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Proposition 36

Issue

Are the funds received by San Mateo County from Proposition 36, the Substance Abuse and Crime Prevention Act producing substantial, effective results?

Summary

Proposition 36 was passed by California voters in November 2000. Its stated purpose was to save hundreds of millions of dollars annually by diverting drug users from incarceration into treatment programs. Anyone charged with a nonviolent drug arrest is potentially eligible to enter a treatment program. Proposition 36 provides that eligible offenders may not be sentenced to jail until they have two prior probation violations. Furthermore, the Act states that a positive drug test may not be treated as a probation violation. The Act established a Substance Abuse Trust Fund from which the County received \$1.9 million in FY 2004-05.

The County established a three level treatment program. After an individual has completed three months of the assigned treatment, he or she is released from both treatment and probation supervision. There is no follow-up program.

Although most agree with the basic philosophy of treatment instead of incarceration, Proposition 36 has been singularly unsuccessful in meeting its goals of reducing crime, saving the County money, and helping people stop using drugs. The Proposition has two major faults. One: there is no incentive such as short term incarceration to participate in the program. Long time drug users avoid spending time in jail and concurrently fail to report for probation and/or treatment. They can re-offend and fail to report a second time. Two: a positive drug test cannot be considered a violation of probation. Without random drug testing there is no reliable method to measure progress or successful completion of treatment.

The administrative demands of Proposition 36 have increased the work load of the Court and the Probation Department creating a burden which threatens Probation's continued effectiveness.

Senate Bill No. 803 was introduced in February 2005 to amend Proposition 36. It retains the purpose of treatment instead of incarceration, but corrects the two above faults plus some others.

The Grand Jury recommends that steps be taken to relieve the burden placed on the Probation Department and the Court, that Senate Bill 803 be passed or, failing passage, that Proposition 36 be reconfigured to allow funding to be used for programs which have proved to be more effective in the County.



Proposition 36

Issue

Are the funds received by San Mateo County from Proposition 36, the Substance Abuse and Crime Prevention Act producing substantial, effective results?

Background

California voters passed Proposition 36 with a 61% majority in November 2000. Its stated purpose was to save hundreds of millions of dollars annually by diverting drug users from incarceration into treatment programs. Proponents also claimed that passage of the proposition would reduce drug-related crime and improve public health by reducing drug abuse and drug dependence.

Anyone charged with a nonviolent drug arrest is potentially eligible to enter a Proposition 36 treatment program. Exclusions include offenders convicted of a serious or violent felony within the past five years and those using a firearm while under the influence of drugs or possessing them. Proposition 36 provides that eligible offenders may not be sentenced to jail until they have two prior probation violations. Furthermore, the Act states that a positive drug test may not be treated as a probation violation and, to reinforce that provision, Proposition 36 provides no funds for drug testing.

The Act established a Substance Abuse Trust Fund with \$60 million for fiscal year 2000-2001 and \$120 million every subsequent year, concluding fiscal year 2005-2006. Beyond June of 2006, the provisions of Proposition 36 will remain in place, but without funding unless the legislature acts.

Findings

San Mateo County's Proposition 36 allocation for FY 2004-05 is \$1.9 million. Three quarters of this amount is budgeted for treatment services and most of the balance covers county staff time.

When a non-violent drug offender is brought to court, the judge remands the individual to Proposition 36 treatment through the Human Services Department with co-ordination by the Probation Department. Together they determine which level of treatment is most appropriate for that individual. Level I is outpatient, the least intensive and least costly;

Level II is Day/Evening Treatment consisting of a minimum of fifteen hours of treatment per week; Level III is Residential Treatment, the most costly.

After an individual has successfully completed three months of the assigned treatment he is released from both treatment and probation supervision. There is no follow-up.

According to everyone the Grand Jury spoke with in the county, Proposition 36 has been singularly unsuccessful in meeting its goals of reducing drug-related crime, saving the county money, and helping people stop using drugs. Most drug offenders in this county remanded to Proposition 36 treatment see it as an opportunity to avoid spending time in jail. According to the San Mateo County Probation Department, approximately one-third of those assigned to Proposition 36 treatment never bother to report to Probation in the first place, much less to their assigned treatment provider.

Approximately one-fourth of those sentenced under Proposition 36 in this county do complete treatment. However, the Probation Department assured the Grand Jury that completion of treatment seldom equates with rehabilitation. For the most part, the defendants are not first-time offenders, but rather have been using drugs for many years. They may spend 90 days in treatment in order to stay out of jail, but after treatment, often return to their prior drug-enhanced lifestyles. The Probation Department reported that many long-time drug offenders have already accepted the negative aspects of their chosen lifestyle and do not wish to change.

In the meantime, the Probation Department is struggling to handle the increased administrative challenges of repetitive violations. Probation is the link between treatment and court. When an offender fails to attend treatment, probation is involved because of the probation violation. When offenders are picked up again, the court reinstates them into the program, then to probation, and on to treatment once more. This cycle can be repeated twice more before the individual can be incarcerated, as the law gives each defendant three violations before exclusion. Violations may be treatment failures, not keeping appointments with a probation officer, new convictions, or not following one of the conditions of probation. Violations can result in bench warrants when defendants cannot be located. After they are picked up, they return to treatment. Additionally, defendants often have more than one Proposition 36 case at the same time. They can even commit a crime and remain under the Proposition 36 umbrella.

San Mateo County Probation reported 64 referrals per month in 2003, and 94 per month in 2004. In early 2005 1800 persons in the County were covered under Proposition 36, as probation may last from one and one-half to three years beyond the three months of treatment time. Probation officers were quite candid with the Grand Jury stating that they are unable to provide case management services and cannot keep up with filing violations due to the increase in the number of cases. Officers who used to handle 50 cases now have over 100, and the number of addicts on the street as well as drug-related crimes continues to climb.

Probation officers would like to identify those who will be amenable to rehabilitation, but they get such a brief time with each offender that they are unable to determine who will be the best Level III program candidates. Officers believe they will reach a point where the procedural requirements of Proposition 36 will overwhelm the Probation Department.

The County has tried to implement the provisions of the Act via various treatment plans with a handbook of policies and procedures and with an Oversight Committee comprised of representatives of the Health and Human Services Department, the Probation Department, the Court, the District Attorney, the Board of Supervisors, the Sheriff, and the County Manager. The result is general agreement that Proposition 36 continues to be unworkable.

A University of California, Los Angeles study found that Proposition 36 clients were 48 percent more likely to be arrested for another drug offense than rehab clients whose treatment was overseen by probation or parole authorities.

The Proposition has two major faults. One: there is no incentive such as short term incarceration to participate in the program. Long time drug users avoid spending time in jail and concurrently fail to report for probation and/or treatment. They can re-offend and fail to report a second time. Two: a positive drug test cannot be considered a violation of probation. Without random drug testing there is no reliable method to measure progress or successful completion of treatment.

Other problems with Proposition 36, both direct and indirect, are:

- There are no funds allocated for drug testing. Nevertheless, testing is used as a treatment tool for cases with a potential to benefit from it.
- There is no standardized protocol for drug testing; therefore results cannot be compared or equally interpreted. Some testing is unannounced on a random basis while other tests are prescheduled. Sometimes law enforcement officers test weekly; sometimes much less frequently. Some officers use tests for just one or two drugs; others test for five drugs.
- The scarcity of funds requires that most Proposition 36 offenders be remanded to treatment Level I, outpatient. It is apparent that many might benefit from Level III, residential treatment, but the funding is inadequate.
- Inadequacy of the Probation Department's computer system hinders tracking of persons under Proposition 36.
- Completion of 90 days treatment does not necessarily result in a decision by the user to be drug free. For most addicts recovery is a much longer process.

Drug Programs with Greater Success

The Grand Jury learned that before Proposition 36, jail was almost never the chosen option for first time drug offenders in San Mateo County. Some first time offenders were released with an admonition but most were put on probation. Jail sentences resulted only from violation of that probation.

The Court formerly used several drug rehabilitation programs which have become less relevant with Proposition 36's restrictions. **Drug Court** was designed to facilitate substance abuse recovery through treatment, ongoing monitoring, and reinforcement. Drug Court combines essential substance abuse treatment, either residential or outpatient, with intensive probationary supervision, and frequent monitoring of client progress through the course of treatment. Treatment providers and probation officers administer urinalyses on random and as-needed bases to consistently reinforce the recovery effort. Clients are seen frequently in the field and in the Probation Office. Drug Court programs have experienced a significant reduction in recidivism among participants. Cost ranges between \$900 and \$2,200 per participant depending on the range of services provided. Savings in jail-bed days alone have been estimated to be at least \$5,000 per defendant. In contrast, Proposition 36 forces the judiciary to use the Proposition's procedures, resulting in much less opportunity to send offenders to Drug Court.

A successful local program, **Bridges** regularly graduates groups of former drug addicts who are working, who have stable housing, and who have cleared all court matters. Most of them obtain a GED. This day treatment program accomplishes its goals by treating only persons who commit to abstain from drugs and alcohol, to abide by program rules, to attend regular court reviews and to submit to searches. The intensive program lasts for eight months after which the participant is placed on reduced supervision. Success is almost 80% as measured by no arrests for one year after successfully completing treatment.

The Probation Department cites two other drug treatment programs. Deferred Entry of Judgment succeeds for non-sophisticated drug offenders by using short-term counseling followed by performance monitoring. Project 90 is a non-profit organization helping individuals and families through alcohol and drug recovery services.

Recent Developments

Senate Bill No. 803 was introduced by Senator Ducheny on February 22, 2005. It retains the focus of treatment instead of incarceration, but corrects many of the faults in Proposition 36. Some of the changes are:

- SB 803 redefines "successful completion of treatment" as not only completing the prescribed course of treatment but also continuing thereafter to refrain from the use of drugs during the entire period of probation.
- SB 803 requires drug testing as a condition of probation.
- If a defendant violates probation, SB 803 allows the court to intensify or alter the drug treatment program.
- SB 803 authorizes a court to also order incarceration for a specified period in order to enhance treatment compliance.
- SB 803 increases the annual appropriation from \$120,000,000 to \$150,000,000.
- SB 803 allows the money appropriated to be used for drug testing.

Conclusions

Proposition 36 was well intentioned in requiring community-based treatment for non-violent drug users instead of incarceration. If the program were restricted to first-time offenders without a drug habit, Proposition 36 would probably be successful. However the program is failing to meet its intended goals because:

- a. Longtime drug users quickly learn to manipulate the Proposition 36 system. They can both avoid jail time and fail to report for probation and/or treatment. They can re-offend and fail to report a second time. Without the possibility of incarceration, Proposition 36 contains no incentive for drug users to commit to participation in the program.
- b. There is no way to measure satisfactory progress or completion of treatment without mandatory random drug testing, which is neither required nor funded.
- c. Funding for the more effective residential treatment programs is inadequate.
- d. Burdens on the courts and on probation departments have increased enough to cause one person interviewed to state that Proposition 36 has moved treatment into the Criminal Justice system. Administrative demands of Proposition 36 cases have forced the Probation Department to necessarily cut back on time spent with more traditional Department demands. The Grand Jury was told, for example, that Probation must limit all phone calls to 40 seconds.
- e. Recovery is a long process for those who have a long-standing habit. The ninety days required to complete Proposition 36 treatment is only a start because rehabilitation requires a lifestyle change.

The Grand Jury learned from interviews and a review of studies that substance and mental health treatment, which reduces the jail population and is cost effective, is far superior to incarceration in rehabilitating drug offenders. However, most informed professionals in the field agree there must be consequences for failure to remain on any program. Jail must be an option if treatment fails. Funding for any drug program must include testing. Proposition 36 has no teeth, or in the words of one judge, is “all carrot and no stick”.

The introduction of Senate Bill 803 by Senator Ducheny is a well-conceived effort to correct Proposition 36’s inherent flaws. The Grand Jury strongly supports the passage of this Bill.

Recommendations

1. The Board of Supervisors should take steps to relieve the burden which Proposition 36 has placed on the Probation Department and the Court.
2. The Board of Supervisors should request the State legislature to amend Proposition 36 in accordance with Senate Bill 803.

3. The Board of Supervisors should continue to urge the Legislature to formulate new legislation, should Senate Bill 803 fail, which will reconfigure Proposition 36, and also allow funds to be used for programs proved to be more effective.
4. The Sheriff and Probation Department should develop a standardized protocol in cooperation with the cities for drug testing that includes random basis testing and frequency of testing.



COUNTY OF SAN MATEO
Inter-Departmental Correspondence

County Manager's Office

DATE: September 2, 2005
BOARD MEETING DATE: September 13, 2005
SPECIAL NOTICE: None
VOTE REQUIRED: None

TO: Honorable Board of Supervisors
FROM: John L. Maltbie, County Manager
SUBJECT: 2004-05 Grand Jury Response

Recommendation

Accept this report containing the County's responses to the following 2004-05 Grand Jury reports: Proposition 36, Children and Family Services, and Integrating Emancipated Foster Youth into Society.

VISION ALIGNMENT:

Commitment: Responsive, effective and collaborative government.

Goal 20: Government decisions are based on careful consideration of future impact, rather than temporary relief or immediate gain.

This activity contributes to the goal by ensuring that all Grand Jury findings and recommendations are thoroughly reviewed by the appropriate County departments and that, when appropriate, process improvements are made to improve the quality and efficiency of services provided to the public and other agencies.

Discussion

The County is mandated to respond to the Grand Jury within 90 days from the date that reports are filed with the County Clerk and Elected Officials are mandated to respond within 60 days. It is also the County's policy to provide periodic updates to the Board and the Grand Jury on the progress of past Grand Jury recommendations requiring ongoing or further action. To that end, attached is the County's responses to the Grand Jury's reports on Proposition 36 issued June 14, 2005, Children and Family Services issued June 16, 2005, and Integrating Emancipated Foster Youth into Society issued June 30, 2005.

Proposition 36

Findings:

Generally agree with the findings with the following clarifications:

- Drug testing is just one way to measure progress. The community-based Substance Abuse Treatment Providers have contact with participants at least twice per week for a minimum of three hours and regularly evaluate and document their progress.
- Substance abuse is a chronic condition and relapse is an expected occurrence in many cases. It often takes a number of treatment episodes before a person is able to maintain sobriety and the person must exercise constant vigilance. Proposition 36 treatment is often the first treatment episode for the participants.
- In San Mateo County, the completion rate of those that enroll in treatment ranges from approximately 29% to 35% depending on the level of treatment.
- Senate Bill 803 is one of multiple bills currently being considered at the state level. Unfortunately, as of this writing, it appears that none of these bills will pass through the Legislature in 2005. However, Senate Bill 803 appears to be the most likely to pass eventually. Since the June 14, 2005 issuance of the Grand Jury report on Proposition 36, Senate Bill 803 has been amended twice. Some of the key changes include:
 - Striking language appropriating \$150,000,000 annually from 2006-07 until 2010-11 and inserting language appropriating \$120,000,000 annually until 2010-11.
 - Expressly prohibiting the use of SACPA funds for drug treatment and probation supervision associated with drug treatment courts established pursuant to Article 2 or 3 of the Health and Safety Code.
 - Striking language allowing for the use of SACPA funds for mandatory drug testing services.
 - Striking language creating the presumption of treatment eligibility in certain cases.
 - Expressly prohibiting the use of SACPA funds for the reimbursement of incarceration costs.
 - Striking language making a parolee who has committed a second nonviolent drug possession parole violation ineligible for continued parole and subject to reincarceration. Replacing it with language allowing for reincarceration or intensified parole conditions to achieve the goals of drug treatment.
 - Expanding the factors a court shall consider when considering intensifying or altering the drug treatment plan of a defendant.

- The County has not conducted a local evaluation of its Drug Court program for several years.

Recommendations:

1. **The Board of Supervisors should take steps to relieve the burden, which Proposition 36 has placed on the Probation Department and the Court.**

Response: Agree. A significant number of Proposition 36 participants fail to report to Probation let alone attend treatment. It was reported at the June 2005 Workgroup meeting that there were 62 first time violations filed in Redwood City Court and that 42 of those were for not reporting to Probation. To address this situation, the Board of Supervisors recently allocated funding for an additional Probation Officer and a Human Service's Assessor. The Assessor will meet with participants immediately following their sentencing hearings to explain treatment and the assessment process, instill in them the importance of treatment, clarify program procedures, and reinforce the Court's expectations. The additional Probation Officer increases the program's ability to respond more rapidly to Court violations and failures to enroll in programs. Additionally, the Probation Department has recently developed new computer software to streamline documents to the Court. The new software allows Probation Officers to complete approximately seven to ten violations per hour versus two to four violations per hour under the old system. The increased staffing and the software upgrade should allow Probation Officers to spend more time with program participants, resulting in better outcomes.

2. **The Board of Supervisors should request the State legislature to amend Proposition 36 in accordance with Senate Bill 803.**

Response: Agree. While Senate Bill 803 will likely not pass through the Legislature in 2005, it has the opportunity to address some key elements regarding the effective treatment should it pass next year. The most significant component of SB 803 – appropriation of at least \$120,000,000 annually – must remain in this bill or any bill that addresses SACPA. While language stating the intent of the Legislature is helpful, it does not assure the annual appropriation of funds needed to sustain SACPA mandates.

3. **The Board of Supervisors should continue to urge the Legislature to formulate new legislation should Senate Bill 803 fail, which will reconfigure Proposition 36, and also allow funds to be used for programs proved to be more effective.**

Response: Agree. The Proposition 36 Workgroup will monitor all legislation related to Proposition 36 and continue to work with the County's legislative advocates and statewide groups to correct some of the inherent problems with the legislation, most notably funding, the allocation formula and enforcement options.

4. **The Sheriff and Probation Department should develop a standardized protocol in cooperation with cities for drug testing that includes random basis testing and frequency of testing.**

Response: Disagree. The Probation Department is required by the Court to randomly drug test probationers. In the past calendar year, Probation has administered over 25,000 drug tests in the Adult Division. With the additional Probation Officer and efficiencies achieved with the new software, Probation should be able to complete this task without the help of the Sheriff's Department or other police departments in the County.



COUNTY OF SAN MATEO

400 COUNTY CENTER • REDWOOD CITY • CALIFORNIA 94063

TELEPHONE (650) 599-1664

ADDRESS ALL COMMUNICATIONS TO THE SHERIFF

June 17, 2005

Honorable Norman J. Gatzert
Judge of the Superior Court
Hall of Justice and Records
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

Re: Grand Jury Report : PROPOSITION 36

Dear Judge Gatzert:

Summary

Proposition 36 was passed by the voters to save dollars by diverting drug users from incarceration into drug treatment. Anyone charged with a nonviolent drug arrest is potentially eligible to enter a treatment program.

The Proposition has two major faults. One: there is no incentive such as short term incarceration to participate in the program. Two: a positive drug test cannot be considered a violation of probation.

Steps should be taken to relieve the burden placed on the Probation Department and the Court to allow funding to be used for programs which have proved to be more effective in the County.

Response

Concur with these observations;

Background

Proposition 36 was passed by majority of the voters to save hundreds of millions of dollars annually by diverting drug users from incarceration into treatment programs.

A trust fund was established to enact provisions of the Proposition until June of 2006, after which Prop 36 remains in place, but without funding unless the legislature acts.

“Proposition 36 has been singularly unsuccessful in meeting its goals of reducing drug-related crime, saving the county money, and helping people stop using drugs.”

Response

Concur with these findings;

The Sheriff’s Office with representatives from a variety of county departments has observed and participated in the implementation of Proposition 36. We have seen no decrease in the jail’s inmate population which can be attributed to the Proposition.

The day to day struggle to successfully implement the voters wishes has been managed by the Probation and Human Services Departments. We defer further analysis or response to the report to those agencies.

Recommendations

1. The Board of Supervisors should take steps to relieve the burden which Proposition 36 has placed on the Probation Department and the Court.

Response

Concur with these findings;

2. The Board of Supervisors should request the State legislature to amend Proposition 36 in accordance with Senate Bill 803.

Response

Concur in general with these findings, however, defer to Probation for response;

3. The Board of Supervisors should continue to urge the Legislature to formulate new legislation, should Senate Bill 803 fail, which will reconfigure Proposition 36, and also allow funds to be used for programs proved to be more effective.

Response

Concur with these findings;

4. The Sheriff and Probation Department should develop a standardized protocol in cooperation with the cities for drug testing that includes random basis testing and frequency of testing.

Response

Disagree:

The Sheriff's Office and cities have neither the staff nor the authority under Proposition 36 to conduct random drug testing on out of custody persons undergoing treatment. Probation and the treatment providers monitor the clients performance and testing. We will continue to support the Probation Department's efforts on in-custody persons if requested, resources and time permitting. We would also be willing to assist in developing a standard protocol, however, drug testing of individuals appears better suited to others with the authority and expertise.

Closing

The Sheriff's Office generally concurs with the findings of the San Mateo County Civil Grand Jury on the above mentioned areas and will work towards achieving those identified goals. In conclusion, we appreciate this comprehensive review and provided perspectives from the members of the 2005 Civil Grand Jury.

Sincerely,

DON HORSLEY, Sheriff

Copy: Clerk of the Court
Grand Jury website
Board of Supervisors

September 9, 2005

Honorable Norman J. Gatzert
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1665

**RE: RESPONSE TO GRAND JURY
PROPOSITION 36 REPORT**

Dear Judge Gatzert:

This letter is in response to the Court's letter of June 14, 2005, directing me to respond to the Court on or before September 12, 2005, regarding the recommendations of the Grand Jury's Proposition 36 Report. The following is the Probation Department's response, as directed.

Recommendation 1: *The Board of Supervisors should take steps to relieve the burden which Proposition 36 has placed on the Probation Department and the Court.*

In August of this year, the Board of Supervisors approved an additional position for a Probation Officer for one fiscal year. We are very appreciative of this additional position. While this will certainly be of assistance, it is not a solution to the workload problems inherent in the Proposition 36 program. The sheer volume of work does not allow the Department to provide effective interventions, and coupled with the problems in the design of the law, it is questionable whether we will have better outcomes with the additional position, due to continuing workload issues involving extraordinarily high caseloads (400+/officer).

Our Proposition 36 caseload has increased to approximately 1800 cases on active supervision. Our violation rates remain high, averaging 90 to 100 violations a month. We also continue to have only approximately 30% to 35% of our cases successfully complete the program. The Proposition 36 caseloads are by far the most time consuming, active caseloads within the Department.

The Probation Department has taken steps to enhance our computer programs to increase the efficiency in processing the high volume of violations and bench

Grand Jury Response

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warrants. However, even with our new technology, we are still unable to process all of our violations and bench warrants.

Until new Proposition 36 legislation is passed, (Senate Bill 803) the Probation Department will continue to have excessively high caseloads, and we will most likely be unable to

respond to all of the violations and warrants. Additionally, we will be unable take appropriate action on positive drug tests, and we will be unable to provide effective drug treatment interventions.

Recommendation 2: *The Board of Supervisors should request the State legislature to amend Proposition 36 in accordance with Senate Bill 803.*

We concur.

Recommendation 3: *The Board of Supervisors should continue to urge the Legislature to formulate new legislation should Senate Bill 803 fail, which will reconfigure Proposition 36, and also allow funds to be used for programs proved to be more effective.*

We concur.

Recommendation 4: *The Sheriff and Probation Department should develop a standardized protocol in cooperation with cities for drug testing that includes random basis testing and frequency of testing.*

By far, the most reliable means of assessing drug usage is by drug testing. Self reports or other subjective assessments are notoriously unreliable and inaccurate. In our judgment, the most effective means of assessing the most basic element of a drug treatment program, i.e., whether or not participants continue to use drugs, would be by using such a testing protocol. The Probation Department would be very pleased to work with all of the Proposition 36 treatment providers who are doing drug testing to jointly develop a randomized, uniform drug testing protocol. We believe this process would be the most effective, rather than working with the Sheriff's Office and cities, neither of which are responsible for administering criminal justice drug tests.

Respectfully submitted,

Loren Buddress
Chief Probation Officer

CC: Board of Supervisors
County Manager's Office