

# Administration of Proposition 36 in Ventura County: A Review

## Summary

In June 2004, the Ventura County 2003-2004 Grand Jury (2003 Grand Jury) published a report critical of the county's implementation of The Substance Abuse and Crime Prevention Act of 2000 (Proposition 36) (Prop 36). The 2003 Report provided twelve detailed recommendations designed to enhance public safety and help the program operate more efficiently.

In June 2005, the Ventura County 2004-2005 Grand Jury (2004 Grand Jury) published an also critical report, restating the unresolved issues from the 2003 Grand Jury report coupled with additional recommendations from their own inquiries.

The current, 2005-2006 Grand Jury (Grand Jury), has conducted an investigative review to determine the present state of Prop 36 Administration in Ventura County and has found it improved with fiscal year 2006-2007 plans indicating potential to become more effective and efficient.

## Background

Prop 36 took effect on July 1, 2001, changing state law so that certain adult offenders who use or possess illegal drugs would receive drug treatment as a term of probation rather than be sent to state prison or county jail.

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" that was highly critical of the leadership provided by the Behavioral Health Department's Alcohol Drug Program (BHD/ADP). The 2003 Report, submitted to the Board of Supervisors, provided twelve detailed recommendations designed to enhance public safety and help the program operate more efficiently.

The 2004 Grand Jury conducted an investigation that revealed a number of areas where the Board of Supervisors, County Executive Officer, Director of the Health Care Agency, and the Director of the Behavioral Health Department failed to take appropriate action in assessing and implementing the recommendations of the 2003 Grand Jury. The 2004 Grand Jury published an also critical report, restating the unresolved issues from the 2003 Grand Jury report coupled with additional results of their own inquiries.

Significant milestones affecting the Prop 36 program and considered in this report are:

- On March 7, 2006, the Probation Agency (Probation) was designated Lead Agency for Prop 36.
- Each year, counties are required to submit a plan to the State Department of Alcohol and Drug Programs by May 1 that describes the planning, delivery, and

funding of services under Prop 36. The plan, proposed by Probation, was submitted to the State on May 1, 2006.

- The Fiscal Year 2006-2007 (FY 2006-07) State funding for Prop 36, allocated at \$2,855,244 with a projected rollover of \$200,000, totaling \$3,055,244 will be available on July 1, 2006.

The Grand Jury has conducted an investigative review to determine the current status of the administration of Prop 36 in Ventura County, particularly with respect to action and implementation of recommendations of the 2003 and 2004 Grand Juries.

## Methodology

The Grand Jury reviewed the recommendations of the 2003 and 2004 Grand Juries and the responses provided by the county agencies. The Grand Jury interviewed health providers and county agencies with respect to actions implementing recommendations of the 2003 and 2004 Grand Juries and the status of operation, results, and efficiency of Prop 36 in the County of Ventura. The Grand Jury reviewed the Ventura County Probation Agency FY 2006-07 Proposed Plan for Prop 36.

## Findings

### General

- F-01.** Probation was designated Lead Agency for Prop 36 on March 7, 2006.
- F-02.** Each year, counties are required to submit a plan to the State Department of Alcohol and Drug Programs by May 1 that describes the planning, delivery, and funding of services under Prop 36. The plan, proposed by Probation, was submitted to the State on May 1, 2006.
- F-03.** The FY 2006-07 State funding for Prop 36, allocated at \$2,855,244 with a projected rollover of \$200,000, totaling \$3,055,244 will be available on July 1, 2006.
- F-04.** Probation has contracted through an annual Memorandum of Understanding (MOU) with BHD/ADP for certain treatment, drug testing, and aftercare services. BHD/ADP, in conjunction and with input from Probation, is responsible for the selection of community-based treatment service providers.
- F-05.** Probation and BHD/ADP staff will also seek input from the Prop 36 Oversight and Operations Committees and the County Alcohol and Drug Advisory Board regarding selection of service providers.
- F-06.** All outpatient treatment providers will be required to seek approval for Drug Medi-Cal certification as a part of their contractual responsibilities in FY 2006-07.
- F-07.** The BHD/ADP Central Assessment Center will be closed July, 2006; when a client is sentenced to Prop 36, they will report directly to the newly formed Quick Start Assessment Center (Quick Start) located in the Government Center's Hall of Justice.

- F-08.** The FY 2006-07 Plan provides for processing of treatment violations on clients under summary probation to be transferred from the Office of the District Attorney (DA) to Probation.
- F-09.** A new protocol for processing treatment violations has been implemented for all cases, with the goal of moving information to the Court more quickly.
- F-10.** A new computer system, intended to increase the efficiency of data sharing between Probation, the Court, and Providers, is being installed.
- F-11.** Approximately 45% to 50% of the clients assigned to Providers have some degree of psychological or psychiatric problem.
- F-12.** Of those drug offenders with psychological or psychiatric problems, only 25% receive appropriate treatment for those problems, none of which are funded through the Prop 36 program.
- F-13.** Criminal justice officials often assert that the psychological or psychiatric conditions suffered by drug offenders are a consequence of drug abuse.
- F-14.** Drug treatment professionals assert that drug abuse is often a consequence of psychological or psychiatric conditions (contrary to the assertions indicated in F-13).
- F-15.** The Prop 36 program has hired a Licensed Clinical Social Worker to assist in determining required care for clients.

#### Implementation of the 2003-2004 Grand Jury Recommendations

After quoting a recommendation from the report of the 2003 Grand Jury, the current status of that recommendation — as determined by the current Grand Jury — is presented.

- F-16.** *(R-01) The Board of Supervisors undertakes the reorganization of Prop 36 implementation within Ventura County in order to better accomplish the statutory mandates and scheme intended under Prop 36. ---*  
Implementation of this recommendation is currently underway under the leadership of Probation.
- F-17.** *(R-02) The Board of Supervisors withdraws the Lead Agency designation from BHD/ADP and designates the County Executive Officer (CEO) as the Lead Agency for Prop 36 management and oversight functions.*  
This recommendation was superceded by the 2004 Grand Jury recommendation that Probation be the lead.
- F-18.** *(R-03) Having assumed responsibility for leading Prop 36 treatment programs in the past, BHD/ADP may function as the County's expert in recommending treatment methods and the standards of successful treatment program completion.*  
This is now being done.
- F-19.** *(R-04) The County should address the issue of "unamenability," as described in the statute and case law, with a view toward bringing the concept to bear in County Practice.*

This is a stated goal of Probation that is not yet attained.

- F-20.** *(R-05) In order to organize and provide actionable information to the probationary supervision, top priority should be given to implementing an integrated information system designed for that purpose.*

This is in progress. Complete implementation is expected early in FY 2006-07.

- F-21.** *(R-06) Probation develops a basic risk management system or protocol to look at key indicators of a client's profile to determine the risk to society.*

The status of this recommendation is unknown.

- F-22.** *(R07) The immediate establishment of a meaningful treatment completion standard in accordance with the spirit and intent of Prop 36.*

The status of this recommendation is unknown.

- F-23.** *(R-08) The Operations and Oversight Committee be re-constituted as the representative body for all stakeholders.*

Little progress toward this recommendation has been observed.

- F-24.** *(R-09) The drug testing protocol should be tightened immediately.*

Drug testing has increased from one to three times per week.

- F-25.** *(R-10) Though, by policy, drug testing is to be used for treatment purposes, public safety concerns require that Probation continue to conduct drug testing.*

The need for this has been overcome by a new protocol.

- F-26.** *(R-11) A goal of early and positive supervision experience should be pursued to initially set the tone for Prop 36 treatment.*

The Quick-Start office has been established within the courthouse.

- F-27.** *(R-12) The Operations and Oversight Committee should institute thoughtful and allowable sanctions for offenders who fail in treatment, submit positive drug tests, or who miss treatment classes.*

This remains a goal.

#### Implementation of the 2004-2005 Grand Jury Recommendations

After quoting a recommendation from the report of the 2004 Grand Jury, the current status of that recommendation — as determined by the current Grand Jury — is presented.

- F-28.** *(R-01) Immediately remove BHD/ADP as Lead Agency of Prop 36. Contact the State Department of Alcohol and Drug Programs to coordinate and emergency halt to the submitted County Plan.*

The County Plan has been changed to designate Probation as the Lead Agency and was submitted to the State on May 1, 2006.

- F-29.** *(R-02) Immediately designate Probation as the Lead Agency for Prop 36.*

Probation is now the Lead Agency.

- F-30.** *(R-03) Immediately disband the Prop 36 Oversight Committee and establish guidelines for the Operations Committee to operate in an organizational fashion and make decisions, with provisions to obtain approvals from department heads when necessary.*

The Oversight Committee still exists with a better defined purpose and function. Guidelines for the Operations Committee have yet to be developed.

- F-31.** *(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.*

The CAC is being closed and replaced by the Quick Start office within the courthouse.

- F-32.** *(R-05) Formally request through the courts that all Prop 36 offenders be placed on formal probation.*

Because of a lack of sufficient resources to handle the case load that this recommendation would create, this is opposed by Probation. Reorganization of the Prop 36 program under Probation may make this unnecessary.

- F-33.** *(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.*

This is now being done at the Quick Start office within the courthouse.

- F-34.** *(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.*

BHD/ADP remains the treatment expert.

- F-35.** *(R-08) Move the addiction specialists from the CAC to the county-operated treatment centers and establish additional DMC reimbursed treatment capacity.*

The status of this recommendation is unknown.

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

This recommendation has been implemented.

- F-37.** *(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.*

The status of this recommendation is unknown.

- F-38.** *(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 ordered to treat Prop 36 clients on a pro-bono basis.*

This problem became severe at the beginning of FY 2005-06, placing the providers at risk of fiscal crises and prompting the current Grand Jury investigation. However, it now appears that this problem is being resolved.

- F-39.** *(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.*

BHD/ADP remains the treatment expert.

## Conclusions

- C-01.** Many of the recommendations of the 2003 and 2004 Grand Juries have been adopted and implemented. (F-01, F-07, F-09, F-10, F-16, F-18, F-20, F-24, F-26, F-28, F-29, F-31, F-33, F-36, F-38)
- C-02.** Other recommendations of the 2003 and 2004 Grand Juries are in the process of being implemented. (F-19, F-20, F-23, F-27, F-30)
- C-03.** The status of still other recommendations of the 2003 and 2004 Grand Juries remains unknown. Since the Prop 36 program is undergoing a significant revision under Probation, the current Grand Jury chooses not to investigate further into those recommendations at this time. (F-01 through F-03, F-21, F-22, F-35, F-37)
- C-04.** A more formalized and coordinated approach appears to be taking place. (F-04, F-05)
- C-05.** With a new agency designated Lead Agency in May 2006 and a new County Prop 36 Plan taking effect July 1, 2006; the entire program will be in a period of transition well into the first quarter of FY 2006-2007. (F-01 through F-03)
- C-06.** A lack of psychological and psychiatric treatment for drug offenders may reduce the effectiveness of the Prop 36 program. (F-11 through F-14)

## Recommendations

- R-01.** The Grand Jury requests feedback on progress towards completing those recommendations from prior reports that are still underway. (C-02)
- R-02.** Probation and BHD/ADP should jointly ensure that appropriate psychological and psychiatric treatments are available to Prop 36 clients. (C-06)

**Responses Required From:**

Board of Supervisors (R-01, R-02)

County Executive Officer (R-01, R-02)

Health Care Agency (R-01, R-02)

Probation Agency (R-01, R-02)

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