.
- F-183.** The contract treatment providers are the only Prop 36 stakeholders required to donate services or pay out of pocket to treat Prop 36 clients.
- F-184.** The BHD/ADP requires the contract treatment providers to provide services unrelated to treatment each month. Each month the treatment providers are required to submit a supplemental report of the number of children the clients have, whether they are on DMC, and whether the client left treatment within 30 days or before treatment was completed.
- F-185.** Contract treatment providers are inundated with requirements to provide numerous budget reports to the CAS. The providers are required to submit quarterly reports showing units of service. The county required many quarterly budget and cost reports. Monthly, the providers are called to the county to explain their supplemental reports.
- F-186.** The treatment providers are not compensated for any administrative activities that are associated with drug treatment. The treatment providers have been told by BHD/ADP that administrative activities are not allowable charges under Prop 36.
- F-187.** Although the treatment providers are not allowed to be compensated for the administrative costs under Prop 36, the CAS staff duplicates many of the same functions and CAS staff is fully compensated by Prop 36 funds. It is not clear whether the treatment providers cannot be compensated because those activities are being paid for at the CAS or whether the CAS is using different criteria for their own billing than they use for their contract providers.
- F-188.** The Prop 36 Court has not ordered government employees to work for free:
- When the Probation Agency did not have adequate funding, they were allowed to forego supervision services for misdemeanor defendants.
 - When the county-operated treatment facilities provide substance abuse services for a client who cannot pay, their staff salaries are still paid by the county.
 - When Mental Health experienced financial cutbacks, they eliminated the psychiatric position that was previously dedicated to Prop 36 clients. There was no Court-ordered pro-bono work for psychiatrists.
 - When BHD lacks funds for any service, they quit providing that service.
 - The D.A.'s office can limit its services to those services for which it has funding. The county continues to pay the salaries of the D.A.'s attorneys.

- The Public Defender’s office can limit its services for which it has funding. The county continues to pay the salaries of the Public Defender’s attorneys.
- F-189.** When the Court orders a client to receive free treatment services, the county and Prop 36 do not provide the client’s co-payment fees. The contract treatment providers, who are private companies, are required to comply with the Courts, even though the money comes out of their private accounts.
- F-190.** The County of Ventura compensates outpatient treatment providers at the rate of about \$9-10 per hour for group sessions and \$18-25 per hour for private sessions. These fees are for direct treatment session hours. There is no compensation for other services such as coordinating paperwork or providing documents to the CAS.
- F-191.** Even though their contracts allow treatment providers to collect a co-payment for treatment services, the county restricts this ability by giving the clients a reduced fee. Approximately 80% of the Prop 36 clients at the contract treatment providers have a reduced fee or refuse to pay. The treatment provider is not allowed to provide sanctions to clients who refuse to pay. The BHD/ADP does not compensate the treatment providers’ losses from Prop 36 funds.
- F-192.** Capacity continues to be a problem with Prop 36 treatment providers. The County Plan states, “Funding decreases from other sources has caused some treatment providers to lay off staff and reduce the number of slots and beds available.”
- F-193.** Whether the county is exercising good business or sharp practices, the contract treatment provider appears to bear the entire risk for clients who might be inappropriate risks and who cannot be forced to pay treatment fees.
- F-194.** BHD/ADP certainly knows the terms of the contracts, and the contractors have made BHD/ADP aware of their concerns.
- F-195.** Other than BHD/ADP, the stakeholders share the opinion that treatment providers have a competing profit motive that prevents them for being objective about compliance and non-compliance. This perception of the treatment providers has not been discouraged by BHD/ADP.

Treatment Examined

- F-196.** BHD/ADP management and CAS treatment specialists provide no added value to the treatment process for Prop 36.
- F-197.** Even without the bureaucratic creations of BDH/ADP, there are some paperwork and bookkeeping functions required by Prop 36. There is a requirement for bookkeeping or clerical employees.
- F-198.** Assessment must be redone by the treatment provider before treatment begins, but the treatment provider cannot bill the county for assessment services.
- F-199.** Referrals to ancillary services can be performed by the treatment providers or Probation with the same or more effectiveness than CAS.

- F-200.** CAS has insinuated itself into the communication channels and has effectively lengthened the time required to pass information from the treatment providers to the Courts.
- F-201.** As a central delivery point for drug test results, CAS is a bottleneck when disseminating the test results to treatment providers for treatment adjustments.

Wrestling with Protocols

- F-202.** Treatment providers are the experts in addiction. In any other court-ordered treatment programs, the treatment providers establish the protocols and work closely with Probation to ensure those protocols are followed.
- F-203.** Since the inception of Prop 36, the stakeholders have been wrestling with treatment and compliance protocols. This struggle over the protocols is unprecedented.
- F-204.** From the first year of implementation, there was a mandated communication firewall between the treatment providers and the Probation Agency and the courts. Partially as a result of this firewall, treatment information was bottlenecked in the BHD/ADP CAS facility.
- F-205.** Information on non-compliances was of particular concern. Treatment providers were sending non-compliance information to CAS to be passed to the Courts, and CAS was making a local determination that those offenses were not to be a violation.
- F-206.** When criminal justice stakeholders noticed that many known offenders were still at large, BHD/AP blamed the contract treatment providers.
- F-207.** The Grand Jury finds that the continual adjustments to treatment protocols and non-compliance reporting requirements are likely a direct result of communications problems mostly attributable to BHD/ADP.
- F-208.** Changes to the protocols are of concern when there is no effort to collect and report data on the success of any given protocol.
- F-209.** Constantly changing treatment, testing, and attendance protocols is confusing to providers and clients alike.
- F-210.** All Ventura County stakeholders are trying to define the parameters of successful drug treatment services. These agencies are not deferring to the treatment providers with regard to treatment decisions.
- F-211.** The treatment decisions are now being made by the Operations Committee. Treatment is no longer based on the reasoned treatment experience of treatment providers. Treatment is now based on the need for public safety official to close the gate on the problems created by BHD/ADP.
- F-212.** Removing BHD/ADP from the process can promote a return to a more logical and natural process with improved information flow.
- F-213.** Probation is very good at coordinating with treatment providers for delivery of services in a court-ordered drug treatment program.

Funding

- F-214.** It is the responsibility of BHD/ADP, as the designated Lead Agency, to “administer Prop. 36 funds” and “coordinate the county plan.”¹⁴
- F-215.** Each fiscal year, the Prop 36 County Plan is prepared for submission to the State. The County Plan describes, among other things, the funding distribution. The plan usually states that it was compiled by BHD/ADP with input from the Operations Committee, community-based treatment providers, and others. The Board approves the plan and then it is submitted to the state.
- F-216.** Operations Committee members (other than BHD/ADP) and community-based treatment providers do not actively participate in the financial aspects of the County Plan.
- F-217.** Other than BHD/ADP, members of the newly-formed Oversight Committee do not participate in the financial aspects of the County Plan. Oversight members refer to the high levels of trust required when working with inter-agency collaborations.
- F-218.** There are two categories of funding in Prop 36. The “criminal justice” category in Prop 36 includes probation, supervision, monitoring, and other related activities. “Treatment services” refers to drug treatment and related services such as literacy training, vocational training, family counseling, and psychiatric services.
- F-219.** Ventura County has chosen to allocate approximately 75 percent of the budget to direct treatment services and 25 percent to criminal justice.¹⁵
- F-220.** A funding limitation is cited as the sole reason that Probation cannot provide oversight to the entire Prop 36 client community.
- F-221.** Since inception of Prop 36, Ventura County has shown an excess of more than a million dollars at the end of each fiscal year. In fiscal year 2003-2004, BHD/ADP earned over \$33,000 in interest on unspent Prop 36 funds.
- F-222.** The California Department of Drug and Alcohol Programs (DDAP), administrators of Prop 36, have published memos stating that counties that have excess Prop 36 funds may be required to return them to the state for redistribution to under-funded counties.
- F-223.** In the annual reporting to the State of California, Ventura County BHD/ADP reports that, over the first three years of implementation, approximately 75% of Prop 36 funding is allocated to direct treatment services.¹⁶
- F-224.** The Board Letter to submit the FY 2004-2005 Ventura County Plan was signed by Linda Shulman, M.F.T., Director of Behavioral Health and Dr.

¹⁴ Ventura County Implementation Committee, “Report of the Implementation Committee,” June 5, 2001.

¹⁵ Proposition 36 Analysis of Plans from the 58 Counties, <http://www.adp.cahwnet.gov/SACPA/coplanindex.shtml>

¹⁶ Health Systems Research, Inc., “Substance Abuse and Crime Prevention Act of 2000: Analysis of FY 2003/04 Plans from the 58 Counties,” http://www.adp.cahwnet.gov/SACPA/pdf/SACPA-AnalysisOf58CountyPlans_2003-04.pdf, September 30, 2004.

Pierre Durand, Director of the Health Care Agency on June 8, 2004.¹⁷ This Board Letter states,

In FY2004/05, State funding for Prop 36 services has been allocated at \$2,865,608, an increase of \$102,941 over FY2003/04. An additional estimated \$1,080,044 in rollover funding from prior years will bring the total available funding to \$3,945,652. Under agreement, 75% of these funds will be used to fund direct substance abuse treatment services. The remaining 25% of the allocation will be used by the Probation Agency to fund services for the supervision and monitoring of offenders. \$614,311 will be held back to be rolled over to FY 2005-06 to assist with maintaining the current level of service over two-year period.

F-225. As described in this Board Letter, the intentions of BHD/ADP for FY 2004-05 are shown in Table 1. The table differs from the text in that the carryover funding of \$614 thousand is reserved *before* the total available funding is distributed.

Description from June 8, 2004 Board Letter	Amount	Purpose
FY 04-05 State "Allocated"	\$2,865,608	
Prior Year "rollover funding"	\$1,080,044	
"held back and rolled over to FY 2005-06"	\$ 614,311	"to assist with maintaining the current level of service over two-year period"
"total available funding"	\$3,331,341	
"75% of these funds"	\$2,498,506	"direct substance abuse treatment services"
"remaining 25% of the allocation"	\$ 832,835	"Probation Agency to fund services for supervision and monitoring of offenders"

Table 1. Funding description from June 8, 2004 Board Letter

F-226. The Board Letter states, "The FY2004/05 Plan specifies core treatment services as follows: 52% of the funds will be provided for residential treatment services, 38% will go towards outpatient services, 3% will go towards medical detoxification services, and another 7% will be utilized for sober living.

F-227. The 75% of the funds allocated to "direct substance abuse treatment" are seen in Table 2.

¹⁷ Behavioral Health Department, "Approval of FY 2004/05 Behavioral Health Department Alcohol and Drug Program (BHD/ADP) County Plan for Proposition 36 Services," Letter to Board of Supervisors. June 8, 2004. <http://gsa-docushare.countyofventura.org/dscgi/ds.py/Get/File-11396/20040602165739.PDF>

Description from June 8, 2004 Board Letter	FY 04-05 Allocated Amount (\$)	FY 03-04 Actual Expenditures (\$)	Current FY Expenditures (Thru May 2005) (\$)	Current FY Budget (\$)
"75% of FY 2004-2005 Prop 36 funds"	2,498,506	Direct substance abuse treatment services		
52% for residential	1,299,223	572,035	466,811	1,293,632
7% sober living	174,895			
38% for outpatient	949,432	365,306	\$ 324,665	
3% medical detox	74,955	---	16,800	
Other services	77,660		0	60,000
CAS/CAC - Salaries and Benefits	-----		996,111	1,258,995
CAS/CAC - Everything Else	-----		173,100	286,780

Table 2. Funding narrative from FY 2004-05 County Plan

- F-228.** Although the County Plans and other documents do not highlight the cost of the CAS assessment center, this facility and its staff consume more than half of the allocated treatment dollars.
- F-229.** In Table 2, as of May 2005 a total of \$808,276 of Prop 36 funds was paid to treatment providers for residential services, sober living, detox and outpatient services. A total of \$1,169,211 has been paid for the CAS assessments and case management as well as program administrative costs.
- F-230.** As a general reference, CAS performs a two-hour assessment for a Level 2 client who receives an average of 66 program hours in a year. Including case management and assuming the services were not redundant, the CAS provides no more than 5% of the services and receives over 60% of the treatment funding.
- F-231.** The Board Letter to submit the FY 2005-2006 Ventura County Plan was signed by all members of the Oversight Committee: John F. Johnston, Chief Executive Officer; Bob Brooks, Sheriff; Gregory D. Totten, District Attorney; Honorable John E. Dobroth, County of Ventura Superior Court; Dr. Pierre Durand, Health Care Agency Director; Linda Shulman, M.F.T., Director, Behavioral Health Department, Calvin C. Remington, Director/Chief Probation Officer; and Kenneth Clayman, Public Defender. It states,
- In FY2005/06, State funding for Prop. 36 services has been allocated at \$2,856,660. A projected \$1,000,000 in rollover monies from FY 2004-2005 will bring total available for the proposed Plan to \$3,856,660: approximately 75% will be used for direct substance treatment services, 23% will be used for criminal justice expenditures (courts, probation, etc.), and the remaining 2% will be used for supplemental services for treatment. The

funds that are designated for treatment services will be distributed as follows: 34% residential treatment services, 64% outpatient services, and 2% are medical detoxification services.

F-232. The 75% of the funds allocated to “direct substance abuse treatment” are seen in Table 3. There are no actual costs for FY 2005-2006 to compare, but there is nothing in the County Plan or proposed budget to indicate that CAS costs will be any different from those seen today.

Description from May 17, 2005 Board Letter	Amount	Treatment funds	Purpose
FY 05-06 State “Allocated”	\$2,856,660		
Prior Year “rollover funding”	\$1,000,000		
“total available funding”	\$3,856,660		
“75% of these funds”	\$2,892,495		“Direct substance abuse treatment services”
34% Residential Treatment		\$ 983,448	
64% Outpatient Treatment		\$ 1,735,497	FY 04-05 Combined outpatient contracts approximately \$370,000
2% Medical Detox		\$ 57,850	
“23% criminal justice”	\$ 887,032		
“2% medical detox”	\$ 77,133		

Table 3. Funding description from May 17, 2005 Board Letter

- F-233.** The two largest Prop 36 treatment providers have a combined 5,500 square feet of space dedicated to treating Prop 36 offenders. The CAC is roughly 5,900 square feet. The CAC treats no clients.
- F-234.** DMC will pay for many of the same drug treatment services that Prop 36 provides. BHD/ADP encourages contractors to qualify for DMC reimbursement.
- F-235.** When a client is referred to a county drug treatment provider, DMC is billed for the treatment if possible. BHD/ADP is not required to expend Prop 36 funds for clients paid through DMC.
- F-236.** As defined by Prop 36, “direct treatment services” includes the CAS building and staff. Direct treatment includes the indirect salaries of CAS support staff and management personnel.
- F-237.** When the Operations Committee and BHD/ADP limit the Prop 36 funds allowed for Probation, that agency must pay for some Prop 36 supervision from their county-funded budget (general fund dollars).
- F-238.** General fund dollars, as well as reimbursable public health referrals, are

currently being used to pay some ancillary services for Prop 36 clients based on agreements between the Board and BHD/ADP.¹⁸

- F-239.** Prop 36 funds cannot be used for drug testing. However, County general fund dollars can be used for drug testing.

Conclusions

- C-01.** If drug abuse and the associated criminal behaviors are truly reduced, public safety will likely be enhanced. Jail and prison cells would be preserved for serious offenders. (F-01, F-02)
- C-02.** BHD/ADP has not demonstrated true leadership. There is an obvious knowledge of funding – how to acquire it and how to keep it – but there is no indication that the leadership can make effective policy and see it through implementation. (F-119 thru F-122, F-230)
- C-03.** BHD/ADP manages reactively, driven to deflect criticism. Rather than real policy changes, the change often witnessed is verbal: the situation may be redefined verbally so that action is not necessary. In the absence of critical thinking, this technique of redefining the problem and fashioning words to appear successful appears to work very well in Ventura County. (F-13, F-49, F-50, F-52, F-102, F-103, F-104, F-107)
- C-04.** True collaboration involves open communication. While emails and private conversations are necessary to coordinate meetings and introduce topics, the meetings should be held so that all opinions are heard by all parties at the same time. The individual conversations and emails can appear secretive, and in a meeting that makes decisions by consensus, it is often unclear how that consensus was reached. (F-49, F-50)
- C-05.** It is hard for the Grand Jury to understand how Prop 36 is lacking in psychiatric services. It was reported that a psychiatrist is not available because of funding cuts in the county budget. It was found that BHD/ADP was allowed to pay for a psychiatrist with Prop 36 funds as an ancillary service. The County Plan states that there is no need to issue contracts for services because there is no problem at this time. Yet everyone treating clients states there is a problem with the lack of psychiatric services. (F-125, F-126, F-127, F-130 thru F-135)
- C-06.** BHD/ADP has not been forthcoming in communicating how little the CAS actually accomplishes. (F-123 thru F-146)
- C-07.** BHD/ADP has not been proactive in analyzing or balancing the costs of treatment delivery. Their neglect in this area is self-serving to the detriment of clients and public safety. (F-119 thru F-122, F-230)
- C-08.** BHD/ADP has not been proactive in determining the needs of the clients and establishing means to satisfy those needs. (F-130 thru F-135)

¹⁸ FY 2005-2006 County Plan, “Many of the additional ancillary services...are currently leveraged with existing County-operated programs.”

- C-09.** BHD/ADP has not been forthcoming in describing court assessment as only an added layer to the already confusing bureaucracy. (F-123 thru F-146)
- C-10.** One measure of program leadership is the ability to develop a service-delivery plan and then execute that plan. Every year BHD/ADP has funds in excess of their intentions, and this equates to services not delivered and program objectives not achieved. (F-221 thru F-231)
- C-11.** The differences between the BHD and the Probation Agency strongly demonstrate the difference between “bureaucracy” and “public service.” (F-110, F-146)
- C-12.** Probation has a long and accomplished track record of supervising offenders and providing treatment services as court-ordered terms of probation. (F-109, F-110, F-112, F-113)
- C-13.** With adequate funding, Probation is the appropriate agency to lead the implementation of Prop 36 in Ventura County. (F-114, F-115)
- C-14.** The Oversight Committee was never recommended by the 2003 Grand Jury and is, indeed, another ineffective layer of bureaucracy. (F-32 thru F-63)
- C-15.** The cost of operating the CAS is not justified by the results obtained. This one organization consumes vast financial resources in pursuit of unnecessary duplication of services. (F-228, F-229, F-230)
- C-16.** The largest problem acknowledged by all stakeholders is the lack of money for adequate drug testing. If Prop 36 funds were used for treatment and oversight as originally intended, then the general fund dollars now needlessly supplementing Prop 36 could be redirected to the drug testing efforts. (F-237, F-238, F-239)
- C-17.** The decision to place more than half of all Prop 36 offenders on conditional release, without formal probation, may have been effective had BHD/ADP fulfilled their promise of oversight and non-compliance reporting. (F-10, F-31, F-65, F-88 thru F-94)
- C-18.** Having early recognized that it could not fulfill the client supervision role, BHD/ADP should have accepted that it was its responsibility as a stakeholder, and particularly as the Lead Agency, to fulfill this objective in another way. Shirking responsibility until it was forced on it by events and criticism is an indicator that the department lacks leadership. (F-93 thru F-108)
- C-19.** Addiction specialists working in the CAS are very dedicated individuals who were convinced by BHD/ADP management that their function was necessary and vital to the treatment delivery process. They should be reassigned to a position where their skills as drug counselors can be used to the real benefit of the Prop 36 clients. (F-123 thru F-145)
- C-20.** Treatment providers, both within the county as well as the contract providers, are continuing to do what they do best – treat substance abuse and addiction. They are stubbornly treating addiction and showing success with clients despite everything the county has done to hinder their efforts. The Grand Jury believes they could accomplish much more if the county would help them. (F-163 thru F-195)

- C-21.** Treatment providers are experts at addiction treatment. Probation is expert at supervision of offenders. These two stakeholders will produce the most effective delivery model for treatment and supervision that should satisfy all stakeholders. (F-164 thru F-169, F-173, F-180, F-109 thru F-113, F-213)
- C-22.** Adjusting and readjusting the protocols was only necessary because BHD/ADP was in the process, prohibiting the natural flow of communication from treatment providers and the courts. By removing the impediments to communications, a simple protocol can be implemented with the assistance of treatment providers to incorporate treatment objectives and supervision objectives. (F-54, F-55, F-97, F-202 thru F-213)
- C-23.** Treatment providers have been used to absorb unrecoverable costs of Prop 36 and they have been called upon to absorb additional bureaucratic requirements as they come up. BHD/ADP has offloaded as many administrative burdens of the program to the contractors as they could, without cost reimbursement. (F-176, F-177, F-178)
- C-24.** Any success that Prop 36 has had in Ventura County is directly attributable to the dedication of the treatment providers. These contractors, county employees, and charity-based providers have held the programs on course in spite of BHD/ADP. It is obvious that these providers believe in the work they are doing, and they have demonstrated that, if necessary, they would do it for free. The county should be grateful we have such dedicated treatment providers and should not take advantage of their dedication. (F-181, F-182, F-183, F-190, F-191, F-194, F-195)
- C-25.** The present contracts with treatment providers have problems that need to be analyzed and addressed. Treatment providers have not been adequately compensated for their services. There are too many government-driven variances in the fees that can negatively impact the treatment providers. Contracts should be rewritten so that the government and the treatment providers more equitably share the risk when the government makes an arbitrary program adjustment or new program requirement. (F-165 thru 170, F-176, F-177, F-178, F-182 thru F-195)

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.
- R-02.** Immediately designate Probation as the Lead Agency for Prop 36.
- 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.
- 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.
- R-05.** Formally request through the courts that all Prop 36 offenders be placed on

formal probation.

- 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.
- 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.
- R-08.** Move the addiction specialists from the CAC to the county-operated treatment centers and establish additional DMC reimbursed treatment capacity.
- R-09.** Under Probation leadership, provide financial accountability and oversight of all Prop 36 funds. Bring funding allocation decisions back to the Operations Committee.
- 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.
- 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.
- 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 programs.

Responses

Responses Required (R-1 thru R-12):

- Board of Supervisors
- County Executive Officer
- District Attorney
- Health Care Agency
- Probation Agency
- Public Defender
- Ventura County Sheriff

Commendations

The successes in treatment seen by Prop 36 clients are directly attributable to the dedication and selflessness of all treatment providers. The treatment providers and counselors have such dedication to drug treatment that they refuse to allow poor management and bureaucratic ineffectiveness to interfere with the treatment of their clients.

Attachments

Attachment 1. “Planned Services by Type Using SACPA Funds in the 12 Large Counties in FY 2003/04” from “Substance Abuse and Crime Prevention Act of 2000: Analysis of FY 2003/04 Plans from the 58 Counties”

