

Ventura County Grand Jury 2010 - 2011



Final Report

Under-Enrollment in Proposition 36

June 10, 2011

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Under-Enrollment in Proposition 36

Summary

In November of 2000, California voters approved Proposition 36 (Prop 36), the Substance Abuse and Crime Prevention Act of 2000 (SACPA). Ten years later, counties receive no State of California (State) money to support Prop 36. The 2010-2011 Ventura County Grand Jury (Grand Jury) noted a decline in Prop 36 enrollment and elected to look at what factors, in addition to the lack of funding, contribute to the lower enrollment.

Ventura County (County) agencies are conflicted about the efficacy of Prop 36. Contributing factors to the purported failure of Prop 36 are: a high rate of repeat offenders; offenders with severe addictions; offenders with concurrent mental health issues or non-drug-related criminal charges; long waiting lists for fewer affordable treatment programs; and a shift of program fees from the County to the offenders. [Ref-01 and Ref-02]

The University of California at Los Angeles (UCLA) conducted a comprehensive study on Prop 36, including the empirical measurement of how success is defined and who defines it. There are many factors which impede success in the Prop 36 program, the most significant being a lack of funding. Without funding, offenders who could benefit most from substance abuse treatment will continue to fill our jails and prisons. [Ref-03]

The Grand Jury recommends that the Ventura County Board of Supervisors (BOS) continue to assist the Ventura County Probation Agency (VCPA) and the Ventura County Behavioral Health Department (VCBHD) in finding alternative sources of funding to better accomplish the statutory mandates intended under Prop 36. The BOS should ensure that adequate personnel are designated to be responsible for tracking offenders from the Prop 36 Courtroom, through the treatment process, and back to the Prop 36 Judge, in order to determine rehabilitative outcomes. The BOS should ensure that some kind of statistical process be put in place to calculate success, recidivism, and failure rates of the County's Prop 36 program.

Background

Prop 36 is a voter-approved and government-funded initiative passed by the people of California in 2000 to provide treatment to non-violent substance abusers in lieu of incarceration. The law became effective statewide on July 1, 2001. Prop 36 changed State law so that certain adult offenders who use or possess illegal drugs could receive drug treatment as a term of probation, rather than be sent to jail or prison. The SACPA provides substance abuse treatment without incarceration for eligible offenders. [Ref-03]

Though the State fulfilled its five-year funding obligation, since then, funding has severely declined. California counties have struggled to secure other sources of funding. The State currently contributes nothing to Prop 36

programs. The people of California overwhelmingly voted for this initiative, yet government funding at the State and county levels is all but non-existent.

Over the past seven years, Ventura County grand juries have written exhaustive reports on Prop 36: The 2003-2004 Grand Jury looked at its implementation; The 2004-2005 Grand Jury examined administrative reforms; and the 2005-2006 Grand Jury performed a review of the administration of Prop 36. It is not the intention of the current Grand Jury to continue to analyze the initiative in this manner. Rather, the Grand Jury noted a decline in enrollment and elected to look at what factors, in addition to the lack of funding, may contribute to under-enrollment.

Methodology

To assess statewide funding over the years, the Grand Jury researched press releases from the Drug Policy Alliance of the California Capital Office in Sacramento, California (Sacramento Press Releases). To assess local funding trends, the Grand Jury researched the archives of the *Ventura County Star* (VC Star).

To examine other factors that might account for under-enrollment in Prop 36, the Grand Jury interviewed representatives of the VCPA, the VCBHD, and the Public Defender's Office. The Grand Jury visited the Prop 36 Courtroom and observed several offenders opt into the Prop 36 program.

Facts

FA-01. According to various Sacramento Press Releases, from 2001 to 2005, there were many indications that Prop 36 was successful. It was working as intended, even exceeding expectations with huge savings. In April of 2006, “. . . . Proposition 36 Saved California \$1.4 Billion in First Five Years. . . .” At the beginning of 2007, funding for Prop 36 became a County responsibility. In spite of the fact that the drug treatment program's success was still being realized, it was “downplayed” by the media. [Ref-04]

FA-02. According to the VC Star in November 2007, the trend of County funding was similar to that of the State. In spite of a \$1.2 million loss of State funding to the County Prop 36 program, County officials wanted Prop 36 drug treatment to continue. In order to accomplish this, they shifted funds and increased the caseloads of counselors. The VC Star quoted Margaret Dooley-Sammuli, then the Prop 36 coordinator for the Drug Policy Alliance, which wrote the measure in 2000, as stating “The measure included guaranteed funding for five years, but that expired last year, so now the program is at the mercy of the Legislature and the governor. . . . The idea . . . was that after five years of evidence to show that the program works, the Legislature would be convinced that this was a good investment . . .” [Ref-05]

- FA-03.** An October 2008 VC Star article reported a crime spike in the wake of Prop 36, stating that arrests for drug and property crimes had grown because voters approved sending non-violent drug offenders to treatment instead of jail. Though the initiative was designed for first- and second-time non-violent offenders, many who opted into the program, though non-violent, had a history of ten or more years of addiction. The article goes on to speculate that those same offenders would do better in an inpatient setting, which is more expensive, rather than in an outpatient setting. In fact, in Ventura County in 2005-2006, it was reported that 85% of the nearly 800 County offenders in the Prop 36 program were in outpatient treatment. [Ref-06]
- FA-04.** In April 2009, a drastic measure was taken when the office of the Ventura County District Attorney (DA) withdrew support for the Prop 36 program. A VC Star headline stated, "Ventura County DA to yank prosecutor from drug court program." A representative of the DA called the initiative a "failed public policy" and said that many repeat offenders were using Prop 36 as a "get-out-of-jail card." Originally, the DA's role in Prop 36 Court was to represent the DA's office and to recommend jail time for those who failed to meet probationary requirements. [Ref-01]
- FA-05.** In June 2009, the VC Star reported that fewer County offenders were entering the Prop 36 program. According to the article, County law enforcement theorized that a rising number of repeat offenders were ineligible because they were committing non-drug-related crimes, and offenders with severe addictions were choosing jail over treatment. [Ref-02]
- FA-06.** According to a long-term UCLA study researching Prop 36 since its inception, there was a \$2.50 savings to State and local governments for every dollar spent on Prop 36 treatment. However, savings were mostly seen in prisons and jails that did not have to incarcerate this population. These savings did not go toward treatment programs. [Ref-03]
- FA-07.** In 2008, UCLA released its last statement to the press on the Prop 36 study, noting that ". . . Prop 36 . . . is being undermined by inadequate funding, participants dropping out of treatment, and increased arrests for drug and property crimes. The good news, however, is that the initiative has saved taxpayers millions of dollars. . . . Several promising new programs have the potential to improve Prop 36's results, and violent crime arrests have decreased more in California than nationally since the proposition's implementation." [Ref-07]
- FA-08.** Prop 36 is currently operating on a federal stimulus grant, along with additional funds from the Drug and Alcohol Division of the VCBHD. The grant was due to expire in March 2011. However, due to the

commitment of the VCBHD and the VCPA, current funding will be extended through September 2011.

FA-09. The VCBHD and the VCPA work in tandem both in and out of the Prop 36 Courtroom to assess and qualify offenders for enrollment in the Prop 36 program. The VCBHD assists in the determination of financial need and provides substance abuse treatment. The VCPA supervises offenders on probation.

FA-10. There are two types of treatment within the VCBHD treatment program for Prop 36. The first is outpatient treatment, which often has long waiting lists due to a reduced number of affordable treatment sites. In the past there were other treatment centers operated by private contractors, but some were discontinued when funding diminished. Most offenders now utilize the few County-sponsored facilities. The resulting delay in treatment may contribute to increased dropout rates.

The second is inpatient treatment, which, while more expensive than outpatient treatment, tends to double the chances of successful recovery. According to the UCLA report, only 11% of statewide offenders were enrolled in more costly, yet more effective, inpatient treatment. [Ref-03]

Findings

FI-01. The Prop 36 Courtroom has no adversarial counsel, since the DA's office removed its representative in 2009, leaving only the Judge and the Public Defender to work with representatives of the Prop 36 program. (FA-04)

FI-02. From the time an offender walks out of the Prop 36 Courtroom until treatment begins, many obstacles exist: long waiting lists for fewer affordable outpatient treatment centers; transportation difficulties; and heavy financial burdens on the enrollees. (FA-07, FA-09, and FA-10)

FI-03. Most treatment programs are on an outpatient basis because they are less expensive, but they often lack consistency and continuity, thus contributing to a higher dropout rate. (FA-03 and FA-10)

FI-04. If the offender has financial means, self-payment for an inpatient treatment facility is the best option. Presently, this enables those who are better off financially to have the best chance at rehabilitation. Prop 36 was designed to provide funds for successful treatment to all offenders who met the enrollment criteria, irrespective of financial means. (FA-03, FA-07, and FA-10)

FI-05. The BOS has worked with both the VCBHD and the VCPA to find alternative sources of funding. (FA-02 and FA-08)

Recommendations

- R-01.** The BOS should continue to assist the VCBHD and the VCPA in finding alternative sources of funding to better accomplish the statutory mandates intended under Prop 36. (FI-04 and FI-05)
- R-02.** The BOS should ensure that adequate personnel are designated to be responsible for tracking offenders from the Prop 36 Courtroom, through the treatment process, and back to the Prop 36 Judge, in order to determine rehabilitative outcomes. (FI-02 through FI-04)
- R-03.** The BOS should ensure that some kind of statistical process be put in place to calculate success, recidivism, and failure rates of the County's Prop 36 program. (FI-02 through FI-04)

Responses

Responses Required From:

Board of Supervisors (FI-02 through FI-05) (R-01 through R-03)

Responses Requested From:

Director, Behavioral Health, County of Ventura (F-02 through F-04) (R-02 and R-03)

Director, Chief Probation Officer, County of Ventura (FI-02 through F-04) (R-02 and R-03)

References

- Ref-01.** Raul Hernandez, "Ventura County DA to yank prosecutor from drug-court program," *Ventura County Star*, April 28, 2009.
- Ref-02.** Kathleen Wilson, "Fewer county convicts entering drug program," *Ventura County Star*, June 23, 2009.
- Ref-03.** Darren Urada, PhD, et al., UCLA, "Evaluation of Proposition 36: The Substance Abuse and Crime Prevention Act of 2000," 2008 Report, <http://proxichi.baremetal.com/csdp.org/research/UCLA> (accessed May 11, 2011).
- Ref-04.** Press Releases from *Proposition 36: The Substance Abuse and Crime Prevention Act of 2000*, The Drug Policy Alliance, California Capital Office, Sacramento, CA <http://www.prop36.org/press.html> (accessed April 18, 2011).
- Ref-05.** Tony Biasotti, "Projects to persist despite big cuts: County out \$2 million in assistance funding," *Ventura County Star*, November 18, 2007.
- Ref-06.** Kathleen Wilson, "Crime spike linked to Proposition 36," *Ventura County Star*, October 18, 2008.

Ref-07. Press Release from *The UCLA Prop. 36 2008 Final Study*
http://www.csdp.org/news/news/sapca10_16_08.htm (accessed
April 21, 2011).

Disclaimer

This report is issued by the 2010-2011 Ventura County Grand Jury. Due to a potential conflict of interest, a member of this Grand Jury was excused from participating in any aspect of the production of this report.

Glossary

| <u>TERM</u> | <u>DEFINITION</u> |
|---------------------------|---|
| BOS | Ventura County Board of Supervisors |
| County | County of Ventura |
| DA | Ventura County District Attorney |
| Grand Jury | 2010-2011 Ventura County Grand Jury |
| Prop 36 | Proposition 36, the Substance Abuse and Crime Prevention Act of 2000 |
| SACPA | Substance Abuse and Crime Prevention Act of 2000 |
| Sacramento Press Releases | Drug Policy Alliance of the California Capital Office in Sacramento, California |
| State | State of California |
| UCLA | University of California Los Angeles |
| VCBHD | Ventura County Behavioral Health Department |
| VCPA | Ventura County Probation Agency |
| VC Star | Ventura County Star |