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May 12, 2003

The Honorable Frederick P. Horn
Presiding Judge
Orange County Superior Court
700 Civic Center Drive West
Santa Ana CA 92701

RE: Orange County Grand Jury Report of March 13, 2003;
Drug and Mental Health Court Support for the Criminal Offender

Dear Judge Horn:

Please find attached the response of the Orange County District Attorney's Office to the Grand Jury Report. Since this report deals only with the Drug Court program, the Dual Diagnosis component of the Penal Code 1210 program and the proposal for a new Mental Health Court, we have addressed our responses to these specific programs.

Unfortunately, many of the Findings and Recommendations where our response has been requested do not involve areas over which the Orange County District Attorney's Office has control. While we have participated in many of the specialty court programs in the past, the current budget situation may preclude our continuing participation in the foreseeable future.

Sincerely,

Tony Rackauckas
Orange County District Attorney

TR\EH:vlb
Enclosure

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

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**RESPONSE TO THE GRAND JURY REPORT
“DRUG AND MENTAL HEALTH COURT SUPPORT FOR
THE CRIMINAL OFFENDER”**

INTRODUCTION:

The Orange County District Attorney’s Office has participated in the Orange County Drug Court since its inception. We sit as a member of the Drug Court Oversight Committee and, as part of our participation in the program, agree to dismiss drug possession charges against criminal defendants who successfully complete the Drug Court Program.

The Dual Diagnosis Court exists as a component of Penal Code 1210 (Proposition 36), an initiative enacted by the voters, which took effect in July 2001. The District Attorney’s Office participates as a member of the Proposition 36 Oversight Committee. During the implementation of the Proposition 36 program, our office took a proactive role in order to allow the program to reach the criminal drug defendants who qualify for treatment. Our positive approach to implementation occurred even though we believe the initiative is fatally flawed and does not require sufficient accountability for criminal defendants who participate in the program. The Dual Diagnosis Court has not shown itself to be effective, in part because of the lack of accountability in the statute.

The proposed “Mental Health Court” for criminal defendants is a program that we cannot currently support because of the current county budget situation. Criminal defendants with mental health problems are common in the criminal justice system and we currently address those cases individually on a countywide basis. We will continue to give these cases the attention they deserve.

RESPONSE TO GRAND JURY FINDING #1 - “The support provided by Orange County departments and agencies contributes to the success of the Drug and Dual Diagnosis Programs. There is also a plan for a Mental Health Court Program that will require additional support”

DISAGREES PARTIALLY WITH FINDING

While we agree that the success of the Drug Court, Dual Diagnosis Court and proposed Mental Health Court depend upon the support provided by county agencies and departments, we do not agree that additional support from the county would be beneficial in making the Dual Diagnosis Court successful because of the limited ability of the court to demand accountability from the defendants who participate in Penal Code 1210 (Proposition 36). Nor do we agree that the county should support the initiation of a Mental Health specialty court for criminal defendants in the present budget situation.

The District Attorney agrees that the Drug Court model, which provides criminal drug offenders who agree to participate an opportunity to address their drug addiction issues with significant structure and supervision, is a model that has worked better than other drug programs available in the criminal justice system. We have supported that program by participating in the Drug Court Oversight Committee, and by providing staffing to the drug court at the Central Justice Center, South Justice Center and North Justice Center. Many agencies, including the courts, have requested additional support from our office. Unfortunately, budgetary constraints have prevented us from staffing the other drug courts. We are unable to expand present support for the Drug Court Program without additional funded positions as a result of the current budget situation. Because of these budgetary constraints, we are currently re-evaluating our participation in Drug Court.

Of the drug programs that currently exist in our court system, we believe that Drug Court is the best of the existing programs. It provides motivated participants a high level of supervision and treatment. This intensive program has thus far been limited to only a relatively small number of persons who qualify and agree to participate. It is difficult to envision spending more on Drug Court in Orange County at the present time. There are two other state-mandated programs, Penal Code 1210 (Proposition 36) and Penal Code 1000, which exist to treat drug offenders and which duplicate some services offered by Drug Court. Our office is concerned about the multiple and overlapping programs existing in the court system at present. Our office does not believe we should offer unlimited free drug treatment to those criminal defendants who fail to take advantage of, or to complete treatment offered under Penal Code 1000 or Penal Code 1210 (Proposition 36) by then allowing them to participate in Drug Court. Drug offenders who continue to violate the law and thumb their noses at the court system should not receive the gift of yet a third program.

Dual Diagnosis Court exists as an adjunct to Penal Code 1210 (Proposition 36) treatment and is paid for with resources available to that program. This program is only in the beginning stages and offers a Proposition 36 drug program to those who could not succeed in the ordinary Proposition 36 program because of a mental illness that limits their ability to comply with the terms of probation or the program. It offers a more structured program with greater supervision and mental health services support. Unfortunately, we do not believe this program will be effective. It suffers from the same problem that regular Penal Code 1210 (Proposition 36) programs have – that there is no ability to impose adequate sanctions such as custody time on defendants who violate probation terms by continued drug usage. It does not promote fairness if some drug offenders are given what is perceived as an easier program to complete since the end result is a dismissal of criminal charges. We do not believe that the public safety interest is served by expanding the Penal Code 1210 program further.

This does not mean that the District Attorney favors ignoring those with mental health issues who commit drug crimes. In our view, defendants who are unable to complete the Penal Code 1210 (Proposition 36) program can receive mental health services as part of a sentence outside of mandated drug programs.

Mental health courts exist in Orange County serving those who are conservatees under the Lanterman-Petris-Short Act and are unable to care for themselves by reason of being gravely

disabled. The Mental Health court contemplated is a proposed specialty courtroom that would handle the criminal cases of defendants with mental health issues whose mental illnesses do not render them gravely disabled. While we recognize the advantage of having a judge and staff familiar with mental health issues, we do not believe that creating a separate court to handle these cases would be an appropriate use of the limited resources that currently exist in the county. We do however support the notion that the courts and Probation Department should offer closer supervision and mental health services to those who are on probation for criminal offenses and have mental health problems.

RESPONSE TO GRAND JURY FINDING #2 - "The funding reductions by the County for the support of the Orange County Specialty Courts during this period of budget reductions and increasing caseloads will jeopardize their success."

DISAGREE PARTIALLY WITH FINDING

While we agree that budget cuts to the Drug Court program may jeopardize its ability to successfully function, and while we agree that budget cuts in the Dual Diagnosis Court and a lack of funding for the Mental Health Court will jeopardize those programs, we disagree that the Dual Diagnosis Court is successful. We also disagree with funding another specialty court at this difficult financial time for the county. We do support the concept that those who participate in programs in lieu of jail or prison be held accountable for their actions, including violations of program rules or the terms of their probation. Accountability primarily comes from more intense supervision of participants by the court and the Probation Department. The only way this can be accomplished is for probation officers to have small caseloads. Unfortunately, the budget situation has already resulted in increased caseloads for Deputy Probation Officers working in the Drug Court program. We support funding smaller caseloads for Drug Court because closer supervision of criminal offenders creates less of a risk to public safety.

Dual Diagnosis Court is funded by Proposition 36 dollars. The planned yearly reduction in funds from the state creates a shortfall for the entire program, which will require the program to be scaled back. Our continued participation in the Proposition 36 program is jeopardized by funding cuts that virtually eliminate funding for the District Attorney's Office in the next fiscal year. We do not believe that additional funding from the county directed at the Dual Diagnosis component of Proposition 36 would increase the success of that program. Dual Diagnosis participation does not promote public safety, because criminal drug defendants with mental illnesses remain out of custody with little supervision. A significant number of participants do not comply with the terms and conditions of the program and probation, continuing to use drugs and commit crimes.

The District Attorney's Office does not support the funding of a new Mental Health Court during the present budget situation.

RESPONSE TO GRAND JURY FINDING #3 - "A need exists to support Mental Health cases involving adults with mental health conditions within the Criminal Justice System."

AGREES WITH FINDINGS

We believe that there is a need for funding for Probation Department supervision and treatment services for those criminal defendants with mental health problems.

Defendants who have mental health issues tend to have higher recidivist crime rates and be more difficult to manage on probation grants. Because of the present budget situation, it is difficult to imagine an expansion of services to these defendants. It would appear to our office that closer supervision of probationers with mental health issues by the Probation Department and the courts would benefit public safety. Whether this can be accomplished is outside the purview of the District Attorney's Office.

RESPONSE TO GRAND JURY FINDING #4 - "An operational agreement does not exist between County and Court for the planned Mental Health Court."

AGREES WITH FINDINGS

No agreement currently exists that would facilitate the development and initiation of a Mental Health Court.

Until such time as funding exists which would cover the additional expense of this specialty court, the present budget situation would prevent our office from committing personnel and services to the process of creating an operational agreement for this proposed court.

RESPONSE TO GRAND JURY FINDING #5 - "Available residential treatment care facilities (beds) to accommodate the Drug Court and Mental Health Court Operations are in short supply."

DISAGREES PARTIALLY WITH FINDING

While recognizing that additional residential drug treatment facility beds would be desirable, some amount of free residential drug treatment for criminal drug defendants is currently available for Drug Court participants. In addition, free residential drug treatment is also provided as a component of the Penal Code 1210 (Proposition 36) program. There is no mental health court currently in operation, so no funded residential mental health care exists presently to support that program. These programs do not serve mentally ill criminal offenders who have been adjudicated as not guilty by reason of insanity or as incompetent to stand trial. Those defendants are committed to state hospitals and are provided mental health treatment.

An unfortunate aspect of the current difficult budget situation is the necessity of making difficult choices to cut or reduce worthwhile programs. County paid residential drug treatment is a component of both the Drug Court Program and the Penal Code 1210 (Proposition 36) program. We recognize Orange County has attempted to meet the need for residential treatment for drug offenders who require residential drug treatment and many persons have received residential treatment as part of their programs. In addition to county paid programs, there are also various charitable organizations with residential treatment programs such as Phoenix House and the Salvation Army. Prior to the implementation of Drug Court and Penal Code 1210 (Proposition 36), criminal narcotics offenders seeking residential drug treatment were generally referred to programs like these. Mental health residential care is not funded under either the Drug Court budget or the Penal Code 1210 (Proposition 36) budget. An attempt to expand county funding for residential mental health treatment for criminal offenders would be difficult in the current budget situation.

RESPONSE TO GRAND JURY FINDING #6 - "A Chief of Operations within Behavioral Health Services is a critical need for coordinating Mental Health support through the Orange County Court system."

DISAGREES WITH FINDING

In the current budget situation, the District Attorney's Office believes that additional bureaucratic positions are not warranted. If the Mental Health Court cannot be implemented at this time because of the current budget crisis, this position should not be filled.

RESPONSE TO RECOMMENDATIONS OF GRAND JURY

GRAND JURY RECOMMENDATION #1 - "Development of a public information plan to emphasize the success and importance of the specialty courts."

DISAGREE PARTIALLY WITH RECOMMENDATION – The recommendation will not be implemented because it is not warranted or is not reasonable.

In our view, not all of the specialty courts are successful or promote public safety. As an example, the Penal Code 1210 (Proposition 36) program, while mandated by the voters, does not effectively deter criminal drug use because the statute does not provide adequate sanctions to ensure compliance. Even after providing free drug treatment to these criminal defendants, it is estimated that only 20% will successfully complete the program. Even those who complete will have a high likelihood of re-offending. The function of the District Attorney's Office is to enhance public safety by the fair and just administration of our laws. Our viewpoint must address the public safety concerns of Orange County citizens. Thus our office should not

develop public information plans that advocate public support for these programs.

GRAND JURY RECOMMENDATION #2 - “Consider placing a priority on the allocation of Orange County funds to maintain support for specialty courts.”

DISAGREE WITH RECOMMENDATION – The recommendation will not be implemented because it is not warranted or is not reasonable.

With the current budget situation, the District Attorney’s Office must make our priority the prosecution of violent crimes and enhancement of public safety and public health. Since most of the specialty courts involve special post conviction supervision and programs for offenders, it is outside of our core mission.

Because our office faces a difficult budget situation, it is not a priority for us to focus on staffing courts that deal with post conviction supervision issues. We cannot make funding of specialty courts a priority item in our budget.

GRAND JURY RECOMMENDATION #3 - “Consider taking immediate action to allocate County funding to include support for a program for adults with mental health conditions within the Criminal Justice System.”

DISAGREE WITH RECOMMENDATION – The recommendation will not be implemented because it is not warranted or is not reasonable.

The District Attorney’s Office cannot allocate any funding to a Mental Health specialty court at this time due to the present budget situation.

GRAND JURY RECOMMENDATION #4 - “Prepare an Operational Agreement or its equivalent, for the planned Mental Health Court to establish the basis for needed department or agency support.”

DISAGREE WITH RECOMMENDATION - The recommendation will not be implemented because it is not warranted or is not reasonable.

Funds do not exist to fund a Mental Health specialty court, so the District Attorney’s Office cannot make any agreement regarding aspects of its function. At present, since no one can predict the impact of the current budget situation, it would be impossible to negotiate the outlines of such a program.

GRAND JURY RECOMMENDATION #5 - “Develop a detailed plan to overcome the shortage of available ‘beds’ needed to accommodate and to provide treatment for the

present and planned Specialty Court defendants”

DISAGREE PARTIALLY WITH RECOMMENDATION - The recommendation will not be implemented because it is not warranted or is not reasonable.

The development of a plan to overcome a shortage of residential treatment “beds” is not within the function of the District Attorney’s Office. However we support the goal of the County planning how to address the residential treatment needs of criminal defendants participating in mandated programs. Residential treatment for some criminal defendants may be warranted or even mandated as a term of probation.

GRAND JURY RECOMMENDATION #6 - “Consider filling the vacant position of Chief of Operations in the Behavioral Health Services.”

DISAGREE WITH RECOMMENDATION – The recommendation will not be implemented because it is not warranted or is not reasonable.

The determination of funding for this position does not fall within the function of the District Attorney’s Office. However, if the Mental Health Court is not funded, there is no need to fund additional administrative positions.