

The Pilgrim at Dana Point Harbor

**ORANGE
COUNTY
GRAND
JURY**

**FINAL
REPORT
2002-2003**

**A Shortfall in
Proposition 36 Support?**

APRIL 30, 2003

A Shortfall in Proposition 36 Support?

Summary

The Substance Abuse and Crime Prevention Act (SACPA) Proposition 36 was approved by the voters in November 2000. Ballot arguments in favor of Proposition 36 led voters to believe that nonviolent drug offenders, convicted for the first or second time after July 1, 2001, would be entitled to court supervised treatment for substance abuse, instead of serving jail time. The focus of Proposition 36 was on treatment programs, without drug testing, leading to rehabilitation in lieu of incarceration. The law did not, at that time, provide funding for drug testing and adequate follow-up.

A subsequent Senate Bill, SB 223, became law on October 11, 2001, to fund drug testing via the Substance Abuse Testing and Treatment Act (SATTA). Actual costs of the program are expected to significantly exceed the available state funding for FY 2003-2004. Orange County departments supporting the court are already spreading the case loads thinner and doing less testing than desired. The departments are working together to provide the necessary support. However, there is concern about the lack of long term funding for the program, which is only authorized by the State through FY2005-2006. State and county funding are presently at risk due to state budget cuts.

Courtroom situations involving the Felony Court and the Proposition 36 Court were observed to assess the county provided court support. This support includes the District Attorney, Public Defender, Probation Department, and the Health Care Agency.

In order to minimize repeated crimes after initial release, attention needs to be given to the release and treatment portion of Proposition 36. Continued funding is needed to accommodate higher than expected caseloads, treatment, supervision support and additional residential care beds to hold recidivism down while local drug related crime rates are increasing. Specifically, support by the District Attorney, Public Defender, Probation Department and the Health Care Agency is critical to achieving adequate follow-up and treatment, and drug testing which has proven to be successful in Orange County Drug Court. Orange County has developed one of the most comprehensive treatment programs in the state in an attempt to make Proposition 36 work effectively. The Proposition 36 Program was listed as one of five strategic priorities for Orange County in 2002, but it needs key changes in the post-custody phase for it to be more effective. Even with adequate funding the desire of an offender to cooperate, accept proper medication with treatment follow up, that includes successful drug rehabilitation is less likely to occur without the threat of incarceration.

Drug treatment costs under Proposition 36 average less than 20 percent of incarceration costs per person per year. There are both financial and social benefits, for not only continuing the program but for providing adequate funding for improvements to the program. County departments providing support for Proposition 36 are actively examining potential impacts of major funding limitations.

INTRODUCTION AND PURPOSE

Orange County Proposition 36 Court defendants are sometimes homeless (about 10 % of the cases) and repeat offenders, with drug problems. These offenders often enter the criminal justice system through the Felony Court where they may be transferred to the SACPA Proposition 36 Court, which offers time limited treatment for drug addiction.

With additional treatment and follow-up under Probation supervision, the Proposition 36 Court can aid in lowering recidivism which, in turn, may lower the number of crimes. However, some key changes are required to further improve the county's treatment phase of the program. These changes in treatment and supervision could result in benefits, which are difficult to quantify, but include improvements in public health and safety. Both the residential treatment care facilities, which provide beds and the supervised treatment and supervision with drug testing, are vital for the program to achieve significant results in recidivism.

The purpose of this study is to focus on the personnel, funding and support provided to the SACPA Proposition 36 Court by the County; and to assess the impacts on recidivism, caseloads, local crime rates and problems being encountered.

METHOD OF STUDY

- Observed the (1) Felony, (2) Drug, and (3) Substance Abuse and Crime Prevention Act (SACPA) Proposition 36 related Courts and noted the type of County support personnel being utilized.
- Met with or obtained information from representatives of the Superior Court, the District Attorney's Office, local law enforcement agencies, Probation Department, Health Care Agency (HCA), the Public Defender's Office and the Drug Court and SACPA Oversight Committees to understand their procedures and policies.
- Reviewed funding sources currently being used.
- Reviewed post release treatment and follow up drug testing support.

BACKGROUND

The Proposition 36 Court is a Specialty Court limited to handling certain drug cases admitted to the program under California State law. A summary of the key aspects of this court is presented in Appendix A. The Proposition 36 program is directed toward people charged with non-violent drug possession or under the influence of a controlled substance. Proposition 36 creates an entitlement to the program. In order to be eligible for the program, the person charged must agree to accept drug treatment as a condition of probation. Probation is then granted to the defendant, drug treatment is begun and progress is monitored. Should they not agree to the provisions, the only recourse is to go through the normal Criminal Court process. The inmate who pleads guilty at arraignment and is eligible enters the Proposition 36 Program to stay out of jail. That becomes the motivation rather than turning away from drugs and crime. Even if a trial

is chosen, the end result, if found guilty, is the same and the offender is still eligible for Proposition 36 treatment. Other drug treatment (post-plea) programs (e.g. Drug Court and Sheriff's Best Choice) involving intensive evaluation, coordination and supervision among the support personnel and an offender, appear to improve an offender's ability to lead a more productive lifestyle. The California Department of Alcohol and Drug Programs (ADP) in its report to the state legislature indicated not everyone who is eligible for Proposition 36 ends up in treatment. Though data is not available, some counties anecdotally reported a higher percentage of individuals 'opting out' of SACPA than anticipated. Eligible offenders without prior offenses can opt first for PC1000, a plea and divert drug counseling program. If they then fail, they are still eligible for Proposition 36 or other programs, such as Drug Court. Based upon the 12 largest counties, 60% of those referred by the criminal justice system were admitted to treatment.¹

Closely monitored treatment and follow-up, after release from jail are key to the program. According to the SACPA progress report released in June 2002, Proposition 36 Courts need increased support and follow-up treatments.² SB 223 (SATTA) allows for SACPA funding for drug testing. The potential total SACPA funding shortfall in FY 2003-2004 is estimated to be **\$2.2 million** or more³ as shown in March data provided by HCA in Appendix A. Budget cuts may increase this shortfall and in turn reduce non-mandated prevention and intervention programs. Every department involved with supporting Proposition 36 is experiencing additional shortfalls in funding.

If additional funding is not provided by the County, Orange County will either be non-responsive to the state mandate of furnishing treatments or will have to reduce staffing to SACPA funded levels. The cost breakdown for these cases is estimated to be about 70% for treatment and 30% for direct support personnel of the Proposition 36 Court. Many of these cases involve persons with dual-diagnosis, i.e. drug or alcohol addiction and mental health problems. This contributes to the high percentage of costs for treatments. Some of these cases are now being handled in the new Dual-Diagnosis Court, which is also being funded by Proposition 36 funds. Approximately 4,048 active cases, through March 31, 2003, are receiving some treatment in the Proposition 36 program. This is burdening some Orange County Departments to cover the mandated requirements.⁴ Without proper funding to cover support, other problems arise when the Proposition 36 Court releases the offenders on their own recognizance as required by law.

Participation by defendants in the Proposition Court 36 Program is considered to be a "right" and this represents a significant influence on the attitude of the persons in the programs. Proposition 36 creates an entitlement to the program. Many defendants choose Proposition 36 Court rather than incarceration, as release from jail is mandatory if the inmate is admitted into the Proposition 36 program.

Problems with Support of Proposition 36

The impact of Proposition 36 was underestimated in terms of the severity of drug addiction and the criminal sophistication (knowing how to work the system) of the participants. Many offenders who are eligible for treatment under the terms of Proposition 36 have long drug histories, combined with numerous other crimes. They suffer from a more serious level of addiction which requires the most intensive treatment programs available. Approximately 80

percent of the cases referred from the courts involve persons with felony charges. A summary of the case loads to date for the Proposition 36 program is shown in Table 1.

Table 1: Data on Proposition 36 Court Caseloads as of March 31, 2003

• PC1210 Cases Received through 3-31-03: Total	100%= 6551 ^{1,2}
• Active Supervision- i.e. Total Active Caseload	62%= 4048
• Warrants	18%
• Terminations	11%
• Assessments	6%
• Other	3%

Data provided by the Probation Department on April 14, 2003.
 Notes: 1. 81 % are new probationers and 19 % are already active probationers.
 2. 376 cases were added during March 2003 (typical month).

Under the provisions of Proposition 36, once a defendant has pled guilty and receives probation, he begins the program process within seven days. The time between the defendant's release from jail and beginning of treatment is critical. The greater the time gap, the greater the likelihood that the defendant will continue drug use and possibly continue committing crimes to support the addiction and not seek treatment.⁵ This continued cycle significantly increases the costs and staff required handling of the offenders. If the offender requires the most intensive residential treatment an immediate placement occurs. The number of funded beds for Proposition 36 cases in Orange County are lower than needed. There are only 100 funded residential beds that can serve about 400 people per year in the drug program. Another 6 beds are available and only can accommodate about twelve pregnant or parenting females per year.

Proposition 36 Impact on Orange County Cities Crime Rates

Data has been provided from some Orange County cities that possibly indicate some evidence of increases in crime rates since Proposition 36 was initiated. However, the specific increase due to Proposition 36 is undetermined. One local Police Department attributes its recent 3% crime increase to two primary factors: (1) an increase in the percentage of the city population in the 18 to 25 age group, which commits the greatest number of crimes and (2) the implementation of Proposition 36. When Proposition 36 was implemented, crimes were expected to be lower. Data now available in the city of Fullerton also shows an increase in major crimes since Proposition 36 Court was implemented on July 1, 2001. The data provided and shown in Figure 1, by the Fullerton Police Department, indicates an increase in the number of felonies committed since July 1, 2001. The Fullerton Police Department attributes this 5% rise directly to the Proposition 36, but hard data is not available to isolate Proposition 36 related crimes from others. People who commit violent crimes are not eligible to participate in Proposition 36. The California crime statistics for similar felonies available only through 2001 beginning on July 1, 2001 are shown in Figure 2 and reflect the same general increase in crime rate.

Anaheim shows a rise in crime that appears to be analogous to the data available from Fullerton. The data provided by the Anaheim Police Department (APD) in Figure 3 indicates a total of 10,058 Part 1 Felony Crime Reports in the year 2000. Part I crimes total, in 2002, based upon a projection of data through October 2002, is 12,569 Crimes. This represents a 25% increase in the crime rate over a two-year period. The APD attributes some portion of the increase since July 1, 2001 to Proposition 36. Other factors such as economy down turns and demographics may be contributing to the rise in crime rates over the past two years and need to be considered in the Proposition 36 evaluation.

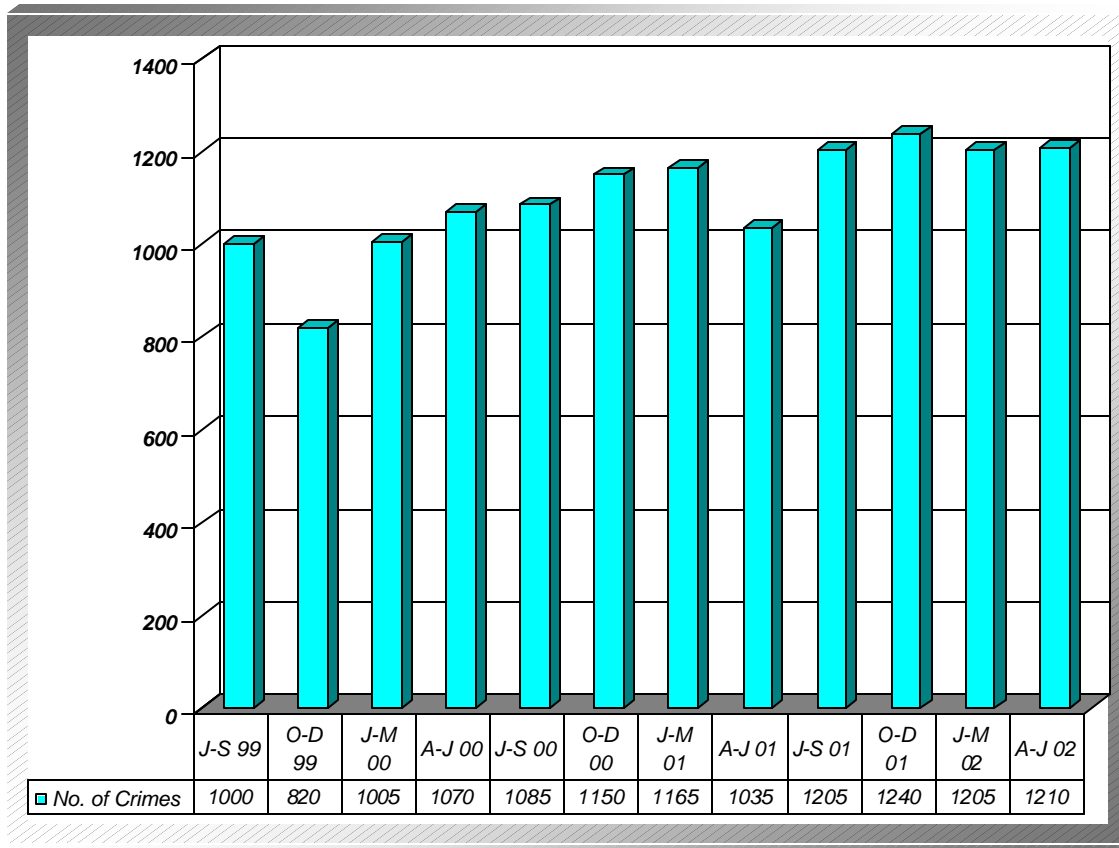


Figure 1: Fullerton Crime Statistics (By Quarters of a year)

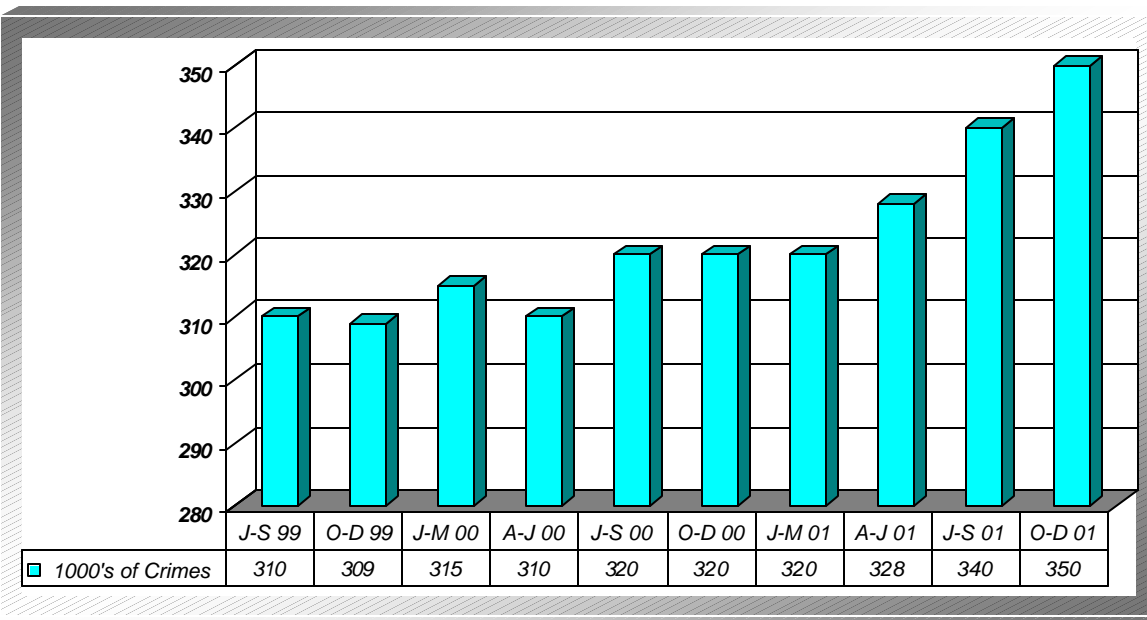


Figure 2: California Crime Statistics (by Quarters of a year)

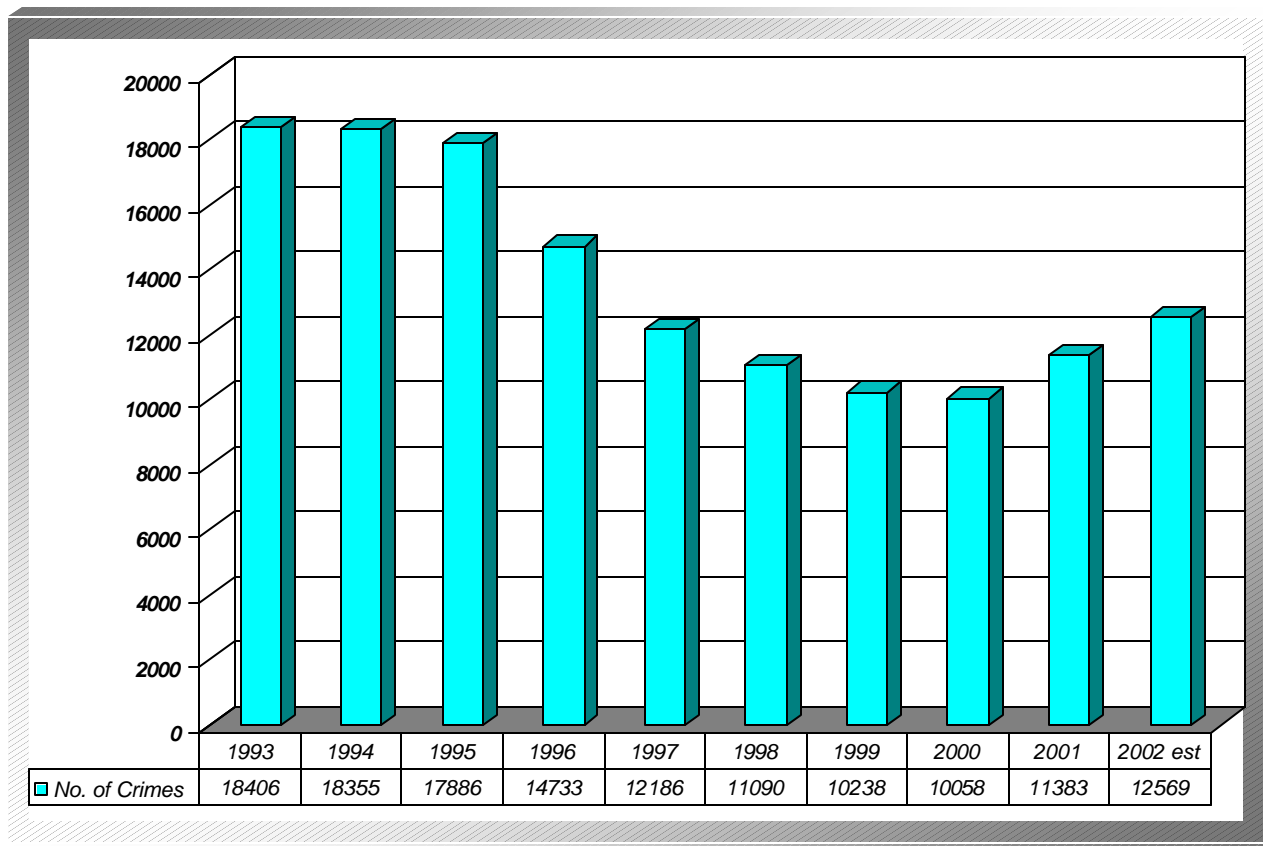


Figure 3: Anaheim Crime Statistics

FINDINGS:

Under *California Penal Code* § 933 and § 933.05, responses are required to all findings. The Orange County 2002-2003 Grand Jury has arrived at five findings:

1. In the Proposition 36 Court, the severity of drug addicted crimes and criminal sophistication are higher than projected by County planners.
2. When an individual is determined to be eligible under the terms and conditions of Proposition 36 there is a need for immediate assessment, treatment, follow-up and drug testing to begin.
3. Crime rates in some Orange County Cities show increases since the inception of Proposition 36 that may be attributable to Proposition 36 or to other factors, such as economy downturns, and drug driven property crimes.
4. Funding is inadequate to support sufficient residential and intensive outpatient needs.
5. County departments (Probation, District Attorney, Health Care Agency and Public Defender) involved with Proposition 36 are absorbing additional cost shortfalls not currently included in SACPA cost projections.

Responses to Findings 1- 5 are required from the Board of Supervisors, the District Attorney, and the Sheriff-Coroner.

Responses to Finding 3 are required from the cities of Anaheim and Fullerton.

Responses to Findings 1- 5 are requested from the County Executive Officer.

Responses to Findings 1, 2, 4 & 5 are requested from the Orange County Public Defender, the Probation Department, and the Health Care Agency.

RECOMMENDATIONS

In accordance with *California Penal Code* § 933 and § 933.05, each recommendation must be responded to by the government entity to which it is addressed. These responses are to be submitted to the Presiding Judge of the Superior Court. Based on the findings, the 2002-2003 Orange County Grand Jury recommends:

1. Assess the factors related to Probation violations during participation in Proposition 36 and implement corrective measures. (Finding 1)
2. Continue efforts to increase treatment and provisions for expediting a timely assessment of the defendant to achieve immediate placement into treatment following sentencing. (Finding 2)

3. Prepare a plan and implement action to increase testing and supervising of the participants under the terms and conditions of Proposition 36. (Finding 2).
4. Examine county and city arrest and incarceration records and statistical data of persons enrolled in Proposition 36 Court to determine the program's effectiveness relative to reducing criminal involvement in serious crimes. (Finding 3).
5. Provide costs for current year (2002-2003) and projected cost for future years (two), for departments for beds and personnel to support Proposition 36. (Findings 4&5)

Responses to Recommendations 1-5 are required from the Board of Supervisors; based upon Findings 1-5.

Responses to Recommendations 1, 2, 4 & 5 are required from the District Attorney, and the Sheriff-Coroner, based upon Findings 1-5

Responses to recommendation 4 are required from cities of Anaheim and Fullerton. (Finding 3)

Responses to Recommendations 1-5 are requested from the County Executive Officer based upon Findings 1-5.

Responses to Recommendations 1- 5 are requested from the Orange County Public Defender, the Probation Department, and the Health Care Agency based upon Findings 1-5.

ENDNOTES

- 1 First annual Report to the Legislature, dated November 2002, by the State of California Department of Alcohol and Drug Programs on Substance Abuse and Crime Prevention Act of 2000 (SACPA-Proposition 36) received November 25, 2002.
- 2 SACPA Progress Report by the SACPA/Proposition 36 Implementation Committee, for the period of July 1, 2001 through March 31,2002, released June 18, 2002.
- 3 Item V of Minutes from OC Criminal Justice Coordinating council Meeting of September 20, 2002
- 4 Memorandum from OC Probation Department to OC Grand Jury re: Probation Department Needs, dated July 25, 2002.
- 5 Superior Court of California County of Orange Commissioner for Proposition 36 Court, October 1, 2002.

**APPENDIX A: SUMMARY OF THE ORANGE COUNTY PROGRAM
WITH THE SACPA PROPOSITION 36 COURT**

This data was prepared by and provided by Superior Court staff to show a summary of key aspects of the Program for the Orange County Substance Abuse and Crime Prevention Act (SACPA) Proposition 36 Court.

<u>Aspects</u>	<u>SACPA Proposition 36 Program</u>
<p>Background</p> <p>History</p>	<p>On July 1, 2001, the County of Orange implemented Proposition 36, The Substance Abuse and Crime Prevention Act (SACPA). The program operates primarily in the Central Justice Center, but is available in all jurisdictions.</p> <p>The County Executive Office (CEO) was initially designated as the County’s Lead Agency The Lead Agency designation was transferred from the CEO to the Health Care Agency (HCA) in January 2002. Participating agencies include the Orange County Superior Court, the District Attorney’s Office, the Public Defender’s Office, the Probation Department, the Health Care Agency’s Alcohol and Drug Abuse Services, the Sheriff’s Department and local law enforcement agencies and community entities.</p> <p>There is a SACPA Oversight Committee that meets regularly providing continuity and policy decisions. The SACPA plan agreed upon by the participating agencies and approved by the Board of Supervisors and State Department of Alcohol and Drug Programs provides operational guidelines.</p>
Lead Agencies	<ul style="list-style-type: none"> • Orange County Health Care Agency
Purpose, goals, objectives	<ul style="list-style-type: none"> • Reduce participant contacts with the criminal justice system. • Reduce costs associated with criminal case processing and re-arrest. • Promote self-sufficiency and empower substance abusers to become productive and responsible members of the community. • Provide participants with opportunities to engage in recovery and achieve abstinence from illicit and illegal drugs. • Provide ancillary services as needed, to include, but not limited to vocational training, literacy training & family counseling.

Program Description	<ul style="list-style-type: none"> • Maximum 12-month program - aftercare up to 6 months may be required. • Non-traditional approach to criminal offenders who are addicted to drugs. • Partnership between criminal justice and drug treatment communities. <ul style="list-style-type: none"> • Serves male and female adults. • Participants return to court for Probation violations. • Services provided by community based treatment providers. • Individualized treatment plans and program requirements. • Private treatment providers determine specific program rules and requirements.
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<u>Aspects</u> Eligibility Criteria	<ul style="list-style-type: none"> • <u>SACPA Proposition 36 Program</u> • Only non-violent first and second time misdemeanor and felony offenders sentenced for drug use or possession and comparable probation and parole violators qualify for participation. • Conviction of qualifying charge. • No conviction for serious/violent felony for which prison time has been served in the past 5 years. • No other criminal charges in addition to non-violent drug possession. • No use/possession of firearm while using or under influence. • Agree to drug treatment as a condition of probation/parole. • No more than two separate prior convictions/probation violations in which sentenced to drug treatment under Proposition 36, is amenable to treatment, and not a danger to others.
Eligibility/Suit ability Screening Process	<ul style="list-style-type: none"> • Potential eligibility determined by District Attorney. • Probation conducts risk assessment for community supervision • HCA therapist assesses for type and level of treatment.
Community Supervision	<ul style="list-style-type: none"> • Participants placed on parole and/ or formal probation assigned to an officer with no minimum caseload. • Parole supervises all parolees • 75% Felons

Treatment Services Provided	<ul style="list-style-type: none"> • Level of treatment is determined by HCA evaluation of participant. Three increasingly intensive levels of outpatient treatment and three increasingly intensive levels of residential treatment are available through community providers. • Detoxification, narcotic replacement therapy and perinatal services are available.
Successful Performance	<ul style="list-style-type: none"> • Completion of all treatment requirements and compliance with Probation. • Petition for dismissal. Conviction on which probation was based will be set aside and Court will dismiss.
Location of Program	<ul style="list-style-type: none"> • All felony cases are monitored through Central Justice Center and misdemeanor cases are monitored in all jurisdictions. • Community based providers operate in each of the County's five judicial districts.
Total No. of People in Treatment as of 3/31/2003	4048 under active probation supervision and treatment services referred to PC 1210 as of March 31,2003.
	<ul style="list-style-type: none"> • Most persons who are eligible for both Drug Court and Prop 36 initially choose to participate in Prop 36.
Funding Source	<ul style="list-style-type: none"> • State General Funds required by law. • Block Grant for drug testing. • <i>Orange County agencies/departments are absorbing additional related costs. (Not included in annual costs below)</i>
	<ul style="list-style-type: none"> • <i>Annual allocation \$8,485,533 Fiscal Year 2002-2003 budget \$12,424,999 (utilizing roll-over from FY 2000-01 and 2001-2002)</i> • <i>Distribution of funds for FY 2002-2003 is as follows per HCA:</i> <ul style="list-style-type: none"> ○ <i>69% Treatment</i> ○ <i>16% Probation Department</i> ○ <i>5%Public Defender</i> ○ <i>5%District Attorney</i> ○ <i>5% Drug Testing*</i> ○ <i>4% Other Services</i> <p><i>100% Total</i></p> <p><i>Shortfall going into FY 03-04 may be as much as \$2.2 million or more.</i></p> <p><i>*Includes 1/3 for Probation and 2/3 for HAC Treatment.</i></p> <p><i>(Costs distributed by HCA to the CJCC on February 18,2003)</i></p>