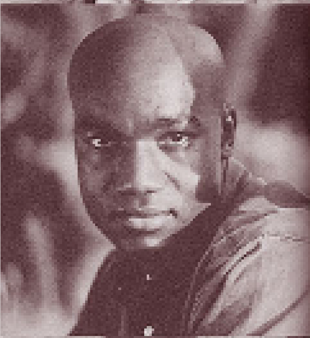

SUBSTANCE ABUSE AND CRIME PREVENTION ACT OF 2000

PROGRESS REPORT

MARCH 2002

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EXECUTIVE SUMMARY

California's Proposition 36, the Substance Abuse and Crime Prevention Act of 2000 (SACPA), took effect on July 1, 2001. Since that date, SACPA has been diverting low-level, non-violent drug offenders convicted solely of possession for personal use into community-based treatment instead of incarceration. While it is too early to determine the ultimate success of this program, this preliminary progress report describes how the state and the largest counties are implementing this initiative.

Early indications suggest that SACPA is being implemented well in most of the state, and that the initiative is on the path to fulfill its promise to the voters to reduce the rates of drug addiction and crime by diverting offenders to drug treatment, and will save California taxpayers many millions of dollars by reducing our state's jail and prison populations.

HIGHLIGHTS

SACPA Clients

- In the seven counties examined in this report—Contra Costa, Los Angeles, Sacramento, San Bernardino, San Diego, San Mateo, and Ventura—over 9,500 individuals had been referred to treatment through SACPA by the end of December 2001.
- In these seven counties, the average number of clients active in treatment was 71 percent of the total number of referrals.
- According to an initial assessment of a cross-section of California counties, methamphetamine was used by over 40 percent of SACPA clients. It is also the primary drug of choice in a number of California counties examined for this report, including Contra Costa, Sacramento, and Ventura Counties.

Interagency Collaboration

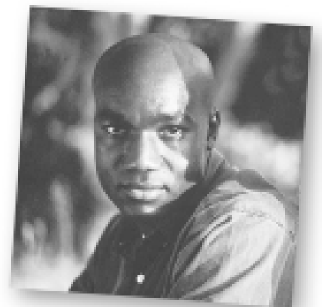
- SACPA involves a unique and groundbreaking collaboration between criminal justice and public health agencies at the county level, including substance abuse and mental health departments, probation, parole and the courts: 53 of the state's 58 counties, and each of the 12 largest counties (which together comprise 75 percent of the state's population) chose local health departments (or the drug and alcohol divisions thereof) to serve as lead agencies in the implementation of SACPA.

Changes to SACPA

- Senate Bill 223 was passed by the California Legislature to provide funding for drug testing, in addition to clarifying the role of drug testing in treatment, as a condition of probation or parole. Under 223, a parolee or probationer cannot be incarcerated solely on the grounds of a positive drug test.
- Several court decisions have clarified the application of SACPA: 1) *Retroactivity*: SACPA applies to persons convicted of a SACPA-qualifying crime but not sentenced before the measure took effect July 1, 2001; 2) *Paraphernalia Charges*: people can qualify for treatment under SACPA even if the sole charge is possession of paraphernalia.

Concerns (Solutions Included in Report)

- SACPA clients are not being placed in methadone maintenance treatment programs consistent with the level of demand.
- Many SACPA assessment professionals are not adequately trained to detect coexisting disorders of addiction and mental illness. Furthermore, for the SACPA clients with coexisting conditions, too few programs are willing to treat a mentally ill drug user.
- Individuals are not always given a treatment plan that is consistent with the level of treatment for which they are initially assessed.
- Clients are not offered a diversity of treatment options to sufficiently match their needs.
- Some counties are facing difficulties retaining clients who fail to appear at treatment.
- Sober living environments are inadequately regulated and licensed.



SUBSTANCE ABUSE AND CRIME PREVENTION ACT OF 2000

PROGRESS REPORT

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I. OVERVIEW OF SACPA

In November 2000, 61 percent of California voters passed Proposition 36, the Substance Abuse and Crime Prevention Act of 2000 (SACPA), an initiative aimed at rehabilitating rather than incarcerating non-violent drug possession offenders. Under SACPA, certain persons convicted of non-violent drug possession offenses are given an opportunity to receive community-based drug treatment in lieu of incarceration in jail or prison. The negative fiscal, public health, public safety and racial impacts of California's punitive drug policies that occasioned SACPA are documented elsewhere.[1]

Prior to its passage, the independent Legislative Analyst's Office predicted that by treating rather than incarcerating low-level drug offenders, SACPA would save California taxpayers approximately $1.5 billion over the next five years and prevent the need for a new prison slated for construction, avoiding an expenditure of approximately $500 million. It was further estimated that SACPA would annually divert as many as 36,000 probationers and parolees from incarceration into community-based treatment.[2]

Reports by state and county administrators, together with data collected from the first six months of experience with SACPA indicate that the new law is being successfully implemented around the state. By the end of December 2001, over 9,500 individuals had been referred to SACPA in the seven counties examined for this report, and over 3,500 parolees throughout the state had been referred to SACPA by the end of January 2002.

The experience of Arizona's Proposition 200, an initiative similar to SACPA enacted in 1996, buttresses these initial findings and provides reason for optimism about SACPA's long-term success. According to a recent report conducted by the Supreme Court of Arizona, Proposition 200 saved Arizona taxpayers $6.7 million in 1999.[3] In addition, 62 percent of probationers successfully completed the drug treatment ordered by the court.[4]

The purpose of this report is to provide a preliminary look at the implementation of SACPA during its initial months, including a county perspective that will show the numbers of treatment

referrals and placements at the local level. The initial round of data presented here will be supplemented by data from the State Department of Alcohol and Drug Programs. SACPA requires an annual statewide evaluation process of the initiative in order to monitor the effectiveness and financial impact of the programs funded pursuant to it. The State Department of Alcohol and Drug Programs has designated researchers from the University of California, Los Angeles Integrated Substance Abuse Programs to undertake this effort.

SACPA'S SENTENCING PROVISIONS

SACPA allows persons convicted of their first and second non-violent drug possession offenses the opportunity to receive community-based drug treatment as a condition of probation in lieu of incarceration in jail or prison.[5] It also permits persons on probation or parole for certain offenses to obtain community-based treatment in lieu of re-incarceration upon a violation of a drug-related condition of their probation or parole. SACPA defines "drug treatment" broadly to include education and vocational training, family counseling, and other services.

SACPA'S FUNDING PROVISIONS

The initiative appropriated $60 million in start-up funds for the 2000-2001 fiscal year, and $120 million each year for five years to the Substance Abuse Treatment Trust Fund (Fund). The California Department of Alcohol and Drug Programs (DADP) administers the Fund and is responsible for implementing SACPA throughout the state. DADP annually allocates monies from the Fund to county governments to offset their costs of implementing SACPA. Under the terms of SACPA, money from the Fund may not be used to pay for drug testing offenders.

The drafters of SACPA precluded funding for drug testing in order to promote the expenditure of Fund monies on what was widely declared to be the state's most critical need: the expansion and improvement of drug treatment services. The drafters added this restriction based, in part, upon the experience of many of California's drug courts, which spend a disproportionate part of their budgets on drug testing rather than investing in treatment services or creating more drug court treatment slots. While the state experienced long waiting lists for people trying to access all forms of drug treatment, there were no comparable waiting lists for people in need of state-funded drug testing. In this regard, the drafters predicted that the Legislature would pass and the Governor would sign legislation allocating additional funds for drug testing if such funds were needed. This assumption was proven correct by the passage of Senate Bill 223, discussed below.

SACPA'S ANTICIPATED COST SAVINGS

According to the independent California Legislative Analyst's Office, SACPA is expected to result in *net* savings to the state after several years of between $100 million and $150 million annually, due primarily to lower costs for prison operations.[6] The Legislative Analyst also calculated that the state would reap a one-time avoidance of capital outlay costs of **an additional $500 million**, because SACPA will prevent the need for a new prison facility that is slated for construction in the near future.

SACPA's predicted cost savings derive largely from the fact that SACPA diverts drug possession offenders from jail and prison terms to community-based treatment. According to the state's 2001-2002 budget analysis, it costs $25,607 per year to imprison each inmate in California.[7] Specifically, DADP estimates the costs for drug treatment in California as follows:

COST OF DRUG TREATMENT IN CALIFORNIA

Methadone Maintenance: $7/day, $2,100/client (average stay, 300 days)

Outpatient Treatment: $7/day, $840/client (average stay, 120 days)

Long-term Residential Treatment: $53/day, $7,420/client (average stay, 140 days)

Day Programs: $33/day, $990/client (average stay, 30 days)[8]

II. THE COUNTY ROLL-OUT OF SACPA

Each county in California is required to submit an annual plan to DADP as a condition for receiving state funds to provide services under the new law. SACPA permits counties to develop specifically tailored plans for SACPA implementation. As part of the plan, each county must appoint a lead agency to manage the funds and coordinate SACPA policies and services within the county. In the 2001-2002 plans submitted by the counties, researchers from the Substance Abuse and Mental Health Services Administration observed the following trends:

- SACPA Lead Agency: Approximately 90 percent of the state's 58 counties, and each of the state's 12 largest counties (which together comprise 75 percent of the state's population) chose local health departments (or the drug and alcohol divisions thereof) to serve as the lead agencies.

- SACPA Assessors: Roughly 90 percent of the counties further required behavioral health professionals or alcohol and other drug professionals to assess SACPA clients for treatment needs and recommend appropriate placements for them.
- SACPA Treatment Allocations: The average percentage of SACPA funds budgeted for drug treatment and related services by the counties is 79.1 percent (ranging from 51.5 percent to 100 percent).
- SACPA Criminal Justice Allocations: The average percentage of SACPA funds budgeted for criminal justice activities is 20.9 percent (ranging from 0 to 48.5 percent).[9]

California's counties are implementing SACPA in a broad variety of ways. Over time it is anticipated that additional data from innovative counties will inform other counties and the state about what procedures and practices work best in terms of ensuring that offenders are provided with appropriate treatment services and are motivated to complete their treatment programs.

Successfully implementing SACPA has required a unique collaboration between criminal justice and public health agencies at the county level, generally under the leadership of the local public health agency in their capacity as lead agency. To use Contra Costa County as an example, the county's Community Substance Abuse Services Division collaborates with the probation department at the Contra Costa County Probation Recovery Gateway Unit, a case management function made up of representatives of probation and treatment staff. The Unit enables the client to access services in short order. Additionally, Contra Costa County's SACPA Task Force, which meets regularly, includes the lead agency, prosecutors, public defenders, treatment providers and users, so that the needs of all interested parties are addressed.

It is essential that the communities who are most impacted by SACPA—especially drug users and their families, who have been historically isolated from the drug treatment infrastructure—be made part of each stage of SACPA implementation. Ventura County, for example, has implemented a survey for clients in treatment in order to address some of their concerns about the implementation process. This is just one step, with further steps needed including open and public meetings on SACPA implementation at the local level, the availability of community based ancillary services to address the user's need for multiple services, and the modification of county plans based on community input.

III. SACPA'S FIRST SIX MONTHS – PRELIMINARY DATA AND INSIGHTS

> *"Judges and county officials say they are pleased with the early results, considering drug users are the ones being served by California's novel sentencing program."*
> — Los Angeles Times, February 5, 2002[10]

At recent meetings convened by the State Department of Alcohol and Drug Programs, stakeholders from across the state have testified about the success of the implementation process, particularly with respect to the coordination between different state agencies.[11] As documented in the *Criminal Justice Drug Letter*, at a hearing convened by the Assembly Committee on Public Safety in the State Capitol in November, "**witnesses at the hearing agreed that the measure has diverted into treatment programs thousands of offenders with drug problems who otherwise would have received no medical attention or counseling at all**."[12] These testimonies reflect both a statewide and a nationwide consensus that is building in support of diversion programs like SACPA—that the benefits of treatment for individuals far outweigh those of incarceration.[13]

In January 2001 DADP developed its State SACPA Task Force, comprised of key stakeholders including courts, probation, parole, drug treatment, prosecutors, public defenders, the Attorney General, and the initiative's proponents.[14] The SACPA Task Force meets monthly, and has consistently been encouraged by what they have seen and heard about SACPA's implementation. At the December 2001 meeting, the Task Force reported that the first six months of SACPA's implementation around the state had gone smoothly and without major incident. This initial favorable review was by no means pre-ordained, as many of the stakeholders, and particularly members of the law enforcement community, adamantly opposed SACPA during the fall 2000 election.

Task Force members at the December meeting acknowledged that SACPA was still in its infancy, only six months old, and that more information was needed to fully assess the impact of SACPA, but the initial feedback was extremely positive. To summarize: **in every county, individuals are being deemed eligible for SACPA, diverted from jail or prison into drug treatment, and receiving the services for which they were assessed**. Law enforcement, the courts, and treatment providers are working collaboratively. Counties are using SACPA funds to greatly expand treatment opportunities.

PRELIMINARY DATA: CLIENT DEMOGRAPHICS

We have obtained data from seven California counties in order to demonstrate preliminary trends in SACPA admissions, referrals and retention. The data below charts six months of SACPA implementation from July 1 to December 31, 2001. They reflect the total number of referrals to SACPA as well as the total number of clients active in treatment. These numbers, and subsequent interviews with county administrators and treatment providers, reveal some potentially important trends.[15]

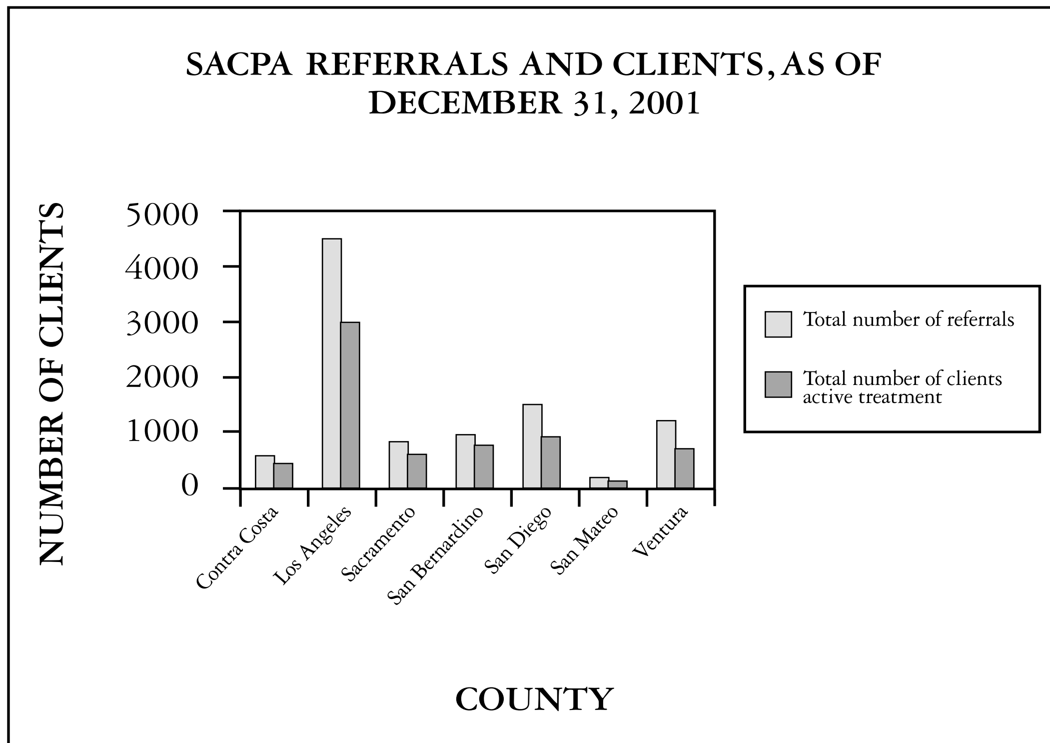
Future evaluations of county implementation strategies, decision-making, assessments, placement and referral may help us understand the differences between the counties' treatment and retention rates. It is our desire to determine over time those strategies that best promote successful treatment outcomes for SACPA participants, and thereby promote the safety of the entire community.

In the counties of Contra Costa, Los Angeles, Sacramento, San Bernardino, San Diego, San Mateo, and Ventura:

- Clients in Treatment: The number of clients active in treatment ranges from 55 percent to 86 percent of the total number of referrals, with a comined average of 71 pecent.
- Clients Not in Treatment: The reasons for a client not being active in treatment include failures to appear in court and at treatment as well as cross-jurisdictional, transportation and legal issues that arise from simultaneous offenses.
- SACPA Caseloads: Compared to their initial annual projections—made before SACPA's July 1, 2001 start date—counties had met between 12 percent and 104 percent of their yearly projected referrals in their first six months of implementation.[16]
- Future SACPA Caseloads: The number of referrals to SACPA fluctuates monthly, so accurate yearly projections remain difficult to make.

COUNTY DATA

County	Total number of referrals	Total number of clients active in treatment	Percentage of referrals active in treatment
Contra Costa	431	370	86%
Los Angeles	4,329	3,008	69%
Sacramento	844	602	71%
San Bernardino	950	722	76%
San Diego	1,702	920	54%
San Mateo	217	174	80%
Ventura	1,240	676	55%



A snapshot of SACPA clients based on preliminary data received from the Department of Alcohol and Drug Programs reveals some demographic trends that may help inform counties in future

implementation efforts. The data is based on only the first two months of implementation, July and August of 2001, and therefore may not prove predictive of future arrest trends.

- Race: 49.3 percent of clients during this time period were European American, 14.9 percent of the clients were African American; and 30.9 percent of the clients were Hispanic or of Latino/a origin.[17] According to the most recent census figures from California, 59.5 percent of California citizens are European American, 6.7 percent are African American, and 32.4 percent are Hispanic or of Latino/a origin. These figures signify that in the first two months of implementation, Latino/a clients were enrolled in SACPA in numbers consistent with their frequency in the California population; European Americans were somewhat under-represented; and that African Americans were over-represented in SACPA. African Americans have long been over-represented in California drug arrests, as well as in prisons and jails; they comprised 23 percent of drug felon arrestees in 2000.[18]
- Gender: 27.1 percent (635 out of 2,343) of SACPA participants were women.
- Education: 33.6 percent of SACPA participants had not completed high school.
- Employment: Over 30 percent of SACPA clients were unemployed at the time of their admission into treatment, and 34 percent of clients had either full or part time employment.[19]

PRELIMINARY DATA: DRUG USE DEMOGRAPHICS

The following information of drug use demographics of SACPA participants have been taken from a component of the California Treatment Outcome Project (CalTOP) data system that extracted data on SACPA clients from a cross-section of California counties through September 2001.[20] Again, these data present only the first two months of SACPA implementation, and may not prove predictive of future trends.

- Methamphetamine was the primary drug used by 44 percent of SACPA clients. Additionally, in counties as diversely populated as Alameda, Contra Costa, and Sacramento, methamphetamine was the primary drug of choice amongst SACPA clients.
- Cocaine/crack was the primary drug of choice for 15 percent of SACPA clients.
- Heroin was the primary drug of choice for 14 percent of SACPA clients.

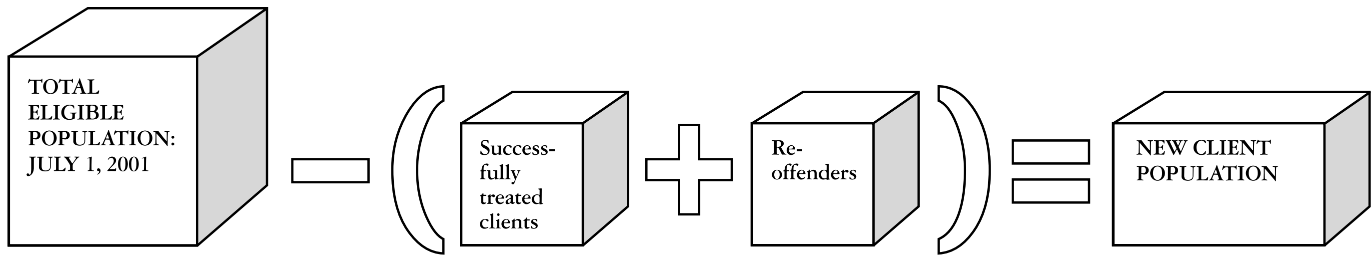
INSIGHT: SEVERITY OF ADDICTION AMONG SACPA CLIENTS AND THE ADEQUACY OF FUNDING

It has been reported in the popular media that some officials are concerned that SACPA is treating a population with longer histories of addiction and that the 120 million dollars allocated annually for drug treatment may not be adequate to address the needs of this group.[21] However, there are no reports of any clients being denied treatment for lack of funds or space in treatment. If these concerns continue to surface, counties that allocated significant amounts of their SACPA monies to the probation department, law enforcement agencies, or poorly performing treatment programs should reconsider such allocations and reinvest in proven treatment modalities that meet the diversity of needs of their clientele.

It is not surprising to the proponents of SACPA or to California's substance abuse treatment professionals that the initial wave of clients are those with longer histories of severe drug dependence, as treatment has been historically under funded and inaccessible to a large percentage of indigent and low-income people in California. More severely addicted individuals are more likely to be known to law enforcement authorities and thus be the primary targets for arrest and prosecution under the new law.

We anticipate that the number of individuals who qualify for SACPA will decrease over time as tens of thousands of them receive treatment and cease to burden the criminal justice and treatment systems. Furthermore, some of the most severely addicted people will predictably relapse into drug addiction and be re-arrested for a low-level, non-violent drug-related crime. Upon a third conviction for such an offense these individuals may no longer be eligible for SACPA diversion, and will often be sentenced under pre-existing law.

One can think of the future SACPA eligible populations as two distinct groups: 1) those amenable to treatment who were previously diverted; and 2) those resistant to treatment who were previously diverted, subsequently re-arrested and rendered ineligible for SACPA. In visual terms, the 'box' of severely addicted offenders who are eligible for SACPA diversion should, over time, decrease (assuming, of course, that the population of newly addicted offenders does not dramatically increase).



DROPPING PRISON INCARCERATION RATES

At present, courts and probation departments refer approximately 90 percent of SACPA clients to treatment; the State's Parole Authority refers the remaining 10 percent.[22] An observed decrease in the state prison population may be attributable, in part, to the effectiveness of SACPA in diverting individuals from incarceration into treatment.

- Parolees: From July 1, 2001 to January 25, 2002, approximately 3,596 parolees have been referred to SACPA.[23] According to the California Department of Corrections, since July 1 only 31 warrants had been issued for parolees who did not follow through with the SACPA program requirements.[24]
- CDC Population: The population of inmates incarcerated by the California Department of Corrections decreased by 4,101 inmates between June 30, 2001 and January 6, 2002. During the same time period in 2000, the year before SACPA began, the population decreased by 1,214 inmates.[25]
- CDC Predictions: The California Department of Corrections predicts that SACPA alone accounts for a projected cut in the prisons' population of about 5,440 inmates next year and by more than 7,700 inmates by 2007.[26]

V. AMENDMENTS TO SACPA

While there have been no successful attempts to legislatively undermine SACPA, at least one notable legislative effort, Senate Bill 223, authored by Senate President Pro Tem John Burton and signed into law by Governor Gray Davis, extended the law's scope and reach.

Senate Bill 223 enhances SACPA in several ways. First, it clarifies that when SACPA clients are drug tested, the results of the drug tests "shall be used as a treatment tool" rather than to punish the client. To this end, it requires that drug test results "shall be given no greater weight than any other aspects of the probationer's individual treatment program." SB 223 also allocates $8 million of federal block grant funds to be used by the counties for drug testing SACPA clients.

In addition, Senate Bill 223 amends SACPA to clarify the ability of courts to expel SACPA clients from drug treatment and incarcerate them on the ground that they are "unamenable to treatment." Specifically, the law requires proof that offenders are unamenable to "*all* drug treatment programs" before their probation or parole can be revoked. Lastly, SB 223 allows for the term "drug treatment program" or "drug treatment" to include a drug treatment program operated under the direction of the Veterans Health Administration of the Department of Veterans Affairs.

VI. JUDICIAL CLARIFICATIONS OF SACPA

A few of the provisions of SACPA have become the focus of litigation at the trial court level. A handful of these interpretative disputes have been ruled on by the state's intermediate courts of appeal, and have thus created legal precedent. Here is a summary of the 2001 judicial decisions interpreting SACPA.

EFFECTIVE DATE

The first and perhaps biggest legal issue to reach the courts concerned the extent to which SACPA's sentencing provisions apply to non-violent drug possession offenders who committed their crimes *prior to* July 1, 2001, the effective date of SACPA. A unanimous ruling by the 2nd District Court of Appeal in Los Angeles in October 2001, *In re Delong,* holds that SACPA applies to persons convicted of a qualifying crime but not yet sentenced before July 1, 2001.[27]

DRUG PARAPHERNALIA CHARGES

A second major interpretive issue concerned the scope and meaning of the term "non-violent drug possession offense" under SACPA. In September 2001, prosecutors in Orange County filed seven appeals challenging court decisions allowing defendants into treatment after being charged with possessing drug paraphernalia. The prosecutors argued that defendants convicted of possessing drug paraphernalia were ineligible under SACPA because drug paraphernalia is distinct from drug possession as covered by SACPA. In an unpublished opinion, the court of appeals ruled that SACPA encompassed drug paraphernalia, and that persons could not be excluded from treatment under SACPA for possessing items commonly used to assist in the ingestion of drugs.[28]

VII. SACPA AND CALIFORNIA'S DRUG COURTS

Although in many ways resembling drug courts, SACPA created a process for diverting non-violent drug possession offenders into community-based treatment that is different from California's pre-existing drug court scheme in both scope and substance. During the implementation of SACPA, comparisons arose between the two schemes. It is important to note the differences in order to point out the need for the more far-reaching SACPA system.

- Scope: SACPA is statewide. Drug courts operate in many but not all counties.
- Admission: SACPA treatment must be provided to *every* eligible individual who commits a SACPA-qualifying offense. By contrast, California's drug courts admit only three to five percent of those offenders who are eligible for admission into drug court.[29]
- Uniformity: SACPA's provisions are uniform across the state. By contrast, each individual drug court has its own rules and requirements regarding eligibility, duration, and treatment options.
- Fairness: SACPA is an equal opportunity law. As already noted, everyone who commits a SACPA qualifying offense is entitled to treatment under the law, regardless of race, ethnicity, gender or county of residence. By contrast, independent government evaluators have criticized California's drug courts for admitting proportionally greater white offenders than persons of color, even though persons of color comprise a disproportionately large percentage of the low-level drug offender population eligible for drug court services.[30]
- Eligibility: SACPA is a post-conviction statute, whereas some drug courts offer pre-conviction diversion opportunities.
- SACPA applies only to certain persons convicted of non-violent drug possession for personal use. Persons are not eligible for SACPA if convicted of drug sales or other felonies in addition to the co-drug offense, or if they have recently been convicted of or been incarcerated for a "strike" offense under California law.
- Drug courts, by contrast, have the discretion to admit these and other more serious drug offenders into treatment.
- Treatment Opportunities: SACPA provides for and funds a diversity of treatment options for offenders. By contrast, the vast majority of California's drug courts offer only one or two treatment options for clients.

- Combatting Heroin Use: SACPA expressly provides for methadone treatment – the most effective known treatment for heroin dependent persons. Forty eight percent of Californians admitted to treatment each year have described heroin as their primary drug of choice.[31] By contrast, virtually all of California's drug courts *prohibit* clients from receiving methadone treatment, in contravention of the recommendations of the National Institutes of Health and other leading medical and substance abuse treatment authorities.

VIII. CONCERNS

It is too early to draw hard and fast conclusions about SACPA based on preliminary information from its first eight months of implementation. However, as proponents for drug treatment and SACPA, we see signs of potentially troubling trends. All of the concerns raised in this section are amenable to interventions, and can be addressed to assure the best possible outcomes for clients and communities. We suggest necessary "Next Steps" to address each concern.

Unlike previous sections, which relied on published quantifiable data, these concerns grow out of our direct observations as participants in many state and local implementation teams and task forces, as well as numerous discussions with key stakeholders from affected communities and from the fields of law enforcement, drug treatment and the judiciary.

METHADONE AND OTHER NARCOTIC REPLACEMENT THERAPIES

Concerns: Early reports from the counties and methadone providers indicate that SACPA clients are not being placed in methadone maintenance programs consistent with the level of demand. This trend has been attributed to systemic biases against narcotic replacement therapies and lack of provider contracts with the counties to provide methadone services. Los Angeles County, California's most populous county, has done a particularly poor job of ensuring narcotic-replacement therapy for its SACPA clients.

Next Steps: The State Department of Alcohol and Drug Programs (DADP) should increase its effort to educate members of the criminal justice system – especially judges and probation officers – on the proven effectiveness of methadone and other narcotic replacement therapies.[32] Personal ideologies or impressions of this treatment type should not factor into the assessment of offenders, the crafting of treatment plans, or in evaluation for the expungement of an offender's record.

Also, the State DADP and the State Legislature need to work with providers to ensure that cost and performance-reporting requirements of these programs are not duplicative of existing state and federal paperwork.

DUAL DIAGNOSIS OF SUBSTANCE ABUSE AND MENTAL ILLNESS

Concerns: Many clients referred to substance abuse treatment under SACPA have co-existing mental health and substance abuse disorders that need to be assessed and concurrently treated.[33] At the statewide legislative hearing in November 2001, a San Mateo County official estimated that 30 to 40 percent of SACPA clients in her county have co-existing disorders; these numbers were also echoed by a Sacramento county official, and appear to be reflected throughout the state.

In some counties, it appears that addiction specialists assigned to assess SACPA participants for treatment placement may be inadequately trained to detect co-existing mental health disorders. In addition, even when diagnosticians appropriately identify co-existing mental health disorders, there are many challenges to providing mentally ill users with appropriate services, given the dearth of programs treating both psychiatric disorders and substance abuse.

Next Steps: DADP should continue to strengthen its collaboration with the State Department of Mental Health and support county efforts to develop and build strong programs to treat the dually diagnosed. Additionally, the SACPA county lead agencies must include mental health services in the collaborative planning process for continued implementation. The State Department of Mental Health Services should work with the State Legislature to reconfigure the mental health assessment and financial support system, so that persons with less severe mental health problems can be offered mental health support in cooperation with their addiction therapy. SACPA also adds impetus to the need to reform the funding streams to accommodate co-existing disorders, including the so-called "border-line cases" which although they are not considered severe enough to merit health insurance or MediCal funding, pose a significant threat to long-term treatment success.

SOBER LIVING ENVIRONMENTS

Concerns: Sober Living Facilities, while not treatment facilities, can be an important part of the continuum of care. A sober living environment allows an individual to live among a community of peers who are also in recovery. A safe, quality-controlled sober living environment is often critical to an individual's success in treatment. Unfortunately, even before the passage of SACPA such facilities have not been required to be licensed, nor has there been a statewide authority responsible for monitoring the quality of such facilities.

Next Steps: The State Legislature needs to work with SACPA proponents, the State DADP and sober-living associations to create a self-supported licensure system that will not drain state resources, but will ensure that quality and accountability are built into every sober-living facility statewide.

DISSONANCE BETWEEN TREATMENT ASSESSMENT AND TREATMENT PLAN

Concerns: SACPA has created the need for collaboration between two different social systems – the public health system and the criminal justice system. In order for SACPA clients to receive the most appropriate treatment plan, substance abuse treatment professionals in appropriate settings must complete assessments, the court must adhere to assessments, and treatment plans should be flexible enough to take into account individual client needs.

Next Steps: The State DADP and County Lead Agencies must continue training criminal justice professionals in the field of addiction and treatment. While criminal justice professionals should not make treatment and other medical decisions, they should be knowledgeable about addiction and treatment modalities so that they can best understand the often-winding path that SACPA clients take on the road to recovery.

DIVERSITY OF TREATMENT OPTIONS

Concerns: The first months of implementation of SACPA indicate a failure to increase treatment options available to participants, but instead show placement in the same limited programs into which individuals entering drug treatment through the criminal justice system have historically been placed. For example, there is a true dearth in programs that provide a wide-range of treatment modalities, and address cultural, ethnic and gender specific needs. While it is understandable that early efforts to expand treatment capacity to accommodate an influx of new clients would tend to rely on pre-existing relationships between the county government and treatment providers well known to the county, SACPA provides new opportunities to improve California's continuum of care by supporting innovative programs for the communities most in need of services. Additionally, the state licensure and certification procedures do not encourage the development of such programs. Finally there is insufficient funding to support vocational and literacy training, family counseling and other holistic services necessary to provide effective rehabilitation for low level drug possession offenders.

Next Steps: County agencies should make efforts to accommodate a diversity of treatment options that address those communities most deeply impacted by SACPA, as well as the broad range of treatment providers that exist, but who are not able to access SACPA funds. These options might include: client-centered care, moderation management, slow reduction course detoxification, motivational interviewing, and provision of a wide spectrum of support services (including housing and entitlements, HIV/AIDS-related interventions, and health and medical care for drug-related illness).

Counties should also continue to make an effort to license facilities which are based in poorer communities or that offer culturally specific treatment, including facilities that offer services for the specific needs of impacted racial or ethnic groups, women (including pregnant and parenting women), and dually diagnosed individuals. Additionally, with the large number of individuals in SACPA who are addicted to methamphetamine, DADP should urge counties to institute best practices for methamphetamine treatment, per the recommendations by the federal government (see for example the Treatment Improvement Protocol "Treatment for Stimulant Use Disorders," published by the Substance Abuse and Mental Health Services Administration).[34]

FAILURE TO APPEAR AT TREATMENT

Concerns: Preliminary reports indicate that some counties have had significantly higher rates of client "no-shows" to treatment than most other counties. Among the reasons cited by informants include poor communication and/or direction for client, inability of clients to access transportation to treatment, clients denied treatment enrollment due to lack of paperwork, lack of motivation by client or direct incompliance with a court order.

Next Steps: County SACPA lead agencies need to ensure the prompt assessment and placement into treatment of SACPA clients. The lead agencies also must enhance communication between the courts, probation, assessment centers and treatment facilities to prevent clients from slipping through the cracks. Written and verbal directions for clients should be clear, concise and easy to understand, and in the client's primary language. The State Board of Prison Terms (BPT), the Regional Parole Authorities and County lead agencies should coordinate communication and paperwork requirements for parolees entering the SACPA system. Finally, the State Legislature and Governor should support amendments to SACPA to include transportation costs as an allowable SACPA expenditure.

IX. CONCLUSION

To the surprise of some, but to the credit of many, SACPA's roll-out has been relatively smooth to date. In addition, early reports and data indicate that SACPA appears to be fulfilling the promises of its sponsors and the predictions of the Legislative Analyst's Office: thousands of people are being diverted from jail and prison into community-based drug treatment and related services, leading to a dramatic reduction in the state's prison population. If this preliminary information is a predictor of things to come, SACPA has the potential to provide urgently needed drug treatment and related services to tens of thousands of Californians, offer viable alternatives to incarceration for non-violent offenders, reduce jail and prison overcrowding, and save taxpayers many millions of dollars.

END NOTES

[1] See, *e.g.*, Beatty, Phillip, Holman, Barry and Schiraldi, Vincent. (*Poor Prescription: The Costs of Imprisoning Drug Offenders in the United States.* Washington, DC: The Justice Policy Institute (2000) (observing that before 2001, drug offenders comprised 27% of California's prison population, and 46% of those offenders were incarcerated solely for simple possession); Federal Centers for Disease Control, http://www.wonder.cdc.gov (reporting that in California, rates of overdose fatalities have risen exponentially over the last twenty years); Nat'l Ass'n of Drug Court Professionals, *Law Enforcement/Drug Court Partnerships: Possibilities and Limitations: A Case Study of Partnerships in Four California Counties,* June 2000, at 35-6 (finding that Caucasians are disproportionately granted access to the benefits of California's drug courts compared to drug offenders from racial minorities); California Legislative Analyst's Office, *Fiscal Effect of "The California Safety and Crime Prevention Act of 2000"* [sic] (1999) http://www.drugreform.org/laoreport.tpl (describing costs of incarcerating non-violent drug possession offenders in California's jails and prisons); Greene, Judith, and Schiraldi, Vincent. *Cutting Correctly: New Prison Policies for Times of Fiscal Crisis.* Washington, DC: The Justice Policy Institute (2002) (noting that California is facing the steepest decline in state revenue in more than half a century, and that Californians are more willing to cut prison spending than any other state program); Males, Mike, Daniel Macallair, Cheryl Rios and Deborah Vargas. *Drug Use and Justice: An Examination of California Drug Policy Enforcement.* Washington, DC: The Justice Policy Institute (2000); Vencill, C. Dan, Sadjadi, Zagros. *Allocation of California Drug War Costs: Direct Expenses, Externalities, Opportunity Costs and Fiscal Losses.* Washington, DC: The Justice Policy Institute (2000).

[2] California Legislative Analyst's Office, *Fiscal Effect of "The California Safety and Crime Prevention Act of 2000"* [sic] (1999) http://www.drugreform.org/laoreport.tpl

[3] Arizona Supreme Court, Administrative Office of the Courts, Adult Probation Services Division, Drug Treatment and Education Fund Annual Report, Fiscal Year 1999, November 2001, http://www.supreme.state.az.us/asd/report99.htm.

[4] Drug Treatment and Education Fund Annual Report, page 3. Thirty-two percent of probationers failed to comply with those requirements.

[5] First and second time non-violent drug possession convictions refer only to those convictions occurring *after* July 1, 2001, the effective date of SACPA's sentencing provisions. Convictions for non-violent drug possession offenses occurring before that date do not affect offenders' eligibility for SACPA. See Section 1210.1(a).

[6] California Legislative Analyst's Office, *Fiscal Effect of "The California Safety and Crime Prevention Act of 2000"* [sic] (1999) http://www.drugreform.org/laoreport.tpl

[7] Legislative Analyst's Office, Analysis of the 2001-2 Budget, which can be accessed on the LAO's website at http://www.lao.ca.gov.

[8] Substance Abuse and Mental Health Services Administration, National Treatment Improvement Evaluation Study, 1997. These numbers are based on estimates of the average number of days of treatment.

[9] Health Systems Research, Inc., for the Center for Substance Abuse Treatment, SAMHSA, "Substance Abuse and Crime Prevention Act of 2000: Analysis of Plans from the 58 Counties," September 2001, i.

[10] Anna Gorman, "Judges Say New Drug Law is Working" *Los Angeles Times*, February 5, 2002, Part 2, Page 1.

[11] Proposition 36: A Status Report on Implementation. A Joint Informational Hearing, Wednesday, November 14, 2001, State Capitol, Sacramento, California. Convened by Carl Washington, Chair of the Assembly Public Safety Committee.

[12] Mark Thompson, "More Hard Core Addicts Seen in California Program," *Criminal Justice Drug Letter,* December 2001.

[13] Peter D. Hart Research Associates, Inc. "The New Politics of Criminal Justice," January 2002.

[14] Department of Drug and Alcohol Programs, Statewide Advisory Group meeting, December 14, 2001, Sacramento.

[15] Sources: **Contra Costa County**: Contra Costa County Health Services, Department of Community Substance Abuse Services Division; **Los Angeles:** Gorman, Anna. "Judges Say New Drug Law is Working," *Los Angeles Times,* February 5, 2002; **Sacramento:** Sacramento County Department of Health and Human Services, Alcohol and Drug Services Division; **San Bernardino:** San Bernardino County Alcohol and Drug Programs; **San Diego**: San Diego County Health and Human Services Agency, Alcohol and Drug Services; **San Mateo**: San Mateo County Alcohol and Drug Programs; **Ventura**: Duncan, Craig, M.D., ed. "Prop 36 Newsletter," Vol. 2, Issue 1, January 31, 2002, Ventura County.

[16]Total projected number of referrals for each of the counties surveyed are: Contra Costa: 917; Los Angeles: 9,000; Sacramento: 3,100; San Bernardino: 6,500; San Diego: 4,265; San Mateo: 1,774; Ventura: 3,500. (Health Systems Research, Inc., for the Center for Substance Abuse Treatment, SAMHSA, "Substance Abuse and Crime Prevention Act of 2000: Analysis of Plans from the 58 Counties," September 2001)

[17] California Alcohol and Drug Data System, July 1, 2001 through August 31, 2001, Produced by the Department of Alcohol and Drug Programs. Of a total of 2,291 clients, 1,129 clients were European-American, 342 were African-American, and 709 were Hispanic or Latino/a.

[18] California Department of Justice, Division of Criminal Justice Information Services,.Gender and Race/Ethnic Group of Felony Arrestees, 2000 by Category and Offense, Table 31, *Crime and Delinquency in California, 2000*.

[19] California Alcohol and Drug Data System, July 1, 2001 through August 31, 2001, Produced by the Department of Alcohol and Drug Programs.

[20] Integrated Substance Abuse Programs, University of California, Los Angeles, SACPA Clients in CALTOP (Sept. 2001).

[21] Warren, Jennifer, "Longtime Addicts Test Prop 36 Drug Treatment Effort," *Los Angeles Times*, (Nov. 15, 2001); Tressler, James, "Prop. 36 Drawing more Serious Drug Users Than Expected," *The Times Standard.* (Dec. 12, 2001).

[22] Department of Alcohol and Drug Programs, California Alcohol and Drug Data System, July 1, 2001 through August 31, 2001.

[23] Board of Prison Terms, Parole and Community Services Division, *Proposition 36 Cases*, July 1 though January 25, 2002.

[24] Thompson, Mark, "California Prison Population Declines Faster Than Expected," 5 *Corrections Journal* 4 (2001)

[25] California Department of Corrections, Data Analysis Unit, Monthly Report of Population. These numbers were found by examining the numbers from the Department of Corrections Institutions (not including Camps, Community Correctional Centers, Department of Mental Health State Hospitals, Parole, Non-CDC Jurisdiction inmates, and inmates-at-large) during each of the dates mentioned.

[26] Thompson, Mark, "California Prison Population Declines Faster Than Expected," 5 *Corrections Journal* 4 (2001)

[27] *In re Delong*, 93 Cal 4th 562 (Oct. 31, 2001) (concluding that extending the benefits of SACPA to persons convicted but not sentenced prior to July 1, 2001 "comports with the purpose of Proposition 36, which is aimed at diverting nonviolent defendants from incarceration into substance abuse treatment programs. An appellate court held that offenders who, prior to the enactment of SACPA, were diverted to drug treatment under another provision of state law (Cal. Penal Code Section 1000) and whose convictions and sentences were stayed pending the completion of the diversion program, remain eligible for SACPA if expelled from the diversion program so long as their convictions and sentences had yet to be imposed as of July 1, 2001. *In re Scoggins*, 2001 DJ DAR 12992 (Dec. 18, 2001).

[28]*People v. Stuart*, 2001 WL 1153451 (Cal.Super. Aug. 15, 2001) (unpublished)

[29] The example of Alameda County is instructive. By the end of November 2001, 922 clients had been admitted to treatment in Alameda. According to Alameda County's 1999 Drug Court Partnership Program Application, Alameda's drug courts admit only about 300 new drug court clients each year (out of 5000 felony drug possession cases).

[30] See National Association of Drug Court Professionals *Law Enforcement/Drug Court Partnerships: Possibilities and Limitations, A Case Study of Partnerships in Four California Counties*, June 2000. (noting that "the majority of drug court participants in all programs were identified as Caucasian or non-Hispanic white.") Alameda County provides a case in point. in 1997 African Americans comprised 18.8% of the residents of Alameda County and 78.5% of the county's adult felony narcotics defendants. Nevertheless, the San-Leandro Haynward Drug Court in Alameda County reported that 65% of their participants were Caucasian. (Source: "Law Enforcement/Drug Court Partnerships: Possibilities and Limitations.") In contrast, the racial breakdown of SACPA clients is relatively consistent, or even surpassed the diversity of the state: 49.3% of SACPA clients are white (non-Hispanic), as compared to 59.5% of the California population. 14.9% of SACPA clients are African-American (non-Hispanic), as compared to 6.7% of the California population; 30.9% of SACPA clients are Hispanic, as compared to 32.4% of the California population (Department of Alcohol and Drug Programs, California Alcohol and Drug Data System, July 1, 2001 through August 31, 2001)

[31] California Department of Drug and Alcohol Programs, *Indicators of Alcohol and Drug Abuse*, from the California Alcohol and Drug Data System.

[32] Other Narcotic replacement therapies include, but are not limited to: L-alpha-acetylmethadol (LAAM) and Buprenorphine. LAAM has been determined to help combat opioid addiction like methadone, however dosage is not daily and therefore allows patients more flexibility in their treatment plan. Office based Buprenorphine trials have begun in California to help treat opioid addiction. Preliminary trials have also determined the possible use of Buprenorphine to reduce the cravings of cocaine addicts. As long as developing narcotic replacement therapies are determined by the medical and scientific communities, they should be made available to SACPA clients. Sources: Finn P, et al.., *Levo-Alpha Acetyl Methadol (LAAM): Its Advantages and Drawbacks,*;14 J Subst Abuse Treat 559 (1997) <http://www.csam-asam.org/office-based_buprenorphine.htm>; Mello, NK et al., *Buprenorphine Treatment of Opiate and Cocaine Abuse: Clinical and Preclinical Studies*, 1 Harv Rev Psychiatry 168 (1993).

[33] According to data from the National Institute of Mental Health survey, researchers found 53 percent of persons with other drug problems had a psychiatric diagnosis not involving drugs. Illicit drug abusers had unusually high rate of anxiety disorder (28 percent), mood disorders (26 percent), antisocial personality (18 percent), and schizophrenia (7 percent). Cited in Grinspoon, Lester, Bakalar, James, "Drug Abuse and Addiction," *The Harvard Medical School Mental Health Review,* 6 (1993).

[34] Rawson, Richard, "Treatment for Stimulant Use Disorders," *Treatment Improvement Protocol Series* 33, United States Departmet of Health and Human Services, Substance Abuse and Mental Health Services Administration (1999).

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