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June 30, 2003

The Honorable Judge Frederick P. Horn
 Presiding Judge
 Orange County Superior Court
 700 Civic Center Drive West
 Santa Ana, CA 92701

RE: Orange County Grand Jury Report of 4/30/03
 A Shortfall in Proposition 36 Support?

Dear Judge Horn,

In accordance with applicable law, the Orange County District Attorney herewith files his response to the above Grand Jury Report.

Sincerely,

Tony Rackauckas
 District Attorney, County of Orange

Cc: Board of Supervisors
 County of Orange

TR/ru

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

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30143 CROWN VALLEY PKWY
LAGUNA NIGUEL, CA 92677
(949) 249-5026 | <input type="checkbox"/> HARBOR OFFICE
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WEB PAGE: <http://www.oc.ca.gov/dad/>

INTRODUCTION:

The Orange County District Attorney's Office has participated in the Penal Code 1210 program (Proposition 36) since its inception. We sit as a member of the Oversight Committee and provide attorney and clerical support and staffing to the post plea Proposition 36 courtrooms. This Office assesses eligibility for defendants who come before Orange County's courts with criminal drug possession offenses.

The District Attorney's Office took a positive approach to the implementation of Proposition 36 after it was approved by the voters in November 2000. We thought then, and continue to think that the proposition was fatally flawed because it does not have an accountability component. The very high rate of failure in the program reflects the defects in the statute. As of April 30, 2003, only 247 of the almost 7000 program participants have successfully completed the program and had their cases dismissed.

The program, as it exists today, has become an entitlement for defendants charged with criminal drug possession offenses. After sentencing, they remain out of jail custody, often continuing to abuse drugs and commit crimes that support their drug habits. Crime statistics since the enactment of the statute in July 2001 show an increase in crime, including drug crime and property crime. Many defendants have already failed in the Penal Code 1000 drug diversion program and then fail repeatedly while in the Penal Code 1210 (Proposition 36) program. The bill to the taxpayers for existing multiple drug programs is high and with a lower success rate than is acceptable to our citizens.

RESPONSE TO GRAND JURY FINDINGS

RESPONSE TO GRAND JURY FINDING #1 *In the Proposition 36 court, the severity of drug addicted crimes and criminal sophistication is higher than projected by county planners.*

Disagree Wholly with the Finding

The severity of the drug addiction and the criminal sophistication of the participants who would qualify for treatment under Proposition 36 were not underestimated by County planners. The District Attorney set a series of meetings in his Office with key representatives of each of the affected county agencies, which began months before the effective date of the initiative. The purpose of these meetings was to plan for the implementation of Proposition 36 in order to give it the best possible chance of success. It was clear from the start that the people who drafted this set of laws did not provide nearly the amount of funding it would take to carry out the mandate of providing oversight and treatment for the thousands of people who would qualify under proposition 36. The projections made at these meetings regarding the number of people eligible and the severity of their drug problems was actually fairly accurate.

Due to the language of the initiative enacted by the voters, defendants with significant criminal histories are eligible for treatment under Penal Code 1210. Proposition 36 is not a first time drug offender program as it was often portrayed. Defendants in the program may have prior convictions for various criminal offenses, including narcotics trafficking and violent crime. Many have long criminal histories and can be parolees from the state prison system. After being convicted of a criminal drug possession offense, defendants are released from jail and directed to community programs for drug treatment. They present a high risk for recidivism and are likely to commit criminal offenses while out of custody and in the program. Many abscond from probation after being released from custody and continue to use illegal drugs and commit crimes. Courts are not given any discretion; all eligible defendants must be sentenced to the Proposition 36 program.

Many of the defendants entitled to treatment under Penal Code 1210 have been addicted to illegal drugs for an extended period and live a lifestyle immersed in the drug culture. These persons often commit criminal offenses to fund their drug habits. Burglary, credit card fraud and other forms of theft are crimes commonly used by drug addicts to fund their drug habits.

RESPONSE TO GRAND JURY FINDING #2 *When the individual is determined to be eligible under the terms and conditions of Proposition 36 there is a need for immediate assessment, treatment and follow-up and drug testing to begin.*

Agrees with Finding

The earlier defendants receive intervention in the form of assessment, probation supervision and treatment, the better their chances are of completing the program successfully. At present, defendants are released from custody after conviction and ordered to report to both the Probation Department and the Health Care Agency. As many as 30% of the defendants released do not report to either agency. They are likely to continue to use illegal drugs and commit criminal offenses. It would be optimal if defendants could be assessed in the courthouse after their conviction. Currently, the Health Care Agency requires that defendants report to their agency out of custody in order to be assessed for the appropriate treatment program.

If there were one element that would maximize accountability, it would be to intensify supervision and testing of defendants who are sentenced to Proposition 36 treatment. The Probation Department's funding has been reduced for 2003/2004 and so it would not be able to offer more intense supervision or testing. The District Attorney supports early assessment and placement in treatment, increased supervision and random drug testing of defendants in the Proposition 36 program.

RESPONSE TO GRAND JURY FINDING #3 *Crime rates in some Orange County cities show increases since the inception of Proposition 36 that may be attributable to Proposition 36 or to other factors, such as economy downturns, and drug driven property crimes.*

Agrees with Finding

Crime statistics show an increase in crime since the inception of Proposition 36 in July 2001. One of the statistics that leads us to conclude that Proposition 36 has resulted in increased crime is the increase in drug offenses. A successful program should bring about a reduction in drug offenses.

A second and even a third drug possession conviction will not disqualify someone from continued eligibility for Proposition 36 treatment, since the statute provides that a defendant may have up to three drug related violations before being terminated from the Proposition 36 program. May, 2003 statistics show 687 of the persons currently sentenced to Proposition 36 terms have more than one case. This means many persons who have been sentenced to Proposition 36 have committed additional crimes while out of custody.

Another important indicator is the increase in the type of crimes that are common to drug users. There has been an increase in property crimes such as burglary, check fraud and credit card theft. These are all common methods for drug offenders to finance their drug habit.

Police agencies report that crime is up in areas frequented by narcotics addicts such as residential motels. Police officers report that drug users mock the Proposition 36 program, calling it a "get out of jail free card". There is great frustration in the law enforcement community because both officers and drug users know that the Proposition 36 program doesn't have any "teeth". Police agencies and probation officers report an increase in attempts by defendants to cheat on drug tests. This indicates defendants are continuing to use drugs even while they are in the treatment program.

RESPONSE TO GRAND JURY FINDING #4 *Funding is inadequate to support sufficient residential and intensive outpatient needs.*

Agrees with Finding

It was planned when enacted that the cost of the Proposition 36 program would be funded with state money that would decline annually until the year 2005/2006 when the counties would have to pick up the entire cost of the program. Approximately 4000 defendants per year are sentenced to Proposition 36 and approximately \$10.3 million is slated to be spent on the program in 2003/2004. \$8 million of that money is scheduled to be spent by the Health Care Agency on treatment and related administrative costs. This amount will not be sufficient to provide intensive treatment for the thousands of serious drug users in the program.

We need to identify which defendants are the most likely to benefit from treatment and direct the available resources accordingly.

RESPONSE TO GRAND JURY FINDING #5 *County departments (Probation, District Attorney, Health Care Agency and Public Defender) involved with Proposition 36 are absorbing additional cost shortfalls not currently included in SACPA cost projections.*

Agrees to Finding

The District Attorney's Office continues to partially absorb costs that are not covered by the funding received. Since funding for the District Attorney's Office was reduced for 2003/2004, we anticipate an increase in costs that will have to be absorbed.

RESPONSE TO RECOMMENDATIONS OF GRAND JURY

RESPONSE TO RECOMMENDATION #1 *Assess the factors related to Probation Violations during participation in Proposition 36 and implement corrective measures.*

The Recommendation has been implemented

Deputy District Attorneys have been assigned to prosecute probation violations in Proposition 36 cases since the law went into effect on July 1, 2001. These deputies have been assessing the factors related to probation violations as they are reported. The District Attorney's Office takes an aggressive posture in prosecuting any violations reported.

The process is very burdensome and time consuming because the law provides for three violations of probation involving drug use before one is subject to termination from the program.

RESPONSE TO RECOMMENDATION #2 *Continue efforts to increase treatment and provisions for expediting a timely assessment of the defendant to achieve immediate placement into treatment following sentencing.*

The Recommendation has been Implemented

The District Attorney's Office does not have any control over the type of treatment into which a defendant is placed after sentencing. However, we do support the goal of getting defendants assessed and into treatment immediately after sentencing. This office continues to make every effort to get defendants placed into treatment as soon as possible following sentencing.

RESPONSE TO RECOMMENDATION #4 *Examine county and city arrest and incarceration records and statistical data of persons enrolled in Proposition 36 court to determine the program's effectiveness relative to reducing criminal involvement in serious crimes.*

The Recommendation has been Implemented

The District Attorney's Office supports statistical evaluation of the program's effectiveness. Arrest and incarceration records of persons arrested for drug offenses are examined daily prior to their qualification for, and enrollment in, the Proposition 36 program. Thereafter, their progress is monitored by Deputy District Attorneys staffing the courts. In addition the success rate of the program has been followed and reviewed on a monthly basis. As additional time passes, we expect to get more information on success and recidivism rates which will tell us whether or not we are experiencing any degree of success with the program.

RESPONSE TO RECOMMENDATION #5 *Provide costs for current year (2002/2003) and projected cost for future years (two), for departments for beds and personnel to support Proposition 36.*

The Recommendation has been Implemented

The District Attorney's Office has continued to provide projections of our office's costs for participation in the program and will continue to do so. Even though our funding has been reduced by 17% for 2003/2004, we will continue to staff Proposition 36 courtrooms and provide eligibility assessments for 2003/2004.

We project that the costs to the District Attorney's Office will not change significantly in the fiscal year 2004/2005.