

**Substance Abuse and Crime Prevention Act of 2000 (SACPA)
STATEWIDE ADVISORY GROUP MEETING SUMMARY
September 19, 2003**

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| Welcome |
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Kathryn Jett, Director, Alcohol and Drug Programs (ADP), welcomed the Statewide Advisory Group members and attendees. Director Jett provided an overview of today's meeting, and called members' attention to the items contained in the meeting materials, including the program and policy update report, and the latest Proposition 36 case law digest provided by Scott Thorpe, Office of the Attorney General.

Director Jett provided an update to the members on issues and current conditions impacting ADP and specific areas of Proposition 36 operations of concerns. These issues include:

Budget

In the current year budget, ADP's General Fund was reduced by \$11.5 million dollars. The reduction occurred in the Local Assistance discretionary category of funding. The budget increased the Comprehensive Drug Court Implementation Act program, with an augmentation of \$2.3 million dollars. The money is to be used exclusively for drug courts that accept only defendants convicted of felonies, placed on formal probation, and participate in a drug court program. The budget increased the amount available for the Drug Court Partnership Program to \$7.6 million dollars. Three new staff positions were provided for Proposition 36 State operations; however, ADP has lost 18 positions, with a potential to lose an additional 32 positions.

Director Jett was asked if the budget reductions will have an impact on the State's ability to meet the federal Maintenance of Effort (MOE) requirement. Director Jett advised members that while the MOE is not yet affected, the MOE will be impacted in the federal FY 2003/04.

Alcohol and Drug Programs' 25 Year Anniversary

ADP celebrated its 25 year Anniversary on September 3, 2003. We were joined by many in the field, including county administrators, treatment providers, former employees, and past directors. Other dignitaries included Senator Wesley Chesbro, Health and Human Services Agency Secretary Grantland Johnson, and Dr. David Smith.

The anniversary was held concurrent with the "Recovery Happens" Capitol kick off ceremony, which made for an inspiring day showcasing the difference prevention, treatment and recovery services truly makes in our families, communities and across California.

Director Jett thanked all those involved in planning and attending the celebration, and took the opportunity to announce the appointment of Lisa Fisher as the new Public Information Officer for ADP. Director Jett also announced the appointment of Sherry Gauger as ADP's Deputy Director of Legislative and External Affairs.

Last, Director Jett noted that the outcome of the October 7, 2003, Recall Election may have an impact on the current ADP leadership. In the interim, ADP remains focused on priority issues and projects, especially the Counselor Certification regulations.

Check-In and Program Updates

Members engaged in a roundtable discussion and commentary on issues relevant to implementation of the Substance Abuse and Crime Prevention Act of 2000 (SACPA). Comments included:

Collaboration

- Los Angeles County is continuing its efforts to be inclusive in the local Proposition 36/SACPA collaborative. These efforts include holding regional meetings on a quarterly basis to facilitate participation and input on program operation. Efforts to improve data collection are also under way, particularly how to improve data collection from the court and probation.
- Los Angeles County is also looking at funding of the program with their Board of Supervisors after the 2005/06 sunset date on State funding occurs.
- September is *Recovery Happens* month. The celebration at the State capital included Proposition 36 clients. Over three thousand people attended. San Diego and Shasta counties are also hosting large celebrations.
- There is good news at the State level. The Judicial Council will hold two training conferences – one in the north state and one in the south – for every presiding Judge, District Attorney and Court Officer. This training is funded by The California Endowment, and the University of California-San Diego.

Criminal Justice

- Multi-county Narcotic Task Force commanders report that drug violators continue to re-offend. Probation caseloads are overwhelming resources, and concerns remain about the validity and trustworthiness of drug testing conducted by treatment providers. Law enforcement is still waiting for the UCLA report.
- Statewide, there are reports of increased arrest and re-arrest rates. There is a great deal of interest in and questions about the type of re-arrests occurring.
- This has been an interesting year in or parolee services, with major reform occurring in paroles, generally to address the high recidivism rate. Some reforms will likely increase the number of parolees qualifying and receiving services through Proposition 36. Other California Department of Corrections' reforms may have different impacts, such as treatment furloughs and 120 day prerelease to

residential treatment. These measures will increase competition for treatment beds, which are already limited through out most of California. Several cohorts of graduates with some successes have occurred; there may be some interest in creating some alumni associations, for sobriety and support for completers.

- A number of jail treatment beds and services have been lost due to budget cuts and other reductions. In four Los Angeles county jails, the population has decreased. Drug program beds remain intact, so there is capacity when Judges sentence defendants.
- There is an effort in the legislature to modify a marijuana violation to qualify for PC 1000 program (SB 131, Sher). This would free up Proposition 36 funding currently used for such violations. In short, SB 131 reclassifies the possession of not more than 28.5 grams of marijuana, other than concentrated cannabis, as an infraction instead of a misdemeanor for the first offense.
- With respect to felony cases, there still appears to be some distrust on the side of the prosecution, when the disqualifying charge is dismissed but the Proposition 36 charge is not. While re-offenders are being seen, some clients are making it through the program.
- A new court decision on Proposition 36 case law is now occurring, including *Guzman*, which would expand the population eligible for Proposition 36 if it stands.
- Public Defenders are seeing uneven application of Proposition 36 county to county. District Attorney resistance is an issue. Proposition 36 seems to be working best where a dedicated court calendar is used.

Legislative

- The California Organization of Methadone Providers shared that Assembly Bill 1308 is enrolled and has significant changes. The first step will be to look at the client fee system. AB 1308 allows the use of a sliding scale for treatment by a narcotic treatment program (NTP) of an indigent person not eligible for Medi-Cal and gives priority in grant funding to cities and counties that implement in-jail addiction withdrawal programs based on available standards of care.
- Senate Bill (SB) 1762, which would clarify the meaning of the term “nonviolent drug offense” as used in Proposition 36, and SB 151, which would require all prescriptions for drugs classified as Schedule two through five to be written on non-duplicative, forgery resistance papers. It is expected that this bill would assist in curbing prescription drug distribution to the streets.
- The Judicial Council’s legislation (AB 1306) on case transfers is still alive as it is a two-year bill. AB 1306 states procedures under which a person released upon

probation may be transferred to the care and custody of the probation officer of another county.

Funding, Capacity, and Services

- Sacramento County reports doing well with its Proposition 36 program. The program continues to operate within the allocation amount and capacity available. Improvements in services for the dually diagnosed client population and addressing the Sober Living Environment gap that currently exists are in progress.

Sacramento County has been looking at the client numbers for year two, and noted there are fewer referrals coming in. The referrals coming through the system have similar characteristics as year one clients; however there are fewer misdemeanants, and a slight reduction in the severity of the client criminal history.

- The biggest concern at this juncture is about funding and data collection. Concern remains about methadone treatment and Proposition 36. Methadone Treatment just does not seem to be happening in the Proposition 36 client population.
- There are capacity concerns and questions about the allocations beginning to surface. The question of how to keep the funding flowing is at hand. The Statewide Advisory Group members cannot begin too soon on strategizing and working on this. The Statewide Advisory Group should be the place to start on this, and it is suggested that this be an agenda item for future meetings.
- In some smaller, rural areas, there continues to be resistance to Proposition 36. In contrast, in Placer County, the first graduation of Proposition 36 clients was a positive experience. Referrals are lower this year compared to last year. A closer analysis by the county of why this is occurring is not yet complete.
- A pilot program in Lancaster (Los Angeles County) is attempting to improve success using a more “hands on” approach to getting clients from court to treatment. In addition, there is a pilot program that drug tests clients in the court. So far, 33 clients have been tested with eight of those testing positive. For those testing positive, there is no re-incarceration, but additional requirements, such as 12-step meeting are imposed. Testing occurs after the weekend, on Mondays.
- In Santa Clara County, there are 5,100 clients in treatment and the funds available are 22 percent less than last year. This has impacted waiting lists, which in turn impacts client flow and engagement. So far, there is a good ratio, 4 to 1, of clients completing treatment. To date, 900 clients have completed treatment. Probation completion is not as good. Felony arrests have dropped, due in part to Proposition 36.

So far, cuts to the county General Fund have not occurred. In-custody treatment is supported. Currently, all methadone slots are filled, so methadone placement is only available out of county.

- Los Angeles County, through good planning, is working. In Sonoma County, the program is also working well. There has been an unexpected greater need for residential treatment. Proposition 36 could work better with buy-in from all the stakeholders. Elizabeth Stanley-Salazar shared a newsletter, which tells the story of success and tells the story of treatment.
- There is clear evidence that some counties have reached the extent of funds. Proposition 36 came at time of good funding, and good economic times. Now, we are all struggling. As an example, San Diego County has a \$12 million dollar program, but is funded at \$9 million dollars. As a consequence, day care intensive treatment is out and outpatient drug free is now the prevailing treatment modality. It is more severe in Orange County, where \$2 million dollars have been cut. The program once supported the District Attorney and Probation, now with restricted funding this support is gone. Residential treatment utilization has gone from 12 percent down to 5 percent.
- Members felt that the change to the sentencing law must be sustained, stating a need to plan our consensus on what Proposition 36 means. They want to take advantage of the opportunity to plan for 2005/06. It was seen as imperative to get the message out now, and engage in advocacy based on data.

In response to members comments, Director Jett commented that this feedback is important for ADP to hear, and that the pain of tough budget choices facing counties is seen in the FY 2003/04 SACPA County Plans. It is also important to look at the first year implementation principles and the allocation to make adjustments where needed.

SACPA Allocation Update

Al Senella provided an update to the members on the most recent work of the Fiscal Workgroup in the analysis and recommendations pertaining to the SACPA allocation formula. Senella walked the members through the existing formula used to determine each county's SACPA allocation amount. Currently, the formula is known as 50-25-25. 50 percent of the allocation is determined by population, 25 percent by arrest data and 25 percent by treatment caseload data.

Senella noted that adjustments to an allocation have never been made by pulling all the dollars back and then reshuffling, as some have suggested be done with this year's SACPA allocation. In the early stages of review, many recommendations were made regarding the allocation but none were adopted, due to concerns regarding the data. Several factors that the allocation should consider have been identified, including capacity and caseload. Senella included the caution that ADP not use "we spent the money" as a factor in determining a modified allocation formula, as this is not an indicator that the dollars were spent as intended under the law. CAADPAC expressed its support of this view.

Director Jett added that the Fiscal Work Group and ADP staff based its work on an approach that considers:

1. Proposition 36/SACPA is a five-year program;
2. People will judge Proposition 36/SACPA by the data generated by the University of California, Los Angeles (UCLA) evaluation;
3. Best practices make a difference in how successful a county's program is, and how well the funds have been spent.

In some counties, clients are going through the system, and getting into treatment. In some counties, very few clients are getting in and through the system. The allocation must consider and weigh the Proposition 36 treatment caseload of a county, and we now have that caseload identified. The work on modifying the allocation formula should consider rewarding counties that are getting clients through the system and into treatment.

The members were asked to provide input and suggestions on the principles that should guide further work to modify the allocation formula. Comments included:

- A caution against moving away from the existing principles and questions whether the ADP Director has the authority to mandate "best practices," and a prediction that if funding is reduced in counties with performance issues, the program would deteriorate further. Any change should be weighed against any impacts to the integrity of the evaluation and should also consider the amount of funds sitting in the local trust fund.
- The problem with the caseload factor is that it may create an incentive to mismatch client need and treatment placement. The allocation should provide incentives for appropriate client placement.
- A suggestion that adversarial relationships at the local level may be delaying caseload. The allocation should provide incentives for the collaborative model of operations.
- A caution about point-in-time adjustments to the allocation formula, and that we are thoughtful about the point-in-time considerations that will come into play.
- It is important to move now and make adjustments to the allocation formula. The Proposition 36 caseload should be weighted differently. This item feeds into an earlier discussion about strategic planning to continue funding beyond 2005/06. It is an immediate need. The discussion about the allocation should also consider utilization, and should weight expenditures as well as treatment and ancillary services utilization.
- A suggestion that the use of a "stinger letter" to put counties on notice about sitting on funds be considered.

- Proposition 36 is an opportunity to make systemic change, to build capacity and an opportunity for clients to access treatment. Senella supports looking at the Proposition 36 caseload, and using CADDIS data, which is not perfect, but it is what the field has always had to guide decisions.
- It seems fair to subtract the amount of unspent funds from a county's annual allocation.
- The request for principles is a sound idea. The Fiscal Work Group members do agree that a change is needed. Caseload should be an overriding factor. This item should go back to the Fiscal Work Group for action.
- A suggestion that the allocation provide incentives for counties to devote more dollars to treatment by weighting this factor.

In response to the comments and suggestions on principles, Director Jett indicated that the issue will be revisited. Use of a "stinger letter" is a good approach. ADP staff will sit down with the Fiscal Work Group members, look at the numbers and bring this issue back to the next Statewide Advisory Group meeting.

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| Probation and Parole: Impact of Proposition 36 |
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Debra Botts, representing the California Probation, Parole, and Correctional Officers Association and David Spencer, representing Sacramento County Probation Department made a presentation on the impacts of Proposition 36. Joe Ossmann and Moses Wilson representing the California Department of Corrections' Parole and Community Services Division also spoke about paroles.

PAROLE

Joe Ossmann reported that the State Parole system underwent a major reconstruction of its referral process following the passage and implementation of Proposition 36. The result has been favorable, with the placement of parolees in treatment expedited to about one week following a finding of Proposition 36 eligibility. In addition, there is more flexibility for the Parole Agent. This has increased the number of parolees in treatment, as well as the length of time Parolees remain in treatment. There are 5,250 parolees referred for treatment this year, which is a 25 percent increase over the number referred in Fiscal Year 2001-02.

Proposition 36 has contributed to a significant decrease in the number of parole revocation on drug charges, from 29 percent prior to Proposition 36 to 21 percent in Fiscal Year 2002-03. There are now nine specialized agents for Proposition 36 parolees. While this is not enough for the caseload, it is an improvement.

There are a number of parole reforms under consideration to reduce the revocation and recidivism rates, all with an aim to identifying alternatives to help keep parolees crime and drug-free.

Judge Luna praised the work of Parole, and observed that this part of the Proposition 36 system seems to really be working now. She asked for clarity on what the priorities of the nine special parole agents. In response, Joe Ossmann indicated that the first priority is on direct parole referrals, and second is the dually supervised clients sent by the Court.

Moses Wilson offered the field perspective on Proposition 36 and parole. Parole agents do attend local collaborative meetings held by the county lead agency. Parole supervision is resulting in some good outcomes, with parolees staying in the program longer and making positive changes in their lives. The current caseload ratio is about 1:5, so additional agents would be optimal.

PROBATION

David Spencer spoke about the experience of Sacramento County, which has a history of collaboration. This made planning and organization for Proposition 36 implementation and operation easier. The county uses on-going, daily collaboration and monthly meetings to manage the Proposition 36 program.

Toni Moore commented that the working relationship between Alcohol and Drug treatment and Probation is excellent. Collaboration on a day to day basis is key to this relationship. Initially, treatment providers were apprehensive about having probation officers on-site, particularly armed officers. But all the misgivings have been worked through and worked out. Executive involvement at the highest levels has also helped, particularly the involvement of the County Executive Officer and the Board of Supervisors.

From the start, the Proposition 36 program evolved as the need developed. Within probation, there are 11 probation agents, 2 supervisors and 1 clerical staff in the program. Nine officers are assigned out to treatment locations.

Sacramento County uses a dedicated court approach, and clients have three weeks to report back. The county has streamlined paperwork and other processes where feasible to efficiently manage the Proposition 36 caseload. There are increasing numbers of clients with extensive criminal records, high incidence of continuing violence, including domestic violence, sexual offenses, and child molestation.

Many clients continue self-destructive behavior and probation supervision has had some mitigating effect. In some instances, probation officers have requested incarceration on old charges as a means of protecting or re-engaging clients. Probation officers report a positive outcome to working with treatment, particularly in the placement of mentally ill clients in treatment rather than arrest. Using treatment staff on calls has assisted in accurate assessments of clients in crisis, and appropriate action.

Currently, there are 57 out-of-county probationers in Sacramento. 203 clients have gone through assessment but are not supervised. The average age of probationers is 37 years old, and engagement in probation and treatment is difficult.

Debra Botts reported that, statewide, one area concern for probation officers and departments around the State is communication with the lead agency. All County Lead Agency Letters and

other information are not shared. Collaboration is uneven, with some counties doing well and others not doing well. Wherever all local stakeholders share an ideology about how to implement, operate and collaborate on Proposition 36, there seems to be success.

There are some unmet needs and gaps in current Proposition 36 operations. These include transportation; the lack of support positions commensurate with caseload, clarity on case management roles is needed. There seems to be little agreement across the board on this.

Last, client motivation to succeed in treatment seems low. The motivation appears to be primarily about jail avoidance.

Drug Testing and Treatment: Efficacy and Utility

Al Senella spoke to the members about drug testing performed by treatment providers. Members were interested in the efficacy and utility of drug testing of Proposition 36 clients.

Senella stated that there are concerns from within the collaborative about drug testing performed by treatment providers. He explained that treatment providers use rigorous testing procedures that include chain-of-custody procedures and policies, as well as certified staff.

While drug testing protocols identify clients attempting to cheat the system, cheating is not widespread. Drug testing results are used to make treatment decisions. For this purpose, on-site instantaneous results are an improvement over the more lengthy laboratory testing. It allows for timely detection and intervention with clients.

Bob Elsberg commented that law enforcement personnel hear a lot about clients smuggling in samples to “game” the testing and asked if there is a procedure that would stop this practice. Senella responded that there are good procedures and noted that treatment staff is well versed in client strategies to “game” testing, as many staff were once clients themselves. Deborah Botts commented that the issue of cheating may best be addressed through the local collaborative with training.

Judge Manley noted that in Santa Clara County, the Probation Department does all the testing and treatment providers need to know about the testing results.

Senella noted that drug testing early in the treatment process can be an added component of client engagement and compliance with treatment, although it is costly.

In Sonoma County, a system known as “passport” is used. This system measures pupil reaction to light in addition to an instant urine analysis. Differences in the samples would trigger a more rigorous and expensive laboratory test. This system can cut the cost of testing.

Toni Moore added that in Sacramento County drug testing is going very well. All testing results are shared within the collaborative as well as the court. They have both instantaneous and laboratory testing. It is performed on a random and observed basis, except in methadone treatment. This is a point of contention with the District Attorney. Oral fluid testing is being tried. The release of information and open testing seems to be key.

Bill Zimmerman representing Campaign for New Drug Policies, observed that the discussion about drug testing is interesting, in that we are now discussing testing in the context of mechanics – how to do it- rather that *can* it be done. He then asked the members if it is true that testing is adequate in treatment and that adequate funds exist for testing. Members responded that the funding may or may not be adequate, depending on the county, but the real point of contention is that funding for drug testing was made by diverting Substance Abuse Prevention and Treatment (SAPT Block Grant) dollars to this purpose. Deborah Botts noted that the testing performed by Probation Departments is not funded with the SAPT dollars.

It was noted that there may be some duplicative testing happening between treatment and probation and that collaboration may be the key to addressing this. It was also noted that testing alone is a poor measure of treatment progress. There are other indicators such as frequency of use to be considered as well. Judge Luna reminded the members that, early in Proposition 36 implementation, testing was seen as trigger to pull Proposition 36 eligibility and we are not there anymore. This seems to be progress.

Next Steps for the Statewide Advisory Group

The members of the Statewide Advisory Group agreed to cancel the previously scheduled meeting of October 3, 2003. The group will meet instead on October 28 or 29, 2003 in conjunction with the CLAIM conference. Members requested the following items be the focus of the agenda, and that ADP include SACPA expenditure data for the members review and discussion:

1. SACPA Allocation Methodology and Formula
2. Strategies for Continued Proposition 36 Funding
3. UCLA Evaluation and Law Enforcement Issues

Adjournment

The meeting was adjourned at approximately 3:00 pm.