

**Little Hoover Commission Hearing  
May 23, 2002**

**Proposition 36 Implementation and Other Substance Abuse Treatment Efforts**

**OUTLINE OF TESTIMONY**

**BY**

**Judge Stephen V. Manley  
Superior Court of California  
Santa Clara County**

**Purpose:** I have been asked to present testimony regarding the early implementation of Proposition 36 from both a statewide and a local county perspective, as well as an overview of other substance abuse treatment efforts relating to Proposition 36. Since other members of the Santa Clara County Implementation Team will be testifying this morning as to implementation within our county, my remarks will primarily relate to statewide issues with reference to examples within Santa Clara County. I am attaching a copy of the Status Report issued by the Board of Supervisors of our county for the first six months of the implementation process.<sup>1</sup>

**The Most Critical Lessons Learned to Date**

- A.** Collaboration at the state level between the courts, Department of Alcohol and Drug Programs, treatment, probation, parole, law enforcement, and the proponents, has successfully led to a shared commitment to resolve issues through collaboration and move as many eligible clients as possible into treatment at the earliest date.
- B.** Leadership by the courts through the Administrative Office of the Courts (AOC) Proposition 36 workgroup has assured that the courts and Judges will be proactive in implementation.

In many counties, the implementation of the AOC Proposition 36 workgroup “drug court model” developed in February 2001 (shortly after the November election) has led to a partnership between the courts and treatment and the development of a non-adversarial system to process Proposition 36 cases, including violations of probation.<sup>2</sup> This model calls for (a) one supervised court treatment system; (b) early assessment of treatment need and entry into treatment; (c) an experienced team using specialized departments and calendars devoted to Proposition 36 clients; (d) ongoing court reviews and supervision directly by the judge; (e) ongoing modification of treatment and supervision plans; (f)

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<sup>1</sup> Santa Clara County Proposition 36 Status Report, July – December 2001 (Attachment 1)

<sup>2</sup> Administrative Office of the Courts Proposition 36 Implementation Workgroup Model, February 28, 2001 (Attachment 2)

collaboration between judge, prosecution defense, treatment and probation to resolve issues and develop protocols to avoid adversarial hearings. The model recognizes the need for a dramatic change within the criminal justice system in working with clients who are substance abusers that goes beyond Proposition 36, and that change is best brought about through local collaboration within the courtroom setting.

### **Clients Moving into Proposition 36**

In six of the largest counties issuing formal written reports to date, we have seen that this model has eliminated early concerns that clients would not take advantage of Proposition 36 treatment. Large numbers of clients have plead Guilty in the early months of program implementation and entered Proposition 36 treatment.

- In Santa Clara, 2300 clients have been sentenced into treatment as of April 30, 2002.
- Sacramento and Riverside reported that 1139 and 1739 clients, respectively, had been referred to treatment at the end of April 30, 2002.
- The following 3 counties reported that an additional 4671 were referred to treatment at the end of 6 months: San Diego 1464, Orange 1967, and Ventura 1240.

### **Level of Addiction**

During the first 8 months, we have seen that these clients are at the high end of treatment modality needs. The Department of Alcohol and Drug Programs has reported that early data indicates 64% of those admitted to treatment are between the ages of 30 and 55 and 63% of all those admitted started using drugs before the age of 20.

### **Criminal Histories**

We have also seen that these clients have substantial criminal histories, including property crime convictions as well as convictions for crimes of violence, with over 50% being assessed by probation as needing moderate to intensive supervision. For example, Sacramento County reported that 32.5% of the clients had been convicted of 3 or more felonies or a serious or violent felony prior to entering Proposition 36 treatment, and 36.5% had been convicted of at least two felonies.<sup>3</sup>

### **Challenge: Need for Increased Treatment Capacity**

The net result is that we are seeing clients who are not at the early stages of addiction. Many are assessed as needing residential or intensive outpatient treatment combined with

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<sup>3</sup> Sacramento County Proposition 36 Program Implementation & Monitoring Report #2, July 2001 – February 2002, p. 9

structured clean and sober housing on entry. If this trend continues, the pressure to be creative with available funding for both treatment and supervision will increase.

Let me talk about Santa Clara County. We saw within months of implementation that our initial planning, which anticipated a large number of clients needing level 1 treatment (primarily educational in nature), had missed the mark. These same observations were made in several other counties. We quickly revised our treatment estimates, purchased additional residential treatment beds, as well as beds in clean and sober structured housing, and developed an intensive outpatient treatment program.

At nearly all times treatment in Santa Clara County has been at capacity or over capacity and Proposition 36 clients are receiving treatment funded by existing county and state resources that, in effect, displaces other clients. At the present time, there are waiting lists in effect even for basic outpatient treatment. This has led us to create a new modality of treatment: a Pre-Treatment Motivational modality designed to engage clients immediately until an outpatient slot becomes available.

The available funding in Santa Clara County under the Proposition 36 allocation will not permit us to continue to meet the need, without very creative treatment alternatives. In fact, we must cut our expenditures by approximately one-third at the end of the next fiscal year because spending is exceeding funding levels needed to meet the ongoing treatment and supervision needs of clients.

Although many counties have not yet experienced a lack of capacity, it should be anticipated that they will, specifically as to the modality of residential treatment. We must be candid and recognize that there is no indication based on our first six month's experience that we have enough funding to provide the necessary treatment. In addition, clients who do not do well in treatment will often be assessed for a more intensive form of treatment.

### **Challenge: Defining "Success"**

The Department of Alcohol and Drug Programs has reported that 12,000 clients were referred to treatment within the first six months, and that on average, 60% of those eligible for treatment were actually participating in treatment.

However, it is far too early to draw any conclusions as to whether or not the clients entering Proposition 36 reflect the actual total we will see in treatment each year, or that they are "successfully" (or "unsuccessfully") participating in treatment. More importantly, no conclusions should be drawn as to "success" based on a traditional school grading system that tells us that 60% is a failing grade.

What does 60% "presently" in treatment mean? It is important in these early days to bear in mind that we are dealing with addiction, which is a chronic relapsing disorder, and we should not criticize the program because we do not have an 80% to 90% "success" rate.

In reporting “success” and “failure”, we must bear in mind that addiction will always be a relapsing condition and that if a client is “failing” in treatment at one level, does not mean that the client will not succeed in a different treatment modality. There should be no expectation that all clients will stay in treatment; rather many clients, including hard-core addicts, will need to be re-engaged in treatment repeatedly.

We must make every effort to educate the public regarding the fact that the treatment process is ongoing, denial is a part of the disease, relapses are common, clients move up and down different modalities of treatment, and there is no “cure.”

At the same time, we must not lose sight of the fact that jail and prison have not demonstrated any success at all in stopping drug use by these clients, as can be noted from their prior criminal histories.

“Success” must be carefully defined and viewed in several different contexts. Most importantly, we must be patient and not draw premature conclusions. We should look for progress rather than perfection.

### **Challenge: Processing Offenders**

Much of the early data indicates a clear lag time between what is reported immediately from the criminal justice system in the courts when a client pleads guilty and the process of assessment, sentence, and entry into treatment. Data for the first six months includes a substantial number of clients who have plead guilty and have been referred to treatment, but who have not had time to enter treatment. Moreover, many counties do not have a sole provider; therefore they must rely on many providers to feed treatment data into a centralized location.

In addition, many of the clients are not immediately eligible for Proposition 36 treatment because they have multiple cases, some of which are not Proposition 36 cases, are serving another jail sentence, are in violation of probation of parole in a non-36 case, or are being held on warrants from other counties.

We will need to wait at least eighteen months into the program to determine with any accuracy the number of clients participating.

## **The Dually Diagnosed**

We have seen a substantial number of clients who are dually diagnosed. These clients are not only substance abusers; they suffer the co-occurring disorder of mental illness. What we have quickly learned in implementation is that the number of clients who are assessed as dually diagnosed exceeded our expectations in planning for implementation. For example, in Santa Clara County, 20% of all clients admitted into treatment have been diagnosed as dually diagnosed.<sup>4</sup> In Sacramento County 24% of the clients receive that diagnosis.<sup>5</sup>

Although Proposition 36 mandates treatment for substance abuse, it neither funds nor mandates mental health treatment. At the local level this has meant that we have had to reach out to the County Mental Health Department and ask for help. For many years dually diagnosed clients have simply “slipped through the cracks” because they do not clearly fall under one definition. This is very evident in Santa Clara County. Although 20% have been assessed as dually diagnosed, only 5% are eligible for direct mental health services meeting the criteria of “seriously mentally ill.”<sup>6</sup>

These dually diagnosed clients need specialized treatment because they do not do well in traditional substance abuse treatment programs. One promising practice that is developing within the Courts is the creation of Mental Health Treatment Courts that specifically address the special needs of the dually diagnosed. The trial courts have recognized that treatment is a viable and necessary alternative to incarceration for these clients, and that their needs should be met on specialized court calendars as in Drug Courts. Unfortunately, there is little direct funding for treatment through these Courts, however, they do serve to present a model for the delivery of services to the dually diagnosed.

## **Violations of Probation and the Need for Limited Sanctions**

In the first six months we have seen a high violation of probation rate in many of the large counties. These violations are nearly all drug-related. The percentages range from 43% reported in Sacramento County to 21% in Santa Clara County.<sup>7</sup>

Again, it should be understood that violations of probation in the context of drug addiction primarily relate to clients not presently succeeding in treatment, or continuing to relapse. Thus, no early conclusions should be drawn. The challenges for the courts, probation, parole, and treatment is to keep these clients engaged in treatment or re-engage them in treatment, and have treatment available at the right level of intensity and in the appropriate modality.

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<sup>4</sup> *ibid* 1, p. 18

<sup>5</sup> *ibid* 3, p. 7

<sup>6</sup> *ibid* 1, p. 18

<sup>7</sup> *ibid* 1, p. 12 and 3, pp. 1, 13

In this respect we must recognize the limitations of Proposition 36. On the third drug-related violation of probation, the defendant is no longer eligible for probation under Proposition 36. In effect, this means that the defendant is to be sentenced under “existing” law and the Judge has the option of sending the defendant to jail or prison, or to continue the defendant on probation and in treatment. However, if the defendant is to continue in treatment, the treatment may not be paid for with Proposition 36 funds.

The lesson learned is that the lack of jail sanctions (or “flash incarceration” as it is commonly referred to) at the time of the first two violations of probation results in clients not staying in treatment and being disqualified from probation under Proposition 36. Modifying Proposition 36 to permit limited jail sanctions, I believe, will result in more clients, particularly hard-core addicts, completing treatment. This sentiment is also reflected in the Partnership Drug Court Evaluation Report.<sup>8</sup>

Moreover, to continue a system in which defendants receive treatment rather than incarceration, I feel it is extremely important that other adult treatment services paid for by the State General Fund not be reduced. In addition, we must keep our Drug Courts fully funded because they have the greatest experience in providing an experienced team to supervise hard-core addicts.

Under the implementation plan in Santa Clara County the most difficult clients, who are failing in treatment and those who are dually diagnosed, will be assigned to the Drug Treatment Court and our Mental Health Treatment Court.

Again, it is important to recognize that our Drug Courts have served as the model for collaboration and successful implementation of Proposition 36. I do not believe we would have as many clients participating in Proposition 36 today as we do if it were not for the leadership of our Drug Courts throughout the State. In this respect we have some very good news. The recent Drug Court Partnership Evaluation Report, submitted by the Judicial Council and the Department of Alcohol and Drug Programs, is testimony to the “success” that we should strive for, and a good example for Proposition 36 to follow.

### **Drug Court Partnership Program Report**

The partnership itself was a unique and historical joining of the courts and the criminal justice system with treatment, as partners with a shared goal of helping convicted felons and misdemeanants with serious substance abuse problems enter and complete treatment and find what we call “recovery” as a way of life, rather than be sentenced to prison and jail.

In many ways this partnership marked a very dramatic change in the way that the criminal courts address defendants. Rather than an emphasis on “traditional sentencing

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<sup>8</sup> Drug Court Partnership Act of 1998, Chapter 1007, Statutes of 1998 Final Report, March 2002 (Attachment 3)

and incarceration,” the emphasis changed to “treatment and guiding clients to improve their lives.”

As noted by our chief justice Ronald George, “This study shows that drug courts are helping the justice system and public by decreasing drug use, improving lives, and protecting the public.”

I would also like to note that although much of the report covers averted costs and reductions in recidivism, the real savings here and the real changes are what have taken place in human lives not dollars. First, what our Drug Court Partnership has demonstrated is the ability to put together an experienced team in each Court that includes a judge, probation and treatment, and to work with the most difficult clients, similar to those we are seeing in Proposition 36 with long criminal histories of felony convictions as well as many years of drug use. Of the successful clients studied, 40% had been using drugs for more than 10 years. The report specifically notes that these clients had significant arrest histories, low educational achievement and high unemployment.

The study results show a significant saving to the state in avoided prison costs of \$2 million in addition to \$1 million in client fees for a net savings of \$3 million over the cost of the program to the state. The local savings are some \$26 million in avoided jail costs.

There are also important findings relating to recidivism. For those who completed the program, arrest rates decreased 85% during the two years after admission in comparison to the two years prior to entry, the conviction rate decreased 77% and the incarceration rate decreased 83%. The decrease in arrests for violent felonies and property felonies was even greater, 96% and 94% respectively.

Of equal importance are the “savings” that are very real, but given the limitations of the evaluation they could not be documented in actual dollar savings. Please consider the fact that:

- 28% of the nearly 3,000 graduates in the study either regained custody of their children or retained it;
- 31% were reunified with their families;
- 7% obtained visitation rights, and 8% became current in child support;
- 95% of all babies born to mothers participating in the program were born free of drugs.

We believe these findings are very important because they demonstrate that substance abuse cuts across all court “systems” and calendars. The savings in foster care costs alone are substantial for these criminal justice clients. And our Comprehensive Drug Court Implementation Act, although not a part of this report, has led to the growth from only four juvenile drug courts in 1999, to 22 juvenile dependency drug courts, 34 delinquency drug courts, and seven family drug courts, all dedicated to family reunification and reducing the costs of foster care.

The improvement in the lives of these clients was remarkable, considering their backgrounds and their dramatic response to being challenged to improve their lives beyond simply stopping the use of drugs. Yes, 96% of those completing the program tested clean. But, more importantly, the number who became employed nearly doubled while in the program (38% v. 70%), 12% who were homeless obtained housing, 20% obtained drivers licenses, and 20% improved their education. In addition, these 3,000 clients actually paid \$1.25 million of their own treatment fees as well as fines.

We now have 146 Drug Courts in 50 of the 58 counties.

### **Challenge: Cross-Jurisdictional Supervision**

One of the deficiencies in Proposition 36 is that although the funding mechanism requires treatment in the County of residence, no provision exists regarding supervision. Under the Drug Court model, a Judge in the County where a defendant resides will often accept the transfer of the supervision of a client who is arrested in another County. However, although existing law permits the transfer of probation supervision, (PC 1203.9), it is not a common occurrence in most parts of the State.

The solution for this problem requires either new legislation, or an agreement among all county probation departments to provide the necessary courtesy supervision for these clients.

I believe the Statewide Advisory Group process will lead to the development of an operational protocol by the Probation Chiefs at the end of the summer.

There appears to be general agreement that absent a serious public safety risk, clients should receive treatment and supervision in the communities in which they live.

### **Learning from the Arizona Experience**

The State of Arizona has implemented Proposition 200, a treatment initiative similar to Proposition 36 in many respects. Funding has been provided under that initiative for five years (1998 through 2002). Data exists for four of those years.

During that time, more funding was allocated for treatment and related services in three of the four years, including the most recent year, than was spent by the counties.

Clients were not always placed at the level of treatment called for in their assessments. In fact in the most recent year that data is available (1999), only 6% of the clients were placed in residential treatment, and only 3% were placed in intensive outpatient. Arizona has not collected any data relating to the number of probation violations, new arrests, drug testing results, and quality of life issues to date.

My purpose in presenting this information is not to criticize Arizona, but to point out that issues such as treatment capacity, implementation of a collaborative drug court model, continued collaboration in helping courts and counties reach more clients, resolving issues as they arise, and the careful defining and collecting of critical data will all be essential elements as the implementation of Proposition 36 moves forward.

Thank you for your consideration and opportunity to present this testimony.

Respectfully,

Stephen V. Manley  
Judge of the Superior Court