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UNIVERSITY OF CALIFORNIA,  
IRVINE

**From Inception to Implementation:  
How SACPA has affected the Case Processing and Sentencing  
of Drug Offenders in One California County**

DISSERTATION

submitted in partial satisfaction of the requirements  
for the degree of

DOCTOR OF PHILOSOPHY

in Criminology, Law and Society

by

*Christine Lynn Gardiner*

Dissertation Committee:  
Professor Elliott P. Currie, Chair  
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Professor Susan F. Turner

2008

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This dissertation of Christine Lynn Gardiner  
is approved and is acceptable in quality and form for  
publication on microfilm and in digital formats:

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Committee Chair

University of California, Irvine  
2008

## **DEDICATION**

*To*

*My Family*

*in recognition and appreciation*

*of their great sacrifices.*

### **Steve**

I couldn't have asked for a more supportive husband and partner.  
Thank you for being by my side the entire way. I love you!

### **Allison and Mackenzie**

My best cheerleaders ~ My greatest joys  
Follow *your* dreams ~ wherever they may take you.  
I hope I have modeled that hard work and determination will help  
you accomplish any dream you can dream. I love you!

### **Mom**

Who told me I could accomplish anything I put my mind to  
and instilled in me a dream long ago. Thanks for your  
unconditional love and support. I love you!

*For I know the plan I have for you declares the Lord, plans to prosper you  
and not to harm you, plans to give you hope and a future. Jeremiah 29:11*

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## ABSTRACT OF THE DISSERTATION

From Inception to Implementation: How SACPA has affected the Case Processing  
and Sentencing of Drug Offenders in One California County

By

Christine L. Gardiner

Doctor of Philosophy in Criminology, Law and Society

University of California, Irvine, 2008

Professor Elliott Currie, Chair

On November 7<sup>th</sup>, 2000 voters of the State of California overwhelmingly passed Proposition 36, the Substance Abuse and Crime Prevention Act of 2000 (SACPA). This law marked a significant change in California drug policy by mandating treatment in lieu of incarceration for non-violent drug offenders. Between 2001 and 2005, more than 150,000 drug offenders in California accepted SACPA and entered treatment. Although this is very encouraging, we do not know whether these offenders who entered treatment would have gone to prison or jail *but for* this legislation, as many would have been sentenced to probation even without this law. Furthermore, we do not know how agencies within the criminal justice system coped with this wide-reaching legislation or how it impacted daily operating procedures.

The current study uses a case study approach to understand how Proposition 36 changed the case processing and sentencing of drug offenders and the agencies tasked with processing and supervising these offenders in Orange County. The study includes both interviews with practitioners and interrupted time-series analyses of multiple case processing and sentencing outcomes to determine the impact of this much-watched legislation. The study describes changes in practitioner behavior and criminal justice system processes related to the implementation of SACPA in Orange County, explains changes that occurred in the case processing and sentencing of drug offenders in Orange County as a result of SACPA, estimates the number of drug offenders diverted from incarceration in Orange County due to SACPA, and offers suggestions for improvement.

The research illustrates how “law on the books” plays out as “law in action” every day. Findings reveal that (1) street level bureaucrats at every stage of the criminal justice system found (or invented) ways to circumvent and/or diminish the effect of this law; (2) there was likely a net widening effect on drug possession arrests in Orange County; (3) Proposition 36 significantly impacted sentences for Orange County drug possession offenders; and (4) fiscal resources were inadequate to provide adequate supervision or appropriate treatment and this has severely hampered the success of Proposition 36.

## INTRODUCTION

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Over the past 25 years, the United States has seen a dramatic increase in its prison population (Spelman, 2001; Tonry, 1998). The segment of the prison population that grew the fastest during the 1980s and 1990s was drug offenders (Auerhahn, 2004; Blumstein, 2002; Blumstein and Beck, 1999). Nationally, the rate of offenders serving a prison term for drug crimes increased nine-fold in sixteen years, from an incarceration rate of approximately 15 per 100,000 in 1980 to 148 per 100,000 in 1996 (Blumstein, 2002). In California, the rate increased 17-fold in 20 years, from 7.5 per 100,000 population in 1980 to 130 per 100,000 population in 2000 (Males, Macallair, & Jamison, 2002). Between 1980 and 1996 drug offenders went from being the second lowest percentage of offenders in prison in the United States to being the highest (Blumstein, 2002). By and large, this increase in incarceration was the result of policy changes and the “war on drugs,” not rising crime (Blumstein & Beck, 1999; Mauer, 1999; Zimring & Hawkins, 1994). For example, in California, over 400 “tough” crime proposals were passed between 1992 and 1997 (Petersilia, Turner, & Fain, 2001), including California’s infamous “Three Strikes and You’re Out” law. These and similar policies passed in the 1980s and 1990s lengthened sentences, made more offenders eligible for imprisonment, and increased the incarceration rate, not only in California, but throughout the United States (Auerhahn, 2004; Tonry, 2004).

Contradicting the above retribution-oriented crime policy trend and possibly reacting to it, the voters of the State of California overwhelmingly passed Proposition

36, the Substance Abuse and Crime Prevention Act (SACPA) on November 7<sup>th</sup>, 2000. Proposition 36 radically changed how criminal justice systems in California deal with drug offenders – from a crime control model to an addiction-treatment model (at least theoretically). The law mandates that all eligible offenders convicted of a “non-violent drug possession offense”<sup>1</sup> be sentenced to probation with a condition of participation in and completion of a drug treatment program. It *diverts* drug offenders *away* from prison and jail and *into* treatment. According to the California Legislative Analyst’s Office, this law has the potential to divert up to 36,000 offenders annually from prison and jail and save the state of California \$150 million annually in the process. This law could have a very significant impact on drug offenders and criminal justice systems in the state of California in a very short time period.

The goal of the current research project is to determine how drug offender case processing and sentencing patterns changed as a result of SACPA and to examine how the criminal justice system responded to this legislation. While SACPA is expected to dramatically change how drug offenders are handled in California, it’s potential impact depends heavily on two issues (1) how many offenders sentenced to prison for drug possession prior to SACPA are eligible for diversion through the law and (2) how different criminal justice actors implement the law (Riley et al., 2000). The current research addresses both of these issues, diversion and criminal justice system response. While we know that approximately 200,000 offenders qualified for SACPA in the first four years of the law (*Longshore et al., 2006*), we do not know how the

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<sup>1</sup> Non-violent drug possession offenses include unlawful possession, use, or transportation for personal use violations of Health and Safety Code sections 11054, 11055, 11056, 11057, 11058, as well as being under the influence of a controlled substance according to section 11550 (Proposition 36, Section 4).

system adjusted to procedural changes or how many offenders sentenced under SACPA would have gone to prison prior to the law.

### Diversion

According to the Text of Proposition 36, the purpose and intent of the Substance Abuse and Crime Prevention Act (SACPA) is three-fold: (1) to divert non-violent drug offenders from incarceration, (2) “to halt the wasteful expenditure of hundreds of millions of dollars each year on the incarceration-and re-incarceration-of non-violent drug users,” and (3) “to enhance public safety by reducing drug-related crime and preserving jails and prison cells for serious and violent offenders and to improve the public health by reducing drug abuse and drug dependence” (Proposition 36, Section 3). Note the primary focus of SACPA is on decreasing the use of incarceration, not on treating the offender. Decreasing incarceration is mentioned three times as a purpose of the bill whereas improving public health is mentioned only once, almost as a sidebar. This bill is clearly focused on drug use as a burden on the criminal justice system not as a burden on the health care system.<sup>2</sup>

Diversion from incarceration is a worthy goal, particularly when cumulative, year over year, benefits are calculated. The LAO estimated 24,000 drug offenders would be diverted from prison, 12,000 would be diverted from jails and there would be 9,500 fewer parolees annually as a result of SACPA<sup>3</sup>. If the LAO diversion estimates are correct, by 2008, there should be over 100,000 drug offenders who escaped a prison sentence they were bound for, prior to SACPA. There should be

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<sup>2</sup> This was confirmed through an interview with Dave Fratello, a co-author of the legislation.

<sup>3</sup> The 24,000 fewer prison admissions results from fewer new admissions and fewer drug-related parolee revocations, the 9,500 fewer parolees results from the number of offenders who will never serve a prison sentence and thus will not be subject to parole.

100,000 fewer ex-convicts trying to re-enter society at the end of their sentences; and 100,000 drug users who received treatment. The potential social benefits to these offenders and their families and communities are immense, though currently unmeasurable. This legislation has enormous potential for long-term, positive benefits for numerous offenders, but before any positive social benefits (or negative repercussions) of this legislation can be estimated, it must first be determined how many offenders have actually been diverted.

Early reports from UCLA indicate that 150,000 offenders accepted SACPA and entered treatment in the first four years of the law (*Longshore et al, 2006*). However, the question remains whether all 150,000 of these offenders would have been sentenced to jail or prison if SACPA were not law. It is doubtful that most of these offenders would have gone to prison for two reasons. First, as prosecutors contend, there are few offenders in prison for simple possession; many of the offenders incarcerated for this crime plea-bargained down from a more serious, non-SACPA-eligible, offense. Second, although the number of drug arrests in California increased exponentially in the past twenty five years, the proportion of offenders sentenced to prison for a felony drug offense has never been more than 30% (*Gardiner, 2004*). In fact, the majority (55% - 85%)<sup>4</sup> of offenders convicted of a felony drug offense in California historically have been sentenced to probation with jail, not prison or jail. So the question is how many drug offenders have been diverted from prison or jail as a result of this law? This study is the first to address this particularly important issue using interrupted time series analysis.

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<sup>4</sup> The proportion of convicted drug offenders sentenced to probation with jail is historically stable within individual counties, but varies considerably between counties in the state.

### Criminal Justice System Response

It is important to know whether intended offenders have been diverted; however, it is also important to understand how this law impacted criminal justice system professionals and organizations. This law affected a large proportion of California's drugs offenders; therefore we would also expect to find noticeable impacts on agencies throughout the criminal justice system. Furthermore, because this legislation was introduced by drug reformers, a group often pitted against criminal justice practitioners, and because the proposition was opposed, vehemently in some cases, by certain criminal justice groups (judges, district attorneys, and law enforcement), it is particularly important to examine how criminal justice actors and agencies carried out the legislation, especially to understand how various practices changed to facilitate or hinder the intent or impact of the law. It is also a lesson in inter-agency coordination, as county criminal justice and health care agencies (with competing interests) struggled to implement the new law without a playbook.

Not only does Proposition 36 symbolize a dramatic paradigm shift in drug policy, it represents a unique opportunity to examine how such laws play out on the ground level by criminal justice professionals and to identify the intended and unintended consequences on agencies and actors within the criminal justice system. As Welsh and Pontell note, "there is great potential for understanding systems operations and outcomes in those contexts where the surrounding political environment has mandated departures from normal criminal justice operations" (Welsh & Pontell, 1991): p.75). Proposition 36 represents just such a "mandated departure" context.

### Important as outsider reform

Not only is Proposition 36 noteworthy for its potential impact, it is also an important example of outsider reform. The framers of this initiative are a group of drug reformers, not prison reformers, or government spending watchdogs, criminal justice practitioners or politicians. This is important because there has been only one other piece of “outsider” criminal justice sentencing legislation passed in the State of California, and that was the Three Strikes initiative in 1994 (Zimring, Hawkins, and Kamin, 2001). However, unlike the “Three Strikes” initiative which, I contend, was “tough enough” to have been introduced by politicians (and eventually was passed by the legislature prior to the popular vote), Proposition 36 had to come from outside politics because politicians, as a group, were still too afraid of being labeled “soft on crime” to author or sponsor any legislation not considered “tough on crime” (Zimring, Hawkins, and Kamin, 2001; Beckett, 1997).

Proposition 36 is also unlike Drug Treatment Courts, which came from inside the criminal justice system, specifically the courts, as a response to the increasing number of drug-using defendants resulting from the war on drugs. Drug treatment courts were developed out of a need to process an ever-increasing number of offenders arrested as a result of the war on drugs (Hora, 2002). Growing caseloads resulted in system capacity issues; the court system was unable to accommodate the growing number of drug offenders who seemed to re-enter the court system with increasing frequency. Thus drug treatment courts were a response to a recognized system capacity issue within the criminal justice system; whereas Proposition 36 was based on public opinion polls commissioned and analyzed by drug reformers who responded

with almost “made-to-order” legislation that both addressed the incarceration problem in California and voters desires for more appropriate and humane drug policies. Proposition 36 is an example of democracy in action.

### Historical significance

Additionally, this law is interesting and important from a historical perspective because it is a radical departure from the previous “get tough” legislation passed by California voters on several recent occasions. For example, in March 1995 voters passed the infamous “Three Strikes and You’re Out” law which created and/or increased mandatory minimum sentences for habitual offenders up to 25 years to life<sup>5</sup>. In March 1996 voters increased the penalties for drive-by shootings and carjackings<sup>6</sup>. In 1998, voters took away good time credits<sup>7</sup> for anyone serving prison time for killing a law enforcement officer. In March 2000 voters passed Proposition 21 which increased penalties and waivers for juvenile offenders. The focus and scope of these laws varied; however, the message was clear – the public wanted retribution from offenders for the crimes they committed.

In the middle of passing tough on crime legislation, voters passed Proposition 215 in November 1996 with a 56% majority, authorizing the use of marijuana for medicinal purposes. The only other legislation passed by the voters that was not more punitive than the law it was replacing was Proposition 36 in November 2000. Why now? Why after years of supporting “get tougher” policies, did the public decide that

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<sup>5</sup> The fact that this bill was passed and signed by then-Governor Wilson in its original form is a testament to the wrangling politicians and political parties did to be considered the “toughest” politician/party on crime (for a discussion, see Zimring, Hawkins, and Kamin, 2001).

<sup>6</sup> These were two, very tough sentencing policies and both passed with an overwhelming majority (72% supported Three Strikes and 85% supported the carjacking and drive-by shooting initiatives).

<sup>7</sup> Good time credits are earned by prisoners for every day they serve without having any behavior problems. The purpose is to encourage good behavior through the incentive of a reduced sentence.

a tempered, therapeutic, and rehabilitative approach to drug offenders is appropriate and desirable? The answer might be “changing sensibilities”, as Tonry (2004) calls it, a shift in outlook and opinion by a large segment of society, in this case, Californians. Proposition 36 represented a unique moment in history for many reasons, but mainly because the voters were ready for a change from the failing drug war and expensive incarceration. It addressed the public’s desire to decrease the prison population (and thus the expense of prison) by focusing on a “safe” group of offenders – drug addicts. The simple fact that Proposition 36 was supported by 61% of voting Californians in an era of “get tough” policies makes this very interesting legislation to study from a historical perspective and within a historical context.

### Dissertation Organization

The purpose of the dissertation is twofold: (1) to determine how drug offender sentencing patterns changed as a result of SACPA; and (2) to learn how one criminal justice system responded to this legislation. Toward this end, this dissertation describes how the criminal justice system in one county adapted to a law that affected the processing of approximately 36,000 offenders per year statewide; and illuminates the mechanisms in place that allowed the county criminal justice agencies to adapt to the massive changes required. It also utilizes time series analysis to interpret changes in case processing and sentencing trends that may have resulted from the implementation of SACPA.

Chapter 1 contains a review of the relevant literatures on Proposition 36, policy implementation analysis, drugs and crime, street level bureaucrats and discretion within the criminal justice system. Chapter 2 presents the research questions and

describes the methodology used in the current study. Chapter 3 explains the law and reveals Orange County's experience implementing Proposition 36. Chapter 4 discusses the various impacts of Proposition 36 on law enforcement officers and agencies, including high levels of frustration amongst officers, changes in officers' arrest practices and exercise of discretion with drug offenders as well as other important effects.

Chapter 5 describes the impact on the courts and courtroom workgroup members, including judges, city attorneys, and public defenders. Chapter 6 describes the sentencing changes that occurred, estimates the number of offenders diverted from incarceration as a result of Proposition 36, and explores the impact that these changes had on corrections agencies and actors in Orange County. The changes included: a probation department that was overwhelmed by an unexpectedly large number of offenders; a jail that did not appear to notice any effect; an overcrowded prison system that got some, though not much, breathing room; and parole officers who were as frustrated as the cops. Finally, chapter 7 brings it all together with a summary of the main findings, conclusions about the lessons learned, suggestions for improving Proposition 36 and ideas for future research.

## **THE LAW AND THE LITERATURE**

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### *DRUG OFFENDER SENTENCING – PRE-PROPOSITION 36*

Prior to July 1, 2001, most non-violent drug possession offenders were sentenced to 30, 60, or 90 days in jail and three years on probation. In addition to this customary sentence, there were two drug diversion programs available to judges and offenders in California (both of which are still in effect): PC1000 and special drug courts. PC1000 is a pre-plea diversion program that allows drug offenders to attend treatment in lieu of jail for their very first drug offense, provided they have no arrests for felonies in the prior five years. If successful, the offender’s case is dismissed. It is meant for the true “first timer.” Offenders eligible for PC1000 generally accept it because it is the least onerous of all drug diversion programs (Proposition 36 included).

Additionally, most counties also operated specialty drug courts prior to Proposition 36 (and continue to do so). Eligibility and suitability requirements for drug courts vary by county but all require a significant level of commitment by drug offenders to treatment and the drug court program. Drug courts, as will be discussed in this chapter, are considered to be successful alternatives to standard criminal justice processing for drug offenders. For this reason and because drug courts require a higher level of commitment than Proposition 36 does, drug court supporters were concerned that Proposition 36 would negatively impact drug courts throughout the state by “diverting drug offenders away from the courts and into unsupervised

treatment, and hurt the community by releasing thousands of offenders into short-term or ineffective treatment with no judicial oversight or accountability” (Belenko, 2002:1646; Tauber, J, 2001). In other words, drug court advocates were concerned that drug offenders would opt for the less onerous Proposition 36 over the more involved drug court program, which they viewed more favorably.

Prior to Proposition 36, if an offender was not eligible for PC1000 or drug court (which was most offenders), they were most often sentenced to 30, 60, or 90 days in jail and 3 years on probation. Now most of these offenders are sentenced to probation with treatment but without jail time. Unlike drug courts which require participants to meet both eligibility and suitability criteria, Proposition 36 is available to all offenders convicted of a drug possession offense and not disqualified due to prior criminal history or concurrent crimes, regardless of desire for treatment.

#### *PROPOSITION 36 – THE LAW*

Proposition 36 was written by drug reformers who aimed to decrease the use of incarceration for drug offenders. The ballot initiative was the culmination of several years of research, public opinion polls, and focus groups (Dave Fratello, personal communication, April 20, 2005). Also known as the Substance Abuse and Crime Prevention Act of 2000 (SACPA), Proposition 36 applies to both new offenders and parolees. It added sections 1210, 1210.1 and 1210.5 to the California Penal Code and mandates that all eligible offenders convicted of a “non-violent drug possession offense” be sentenced to probation with a condition of participation in and completion of a drug treatment program. The court may also add vocational training, family

counseling, literacy training and/or community service as conditions of probation, but it may not require incarceration as a condition of probation (Proposition 36, Section 5). Drug offenders previously convicted of a serious or violent felony<sup>8</sup> are excluded unless they have remained out of prison and have not been convicted of any felony, or certain misdemeanor offenses, within the past five years. Additionally, an offender is ineligible for SACPA diversion if he/she was convicted of a non-drug misdemeanor or any felony at the same time as the non-violent drug possession offense. Offenders who do not agree to participate in treatment are sentenced according to their offense without consideration of SACPA.

Eligible offenders who agree to SACPA diversion are given a suspended sentence. Once the offender successfully completes treatment and probation, he/she may petition the court to dismiss the charges against him/her. “The arrest on which the conviction was based shall be deemed to have never occurred”<sup>9</sup> (Proposition 36, Section 5(d)(1)). See Appendix A for a flowchart of Proposition 36 case processing.

### *Parolees*

The law also changed procedures for parolees who commit a non-violent drug offense or violate any drug-related condition of parole. Since inception of the law, parolees may no longer have their parole suspended or revoked for drug-related violations or new offenses. Instead, they are required to participate in and complete a drug treatment program. The same exclusions for participation apply to parolees as new offenders. The parolee may however be re-incarcerated if s/he does not comply

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<sup>8</sup> As defined by California Penal Code sections 667.5(c) or 1192.7.

<sup>9</sup> The exception to this rule is when the offender is applying for employment in a law enforcement capacity, where full disclosure is still required.

with the provisions of the law or refuses treatment ("Substance Abuse and Crime Prevention Act of 2000," 2000), Section 6).

Depending on the drug violation, a parolee may be supervised by parole or by both parole and probation. If a parolee commits a drug-related violation of parole (such as testing positive for drug use), he/she will be offered Proposition 36 treatment through parole and will continue to be supervised only by parole. Every eligible parolee is allowed two opportunities at Proposition 36 treatment through parole. If, however, an eligible parolee is arrested by a law enforcement officer for a new drug crime (such as under the influence or possession of a controlled substance), he/she will have their case adjudicated in court and will be sentenced to Proposition 36 probation, just as any other offender not on parole. In this case, a parolee will be dually supervised by both probation (for the new drug offense) and parole (for the original crime on which he/she was on parole for). Parolees are subject to the same rules and regulations as Proposition 36 participants not on parole.

### ***Post-Conviction Treatment***

Once an offender pleads guilty and accepts Proposition 36 probation, she/he is assessed for individual treatment need by the County Health Care Agency. The offender is assigned the appropriate level of treatment based on the treatment assessment; typically conducted using a standard measure of addiction severity (e.g., ASI) (Longshore et al., 2003). Offenders are placed with a State-approved treatment provider based on their indicated need, location of local providers, and available capacity. Multiple levels of care are available for offenders and vary by county.

In Orange County, the focus of the current study, offenders are assigned to one of three levels of outpatient drug-free treatment (low, medium, high), residential treatment, or narcotic replacement treatment. Outpatient treatment lasts between six and twelve months, depending on the level the offender is assigned to, and includes 24 - 48 group counseling sessions, eight individual counseling sessions and eight weeks of structured relapse prevention, as well as up to six months of aftercare. Participation in a 12-step program may also be required by the judge or treatment professionals. Residential treatment is highly structured around three treatment phases; it lasts 90 days and includes three months of outpatient treatment after the residential treatment is completed.

#### *PRIOR RESEARCH*

##### *Drug Policy*

It is well known that the United States is one of the most punitive nations in the world when it comes to punishing criminals (Currie, 1998; Tonry, 2004). However, drug offenders have historically been a problematic population. What is the most appropriate response to drug use has been debated for years (Anglin and Perrochet, 1998; Tonry and Wilson, 1990). Are drug offenders' criminals who should be incarcerated, addicts who should be treated, or both? Public opinion tends to move in cycles corresponding to the proportion of the public that uses illegal drugs (Musto, 1973). Tonry (2004) identified the cyclical nature of drug policies by examining the history of U.S. Congress enacted drug policy which illustrated that policies became most punitive when drug abuse was on the decline. For example, he found out that the

U.S. Congress enacted mandatory minimum sentences for numerous drug crimes in the 1950s and 1960s (when use was on the decline) only to repeal most of those laws in the 1970s (when it was on the rise) and then enact even more punitive drug policies in the 1980s and early 1990s (when drug use was again on the decline). During and since the “war on drugs” initiated by President Reagan and his administration in the early 1980s the popular response to drug use has been incarceration. In fact, the “war on drugs” during the 1980s and 1990s dramatically increased both the number and rate of drug offenders sentenced to prison in the United States (Blumstein, 2002; Blumstein & Beck, 1999; Caulkins and Chandler, 2006; Mauer, 2001).

### *Drugs and Crime*

In spite of our changing policies, research consistently confirms that drug users are more likely than non drug users to engage in crime (either to obtain drugs or as a result of their drug use) (Anglin, Longshore, & Turner, 1999; Condon and Smith, 2003; Inciardi, 1987; MacCoun and Reuter, 1998;) and that drug users commit a disproportionate amount of crime (Chaiken and Chaiken, 1982; Gropper, 1985). The National Institute of Justice’s Arrestee Drug Abuse Monitoring study (ADAM) found that two-thirds of arrestees in a sample of California cities tested positive for drugs at time of arrest (National Institute of Justice, 1999). Many studies have also found that involvement in criminal activity increases as drug use increases and decreases as drug use decreases (Caulkins et al., 1997; Chaiken and Chaiken, 1982; Inciardi, 1987; Johnson and Wish, 1986). Gropper (1985) found that drug users were four to six times more likely to commit crime when they were using than when they were not using drugs.

### *Substance Abuse Treatment is Cost Effective*

Jofre-Bonet and Sindelar (2001) found that drug treatment reduced drug usage and that reduced drug usage was directly linked to reduced crime. Research also confirmed that substance abuse treatment has been effective at reducing substance use as well as the crime associated with drug use (Belenko, Fagan, and Dumonovsky, 1993; Anglin and Perrochet, 1998; Chaiken and Chaiken, 1990; Chaiken, 1986; McBride and McCoy, 1993). A California Legislative Analyst's Office analysis of more than 600 research studies found "substantial evidence that drug addiction treatment [was] effective at reducing substance abuse, crime, and medical costs" (California Legislative Analyst's Office, 1999).

Prior research revealed that the treatments that were most effective at reducing drug use were also the most effective at reducing future criminal activity and that the offenders who spent the most time in treatment had the greatest reductions in criminal activity ( CALDATA 1992/2000; McClellan et al., 1996; Longshore et al., 2005). Furthermore, research has confirmed that offenders legally coerced to participate can and do benefit from treatment (Belenko, 1990; Belenko, Fagan, and Dumanovsky, 1994; Hepburn and Harvey, 2007; Miller and Flaherty, 2000; Polcin, 2001). Numerous research studies have found that community-based substance abuse treatment programs for drug offenders were cost effective, particularly when compared to incarceration (CALDATA, 1992/2000; Aos et al., 2001; Aos, Marna, and Drake, 2006; Bhati, Roman, & Chalfin, 2008; Lipsey and Cullen, 2007; MacKenzie, 2006; McVay, Schiraldi, and Ziedenberg, 2004; Turner, et al., 2002). Yet, the ADAM

study revealed that only about 15% of offenders ever received treatment (National Institute of Justice, 1999).

### *Substance Abuse Treatment within Criminal Justice*

Two basic program models provide community-based treatment to drug-using offenders in the criminal justice system in hopes of reducing recidivism rates. The first is Treatment Alternatives to Street Crime (TASC) which was developed in the 1970s and had expanded to more than 300 programs in 30 states by 1996 (Anglin, Longshore, and Turner; 1999). The second is the national drug court model which was initially developed in 1989 in Dade County, Florida as a response to system capacity issues related to processing drug offenders in the courts. By 2004, there were more than 1,600 drug courts operating in the United States (Huddleston, 2005).

#### Treatment Alternatives to Street Crime

Treatment Alternatives to Street Crime (TASC) was one of the first successful attempts to coordinate criminal justice and community-based drug treatment agencies with the purpose of getting drug-abusing offenders into substance abuse treatment (Anglin, Longshore, and Turner; 1999; Hser et al., 2003). TASC is considered to be “possibly the best example of programmatic efforts to establish and promote formal coordination between criminal justice and drug treatment within local jurisdictions” (Anglin et al., 1999: 170). According to the model, drug-using offenders are allowed to remain in the community and attend drug treatment in lieu of, or in addition to, criminal justice imposed punishments, or as a pre-trial diversion program. Essentially, TASC works by linking the criminal justice system with the local treatment system through a third-party case manager that identifies qualified

offenders, assesses their needs, connects them to appropriate services, monitors their progress (including the use of sanctions if needed), and provides additional services as necessary until the offender has successfully completed or been terminated from the program (Wenzel, et al., 2001). Evaluations of TASC programs are mixed, but generally positive. Favorable results are linked to strong individual programs (Anglin et al., 1999; Anglin et al., 1996; Hubbard et al., 1989). Anglin et al. (1999) found that the TASC program model was particularly effective for problematic offenders – those with extensive criminal histories or other issues or characteristics that make them especially difficult to treat. Unfortunately federal funding streams that supported TASC programs were withdrawn in the 1980s, which left existing TASC programs searching for funding or being forced to dissolve (Marlowe, 2003).

### Drug Court

Drug court, the second model that incorporates drug treatment as a main response to offenders' behavior within a criminal justice context, built upon the foundational concept of collaboration laid by TASC (Wenzel et al., 2001). It developed out of a necessity to efficiently handle an ever-increasing number of drug offenders, but quickly evolved into a movement focused on rehabilitation rather than expedited offender processing (Goldkamp, White, Robinson, 2001). Like TASC, there is no “single” drug court model; the basic framework involves a collaborative team of courtroom actors (judge, prosecutor, defense attorney, probation officer, and social worker/treatment provider) focused on helping a convicted drug court participant reduce his/her reliance on drugs in a therapeutic judicial setting (rather than an adversarial one). The focus is on rehabilitation, but participation in the program

requires the offender to accept responsibility and commit to the entire program (which typically involves several successive stages).

There are ten key elements underlying most drug courts that include, the integration of a continuum of substance abuse treatment and other rehabilitation services with justice system processing in a non-adversarial setting with frequent judicial contact and a coordinated approach to monitoring participants' compliance (including drug testing) and evaluating participants' progress toward program goals (Drug Court Program Office, 1997; Hora, 2002). Early identification and placement of eligible participants is important (Hora, 2002), and although drug courts have eligibility requirements that vary by jurisdiction and court; most exclude offenders unwilling to participate or unmotivated to change and those who have committed violent crimes (Bhati, Roman, and Chalfin, 2008; Longshore, et al., 2001; Taxman and Bouffard, 2002).

#### Components of Successful Criminal Justice Programs for Drug Offenders

Research suggests that drug courts are successful at reducing drug use and criminal activity (Belenko, 1998, 2001; Bhati, Roman, & Chalfin, 2008; Deschenes et al., 1995; Goldkamp, White, and Robinson, 2001; Gottfredson, Najaka, and Kearley, 2003; Harrell, 2001; Kalich and Evans, 2006; Spohn et al., 2001; Turner et al., 1999). However, there is some debate about the actual processes and components that are most responsible for successful outcomes (Goldkamp, White, and Robinson, 2001; Gottfredson, Najaka, and Kearley, 2003; Kleiman, 2003; Longshore et al., 2001). Recent efforts have attempted to identify the fundamental aspects of successful drug courts and develop a set of key components (see specifically: Hora, 2002; and

Huddleston, et al., 2005; but also: Goldkamp, White, Robinson, 2001; Longshore, et al., 2005; Turner et al., 2002).

Research suggests that effective treatment programs, (1) occur in the community, (2) reward successful completion of treatment by removing criminal justice imposed sanctions (such as imprisonment or conviction), (3) include close monitoring and supervision of offenders, including drug testing and regular progress reports, and (4) include swift and certain punishments for noncompliance that do not require additional, formal hearings (Marlowe, 2003). Additionally, research indicates that both models (TASC and drug court) require conciliatory collaborative relationships between the criminal justice and treatment system actors in order to be effective (Anglin et al., 1999; Drug Courts Program Office, 1997, General Accounting Office, 1995, Peyton and Gossweiler, 2001). Yet research suggests that barriers exist in developing these collaborative linkages (Taxman, 2002; Wenzel, Turner, and Ridgely, 2004). Common obstacles included: staffing shortages, coordinating management information systems and sharing information between agencies, and funding limitations (Wenzel, Turner, and Ridgely, 2004).

In summary, both models (TASC and drug courts) are based on collaboration between criminal justice and treatment agencies and both models attempt to incorporate scientific research for the best results. The differences are in the process and operating framework. It should be noted that both models were considered innovative criminal justice approaches for drug offenders when they were created, and I might argue that treatment as a cost-effective response to drug offenders is still considered a novel approach by many people. Proposition 36 is loosely based on the

TASC and drug court models but expands the scope significantly by mandating that *all* non-violent drug possession offenders convicted in the State of California, regardless of motivation to change or willingness to work the program, receive treatment with a term of probation in lieu of incarceration. It is one of the most wide-reaching pieces of criminal justice legislation ever passed in California.

### *Criminal Justice Policy Studies*

Despite the explosion of criminal justice legislation passed in recent years, few policies have been examined for criminal justice system, agency, or actor impact and no study to date has considered the effect of a single policy change on all components of a criminal justice system in the United States. Studying policy impact is important and understanding agency response to legislation should be a priority. As Petersilia pointed out ten years ago,

We need to move away from the fragmentary studies of individual agencies and toward more comprehensive assessment of how probation departments and other justice agencies influence one another and together influence crime. Decisions made in one agency have dramatic workload and cost implications for other justice agencies for later decisions... to date, these systemic effects have not been well studied, and much benefit is likely to come from examining how various policy initiatives affect criminal justice agencies, individually, and collectively. Petersilia, 1997 as cited in (Auerhahn, 2007)

The criminal justice system is often described as a “nonsystem” composed of “loosely coupled”, inter-related agencies (Cohen, March, & Olsen, 1972; Feeley, 1983; Hagan, 1989). Each component has its own goals and responsibilities; yet change that occurs at one stage can have profound implications for agencies and actors at other stages (Katz & Kahn, 1978; Parsons, 1951). Most studies of crime policy

have focused on the effect on crime or criminals and not on system response to legislation. Some exceptions include studies of: California's "three-strikes" legislation (Johnson & Saint-Germain, 2005; Zimring, Hawkins, & Kamin, 2001); California's 17.P.C. amendment (Meeker & Pontell, 1985); California's hate crime legislation (Jenness and Grattet, 2005), public drunkenness decriminalization laws (Aaronson, Dienes, and Musheno, 1981, 1984), and other sentencing reforms (Engan and Steen, 2000; Feeley, 1983; Ulmer, Kurlychek, and Kramer, 2007). These policies have been studied for specific system effects, but none, to the author's knowledge has investigated how a change in criminal justice policy has been implemented on the ground level – by practitioners at all stages of a criminal justice system.

### *Street Level Bureaucracy*

Criminal justice policies enacted at the state level (through the legislature or popular vote) are almost always implemented at the local level. This is because most policy changes involve local criminal justice actors enforcing and implementing the new rules. These agencies, particularly law enforcement agencies, play a critical role in implementing policy (Aaronson et al., 1981; Goldstein, 1977; McCleary, 1978) as they are the ones who translate the "law-on-the-books" into the "law-in-action" (Jenness and Grattet, 2005). Jenness and Grattet (2005) refer to law enforcement agencies as the "law-in-between" because law enforcement agencies form the bridge between law-on-the-books (legislation) and law-in-action (implementation) when it comes to criminal justice policy. Agencies in this location not only enforce law; they make law by setting standards and exercising discretion in ways that shape local norms and influence practices (Breyer, 1982; Kagan, 1978; McCleary, 1978).

As “street-level bureaucrats,” criminal justice actors have a tremendous amount of discretion (Lipsky, 1980) and can often choose to act in ways that either facilitate or hinder the implementation of a new law, policy, or organizational change (Bayley and Shearing, 2001; Engen and Steen, 2000; Jenness and Grattet, 2005). Research has found that law enforcement officers and others in the criminal justice sector tend to be distrustful and often are resistant to such changes (Skolnick, 1966/1994; Skolnick and Bayley, 1986; Trojanowicz and Bucereaux, 1990). This resistance can affect the implementation of new laws and ultimately alter the actual impact the legislation has (Bayley and Shearing, 2001), especially if it is perceived to be in competition with organizational or individual goals (Aaronson et al., 1981).

Only a handful of studies have examined street level bureaucracy as it relates to criminal justice policy (Aaronson, Dienes, and Musheno, 1981; Engen and Steen, 2000; Jenness and Grattet, 2005; Kramer and Ulmer, 2002; Ulmer, Kurlychek, and Kramer, 2007). Studies suggest that local agency buy-in is one of the key factors in determining whether and how a given criminal law is enforced (Aaronson, Dienes, Musheno, 1984; Jenness and Grattet, 2005; Walker and Katz, 1995). Jenness and Grattet (2005) argue that organizational “perviousness” (the degree to which an organization is susceptible to environmental influence and how well the innovation aligns with organizational customs and philosophy) determines whether legislation passed at the state level will be adopted by a local agency. Aaronson et al. (1981: 88) found, “a common response of street-level personnel is to reformulate public policy goals by developing informal norms, practices, and routines of exercising discretion that sometimes adjust and at other times clearly violate the aims of codified law.”

They also noted that “negative perceptions of mandated policy change are likely to be more intense when implementation of the change requires sharing of work and responsibilities with another relatively autonomous public service bureaucracy” (Aaronson et al., 1981: 88). This finding may be important for the current study, as Proposition 36 expanded collaborations between two distinct public agencies – criminal justice (specifically court and probation personnel) and public health.

Studies of sentencing reforms, in particular the implementation of sentencing guidelines, show that policy goals are often not achieved because they are in competition with the organizational and practical needs of courts and courtroom workgroups (Walker, 1993; Miethe, 1987; Engen and Steen, 2000) or individual courtroom actors’ assessment of what constitutes “justice” (Knapp, 1987; Savelsberg, 1992). For example, Savelsberg noted, “criminal justice actors’ substantive concerns regarding appropriate punishment were manifested in organizational adaptations that largely muted the effect of sentencing guidelines” (Engen and Steen, 2000:1360). These studies indicate that criminal justice practitioners at all stages use the tools of their trade to circumvent laws they are in disagreement with or to reach desired outcomes not intended by the policy change (Engen and Steen, 2000; Savelsberg, 1992).

### ***Proposition 36 Studies***

Despite the belief that Proposition 36 represents a major paradigm shift in drug policy and that implementation issues and outcomes are expected to be closely monitored around the country (Klein et al., 2004; Hser et al., 2003), there has been relatively little research on the topic thus far. Of the studies written to date, most have

investigated coordination efforts between treatment agencies and criminal justice agencies (Greenberg, 2001; Jett, 2001; Spiegelman, Klein, Miller, & Noble, 2003); strain on treatment agencies (Hser et al., 2007; Hser et al., 2003; Wiley et al., 2004), or characteristics of offenders (Goyer & Emigh, 2003; Wiley et al., 2004). Three studies on the expected impact of Proposition 36 predicted a decrease in the drug offender population in prison as a result of the law (Auerhahn, 2004; California Legislative Analyst's Office, 2000; Riley et al., 2000). Three studies concluded that the number and rate of offenders serving a prison term for a drug offense had indeed diminished markedly after SACPA took effect in 2001 (Bailey & Hayes, 2006; Ehlers & Ziedenberg, 2006; Males et al., 2002) and four others reported preliminary findings on other criminal justice system, treatment system, or offender outcomes (Cosden et al., 2006; Hilger, Jenkins, & Nafday, 2005; Percival, 2004).

#### Pre-Passage Prediction Studies

The Legislative Analyst's Office conducted a potential cost/benefit analysis of the law for the California Voter Pamphlet. The report estimated 36,000 offenders annually would be diverted from prison and jail as a result of Proposition 36 (LAO, 2000). Their estimate was based on 24,000 fewer prisoners and 12,000 fewer jail inmates each year. They further estimated that 11,000 fewer prison beds would be needed at any given time for drug possession offenders and those could then be used for other criminals. This would allow the state to postpone the construction of a new prison, saving the state approximately \$450-\$550 million in construction costs. This cost savings was in addition to the annual \$40 million local governments were expected to save in jail and court/trial costs and the annual \$100-\$150 million state

government agencies were expected to save in prison and parole operations after accounting for the additional treatment and program expenditures. However, the estimate of local savings did not take into account the additional costs associated with supervising an additional 36,000 probationers. This was an important omission, as all offenders (including most parolees) sentenced under Proposition 36 are supervised by probation.

Although this policy could potentially save taxpayers in California up to \$200 million annually, this is entirely dependent on how the law is implemented in each county in terms of changes in the way drug cases are adjudicated by judges, prosecutors and defendants; as well as treatment program availability and effectiveness; in addition to how many three strikes cases are involved (LAO, 2000). The LAO report suggested fewer offenders would likely contest their non-violent drug possession offense charge as a result of this law, thus saving trial, prosecution, and potentially indigent counsel costs.

The LAO correctly pointed out that these savings could be offset by some diverted offenders who may commit crime while receiving treatment and supervision in the community. Some of these offenders might be sentenced to prison for a new offense, which would decrease some of the cost savings.

Researchers at RAND reviewed the Legislative Analyst's Office evaluation to determine the potential effect of the legislation (Riley et al., 2000) on local and state government. RAND researchers anticipated that the law would change how prosecutors, defense attorneys and defendants behave in regards to charges and plea bargaining (Riley et al., 2000). They concluded that the LAO prison diversion

estimate was reasonable, but the potential impact of the law very much depends on how different criminal justice actors implement the law and how many offenders currently sentenced to prison for drug possession would be eligible for diversion through Proposition 36. Riley et al. (2000) point to prosecutors contention that most drug offenders currently in prison for “simple possession” would not qualify for diversion through Proposition 36 due to an extensive or serious past criminal history or because they plea bargained their current charge down from a more serious charge.

Research by Caulkins and Chandler (2006) support the supposition made by Riley et al. (2000). They analyzed the 1997 Prison Inmate Survey and found that only 17% of prisoners incarcerated for “drug possession” were charged with possession from the beginning (all the others had either been convicted of “possession with intent to distribute” (akin to “sales”) or plea bargained their original charge down to “possession”) (Caulkins and Chandler, 2006). Of the 17% of offenders originally charged with “possession,” 40% of them were repeat offenders who were subject to sentencing enhancements based on their prior record (Caulkins and Chandler, 2006). Thus it would appear that approximately 10% of offenders in prison for “possession” could be eligible for Proposition 36 diversion.

Response to the law is expected to vary by county as well as by actor. Studies of “Three Strikes” legislation showed dramatic differences in implementation and charging practices of prosecutors by county. This is important because the cost savings of the legislation is primarily dependent upon the number of offenders diverted from prison (and jail) and to a lesser degree on how many of those diverted offenders commit crimes while on probation in the community (Riley et al., 2000).

Based on prior studies, Riley et al. (2000) predicted that some diverted offenders would engage in criminal activity while free in the community, and this criminal activity would represent an increase in the amount of crime they would have committed if they had been incarcerated.

Another prediction study, by Auerhahn (2004) used data-validated dynamic systems simulation modeling to predict the effect of Proposition 36 on drug offenders in California. Her method involved constructing a computer simulation model of the criminal justice system, and then comparing it against and fitting it to actual historical time-series data. Using this method she predicted both the drug offender population and the general inmate population would continue to increase regardless of Proposition 36 but that the rate of growth would be a little slower as a result of SACPA. She estimated that due to SACPA, the drug offender population would be 7% smaller and the general population would be 2% to 3% smaller than it would have otherwise been over the period 2000- 2020 (Auerhahn, 2004). Although the percentage of drug offenders with two or more prior convictions was stable between 1980 and 1998; she found that the percent of incarcerated drug offenders with a violent prior conviction rose from 6% in 1980 to 36% in 1998 (Auerhahn, 2004). Based on her findings, she forecasted that both the percentage of drug offenders with a violent prior and the percentage of drug offenders with two or more priors would be higher than it otherwise would have been as a result of SACPA. Additionally, she expected the percentage of incarcerated drug offenders with no priors to decrease more with implementation of the law than if the law were not implemented (Auerhahn, 2004). Auerhahn predicted the drug offenders in prison after Proposition

36 would be more serious offenders with lengthier or more violent criminal pasts than the drug offenders in prison in 2000. This is logical, as lower-level offenders (those without a serious past) should be the ones diverted away from prison through SACPA and as a result drug offenders with a serious past would make up a larger proportion of drug offenders in prison.

Auerhahn (2004) found only limited support for claims made by SACPA supporters that it would dramatically reduce prison populations. Her prediction was that the incarcerated drug offender population would continue to rise an estimated 60% over 20 years with implementation. This is in comparison to her estimate of a 70% rise over the next 20 years without implementation. According to her analysis, drug offenders would continue to represent approximately 30% of incarcerated offenders (Auerhahn, 2004). In her estimation, SACPA would further decelerate the rate of growth of the prison population, however it would not dramatically change the number of drug offenders in prison nor how the criminal justice system operates (Auerhahn, 2004).

#### Preliminary Outcome Studies

The imprisonment rate for drug offenders in California declined from 64 per 100,000 population in 2000 (the year prior to SACPA implementation) to 50 per 100,000 population in 2001 (the year SACPA took effect), with most of this accounted for by fewer incarcerated possession offenders (Males, Macallair, and Jamison, 2002). Admissions of drug possession offenders to prison also declined 30% between 2000 and 2001 (Males, Macallair, and Jamison, 2002). Males and his colleagues attributed this entire decrease to SACPA. While this was an impressive drop, they failed to

investigate the decline in context. For example, they did not discuss the corresponding 7.6% drop in sales/manufacturing drug admissions during the same period (offenses which are not eligible for SACPA diversion), nor did they discuss the overall trend of declining admissions of drug offenders to state prison since 1998 – before the passage of SACPA.

Two more recent studies also examined prison admission trends and determined that Proposition 36 reduced the number of drug offenders in prison for simple possession (Bailey and Hayes, 2006; Ehlers and Ziedenberg, 2006). Bailey and Hayes (2006) estimated there were 10,000 fewer drug offenders in prison from 2000-2005 as a result of SACPA. In addition to crediting SACPA with the declining prison population, they credited it with changing the composition of prisoners serving time. They found that the proportion of prisoners incarcerated for a violent offense noticeably increased at the same time that the proportion of offenders serving time for drug offenses declined (Bailey and Hayes, 2006).

Ehlers and Ziedenberg (2006) also concluded that the legislation decreased the prison population. They estimated that 14,616 fewer offenders served time in California prisons for drug possession from 2001-2004 as a result of SACPA based on a comparison of the number of new admissions of drug offenders to prison before and after SACPA went into effect. It is significant to note that their estimate of the number of offenders diverted from prison (14,616 offenders over three years) is far less than the number predicted by the California Legislative Analyst's Office (72,000 over three years) (LAO, 2000). Moreover, they also observed that the actual prison population had approximately 16,000 fewer inmates in 2005 than was projected to be

the case in 2000 (Ehlers and Ziedenberg, 2006). There is no doubt that the California prison population decreased between 2000 and 2005, the only questions are whether SACPA is entirely responsible for the decline or whether other factors played a role, and how many SACPA offenders would have received prison sentences if SACPA were not law.

In addition to fewer prisoners, Ehlers and Ziedenberg estimated that 45,534 fewer drug offenders were sentenced to probation with jail between 2001-2006 (Ehlers and Ziedenberg, 2006). According to these researchers from the Justice Policy Institute, the number of new felon admissions for drug possession was 32% lower in 2004 than it was in 2000, prior to the passage of Proposition 36; and the number of parole violators returned to prison for a new term declined 20% during the same time period (Ehlers and Ziedenberg, 2006). They also compared the drug possession imprisonment trend in California to six other states with large prison populations and found that the decline in drug possession admissions in California was larger than any other state in the analysis, both in number and proportion of the prison population (Ehlers and Ziedenberg, 2006). These are important findings, but an interrupted time series model is really needed to be able to say with much certainty that these changes can likely be attributed to SACPA.

Policies implemented at the local level are not implemented in the same manner in every locale (Percival, 2004; Klein et al. 2004; Riley et al. 2000; Hser et al., 2003; Males et al., 2002). Therefore, diversity in implementation of Proposition 36 within California's 58 counties is not only anticipated, it is expected (Longshore et al. 2002; Hser et al., 2003). Percival (2004) examined local political preferences and

other local contextual characteristics, such as politics, community needs, and socioeconomic factors, to determine if they impacted how a county implemented Proposition 36. He found that counties considered “tough on drugs” were 4.1 times more likely to incarcerate offenders for low-level drug possession during the first two years of SACPA than counties lenient on drug offenders (Percival, 2004). He also discovered very little change in incarceration rates of low-level drug offenders in these tough counties before and after SACPA, in comparison to more lenient counties. However, one of the issues with his analysis is his measure of “tough on drugs.” He ranked counties according to their “tough on drugs” stance into three categories. His ranking was based on the average number of incarcerations per 1,000 persons for all drug offenses for the period 1996-1999 in each county. The problem is that those counties which incarcerated the most offenders before the law will, *ceteris paribus*, continue to incarcerate the most offenders after the new law.

#### Effects on the Treatment System

Percival also found that political ideology (conservative, moderate, liberal) made a difference in how the county implemented Proposition 36, specifically in terms of treatment quality. In particular he noted that, after accounting for other factors (such as drug problem severity, drug treatment expenditures, and socioeconomic status of the county), liberal counties added more residential treatment facilities during the first year of SACPA (2001-2002) than did conservative counties (Percival, 2004). Furthermore, a Justice Policy Institute study that supported this supposition found that the number of treatment facilities in California increased by 26%; unfortunately however, the number of clients increased by 34% (Ehlers and Ziedenberg, 2006) so

strain on the treatment system became more pronounced, instead of less pronounced. Interestingly, the number of treatment facilities throughout the rest of the United States declined about 2.6% during the same time period.

Hser et al. (2003) investigated how Proposition 36 affected the drug treatment system and patient outcomes during the first year after implementation in five focus counties. They found that Proposition 36 clients were more likely to be male, employed full-time, users of methamphetamine or marijuana, first-time admissions, and treated in outpatient programs than their sample of non-Proposition 36 clients. Furthermore, they discovered that treatment admissions overall increased in each of their five sample counties (except San Francisco) after Proposition 36 was implemented (Hser et al., 2003). In a follow-up study, they found evidence that non-Proposition 36 clients may have been displaced as a result of Proposition 36. Hser et al. (2007) found that relatively few new facilities were created to deal with the demand brought on by Proposition 36. They also found self-referrals and non-Proposition 36 criminal justice referrals declined from 2002-2003, while Proposition 36 referrals increased (Hser et al., 2007). These findings indicate that county treatment systems encountered mild to severe system capacity issues associated with providing services to the large volume of offenders seeking treatment as a condition of diversion and that the likely result was displacement of non-Proposition 36 clients (Hser et al., 2007).

Moreover, several studies found that SACPA clients had extensive drug use histories (Hser et al., 2003; Goyer and Emigh, 2003; Longshore et al., 2004). Wiley et al., (2004) found that the client prediction models used in Santa Clara County to predict the needs of Proposition 36 offenders prior to implementation were not

accurate and required treatment staff and probation officials to scramble and adjust to more seriously involved SACPA clients than they expected. In San Diego County, the average first-year SACPA client had been arrested 4.6 times in the past, was unemployed, and was addicted to methamphetamine or crack cocaine and 7% needed mental health treatment in addition to substance abuse treatment (Goyer and Emigh, 2003). Research has found the need for intensive treatment (e.g. residential placement) was high for SACPA clients (Goyer and Emigh, 2003); but the supply was not adequate (California LAO, 1999), particularly for dually-diagnosed offenders. Farabee et al. (2004) found that SACPA clients with severe drug problems were significantly less likely to receive treatment in residential programs than were non-criminal justice system clients of similar drug severity. This is a key finding which, as the current study reveals, has significant repercussions for offenders and practitioners.

### Statewide Evaluation

Proposition 36 mandated a long term study encompassing annual evaluations of the “effectiveness and financial impact” of the policy and programs. UCLA Integrated Substance Abuse Program conducted the statewide evaluation of SACPA. For purposes of their evaluation, they collected aggregate data from every county in California, as well as individual-level data on *all* SACPA eligible offenders (not just the offenders who choose to participate) in ten focus counties (Orange County was *not* a focus county). Additionally, UCLA collected information from focus groups and conducted in-depth interviews with a sample of offenders from these counties. In the following paragraphs, I describe their findings, including: numbers and characteristics

of Proposition 36 offenders, treatment findings; recidivism results, impact on crime rates, and conclusions of their cost-benefit analysis.

**Table 1.1: Number of SACPA Offenders Statewide, 2001-2005**

Year <sup>1</sup>	Offenders Accepted SACPA & Referred to treatment <sup>2</sup>	Offenders Assessed <sup>3</sup>	Offenders entering treatment <sup>4</sup>	% Offenders completed treatment <sup>5</sup>
<b>1 (2001-2002)</b>	<b>44,043</b>	<b>37,495</b> (85.1%)	<b>30,469</b> (81.3%; 69%)	<b>34.4%</b> <sup>5</sup>
<b>2 (2002-2003)</b>	<b>50,335</b>	<b>42,972</b> (85.4%)	<b>35,947</b> (83.7%; 71.4%)	<b>34.3%</b> <sup>6</sup>
<b>3 (2003-2004)</b>	<b>51,033</b>	<b>42,880</b> (84%)	<b>37,103</b> (86.5%; 72.6%)	<b>32.0%</b> <sup>7</sup>
<b>4 (2004-2005)</b>	<b>48,473</b>	<b>41,450</b> (85.5%)	<b>36,285</b> (87.5%; 74.9%)	<b>Not Available</b>
<b>Total</b>	<b>193,874</b>	<b>164,797</b> (85%)	<b>139,804</b> (84.8%; 72.1%)	<b>Est. 63,978</b>

<sup>1</sup> Unless otherwise indicated, numbers and percentages taken from Longshore et al., 2003; Longshore et al., 2004; Longshore et al., 2005a; and Longshore and Urada, 2007.

<sup>2</sup> Number refers to the number of offenders who pled guilty, were sentenced to Prop36 probation and referred for treatment assessment.

<sup>3</sup> Percentage refers to the percentage of referred offenders who were assessed by treatment professionals.

<sup>4</sup> The first percentage refers to the percentage of assessed offenders who entered treatment and the second percentage indicates the official “show rate” (the percentage of *referred* offenders who *entered* treatment).

<sup>5</sup> Percentage refers to the percentage of *treated* offenders who completed treatment.

*Number of SACPA Participants* SACPA doubled the number of new treatment admissions referred by the criminal justice system (Hawkin et al., 2007<sub>6</sub>). Between July 2001 and July 2005, more than 193,000 drug offenders accepted Proposition 36 diversion and were referred for treatment, approximately 140,000 offenders received some treatment, and approximately 60,000 offenders completed treatment (Longshore et al., 2003; Longshore et al., 2005a, 2005b; Longshore et al., 2004; Urada & Longshore, 2007). As Table 1.1 indicates, each year approximately 50,000 drug offenders throughout the state agreed to participate in

SACPA and were referred for treatment. Of those, approximately 36,000 offenders entered treatment each year. Each year, approximately 85% of those who agreed in court to participate actually showed up to be assessed by a treatment provider. Of those who had their treatment needs assessed, approximately 85% actually began treatment (the others failed to show up to any meetings). Thus, each year approximately 72% of offenders who were referred to treatment actually entered treatment. Finally, approximately 33.5% of offenders who entered treatment, completed it (Longshore and Urada, 2007; Longshore et al., 2005). These percentages are similar to no-show and treatment-completion rates of drug treatment programs overall (Longshore and Urada, 2007; Longshore et al., 2005); despite the fact that SACPA offenders have very extensive drug use histories and addictions.

*Offender Characteristics* According to the final report, offender characteristics remained constant between 2001 - 2005 (Longshore and Urada, 2007). Most offenders were male (73%), with an average age of 35, and 53% were users of methamphetamine (Longshore and Urada, 2007; Longshore et al., 2005). Approximately 45% of offenders were non-Hispanic white, 34% were Hispanic, 14% were African American, 3% were Asian/Pacific Islander and 2% were Native American (Longshore and Urada, 2007).

Half of all SACPA clients entered drug treatment for the *first* time as a result of the law and 57% of these first-time treatment clients had been using drugs for *more than ten years* (Longshore and Urada, 2007; Longshore et al., 2005). One in five SACPA offenders had been using drugs for more than 20 years before entering treatment for the first time (Longshore and Urada, 2007). The overwhelming majority

of SACPA clients (84%) received treatment in outpatient programs (Longshore and Urada, 2007). Despite validated need, SACPA clients were less likely to be placed in residential treatment and thus were more likely to be under-treated than non-SACPA criminal justice referrals (Hawkin et al., 2007<sub>6</sub>). This under-treatment (the difference between the treatment needed and treatment provided) was most pronounced for young Hispanic offenders and the under-treatment was greatest for heavy-users who reported methamphetamine as their primary drug of choice (Hawkin et al., 2007<sub>6</sub>).

**Table 1.2: Percent of Offenders Arrested for a New Crime within 30 Months of their Original SACPA-Eligible Offense**

Percent with a New Arrest in Each Category	Referred but Untreated	Entered but Did Not Complete Treatment	Completed Treatment
<b>Any Drug Arrest</b>	55.5%	60.5%	42.7%
<b>Felony</b>	<b>38.1%</b>	<b>42.1%</b>	<b>28.8%</b>
<b>Misdemeanor</b>	<b>27.8%</b>	<b>30.2%</b>	<b>19.5%</b>
<b>Any Property Crime Arrest</b>	16.9%	16.8%	9.9%
<b>Felony</b>	<b>4.2%</b>	<b>4.6%</b>	<b>3.0%</b>
<b>Misdemeanor</b>			
<b>Any Violent Crime Arrest</b>	5.7%	4.9%	3.5%
<b>Felony</b>	<b>3.4%</b>	<b>2.6%</b>	<b>1.9%</b>
<b>Misdemeanor</b>	<b>2.1%</b>	<b>2.2%</b>	<b>1.7%</b>

Based on Urada et al., 2007<sub>4</sub>

*Recidivism* Urada et al. (2007) reported that the offenders who completed treatment had better outcomes (no new arrests, less drug use, and more employment) at a 30-month post-arrest follow-up than did offenders who entered, but did not complete treatment and those who never entered treatment (see Table 1.2). 55.5% of offenders who were referred for but did not receive treatment had a new drug arrest within 30 months of their original SACPA-eligible arrest. This is in

comparison to 60.5% of offenders who started but did not complete treatment and 42.7% of offenders who completed treatment (Urada et al., 2007<sub>4</sub>). Those who completed treatment had lower rates of property and violent offense arrests as well as misdemeanor and felony arrests (regardless of type) (Urada et al., 2007<sub>4</sub>; Longshore et al., 2005). In a separate study, Cosden et al. (2006) found that SACPA clients who completed treatment spent fewer days in jail during the 12 months after discharge than those who did not complete treatment.

In comparison to a group of similar offenders prior to SACPA, 1<sup>st</sup> and 2<sup>nd</sup> year SACPA offenders had a higher rate of drug arrests (50% to 38.1%) and property arrests (16.5% and 10.7%) after a 30-month follow-up, but similarly low rates of arrests for violent offenses (Urada et al., 2007<sub>4</sub>; Longshore et al., 2005). According to the researchers, this may be attributable to the short-term incarceration experienced by pre-SACPA offenders and the accompanying incapacitation effect which could be confounding the results. As an example, 9% of SACPA-era non-participants were sentenced to jail or prison while 22.5% of pre-SACPA eligible offenders were sentenced to jail or prison (Longshore et al., 2005). Also of interest, 15.6% of pre-SACPA eligible offenders were sentenced to probation or parole with a drug treatment component (Longshore et al., 2005). Of the 22.5% of pre-SACPA offenders sentenced to incarceration, 69.8% were sentenced to short terms in jail and the other 30% were sentenced to prison (Longshore et al., 2005). Farabee et al. (2004) also found that SACPA clients were more likely than non-SACPA criminal justice clients and non-criminal justice system clients to be rearrested for a drug crime within the 12 months after treatment admission.

*Crime Rates*            The UCLA study examined crime rates and revealed that there were no consistent changes in crime trends that could be attributed to SACPA. Researchers from RAND also looked at the impact of SACPA on crime rates, specifically in Orange County, and found that although commercial burglary reports and arrests for possession of drug paraphernalia increased during the study period they could not attribute either increase to Proposition 36 because other categories of crime that were expected to be impacted (such as residential burglaries, auto thefts, etc.) were unaffected. Thus, two teams of researchers concluded that SACPA had no noticeable impact on crime in California (Longshore et al., 2007<sup>5</sup>; Hiromoto et al., 2006<sup>?</sup>).

Results of a cost-benefit analysis conducted by UCLA indicated that taxpayers saved \$2.50 for every \$1 spent on SACPA for offenders who did not complete treatment and \$4 for every \$1 invested for offenders who completed treatment (Longshore et al., 2006). Savings were primarily attributed to reduced prison and jail costs and to a lesser degree, reduced parole costs for SACPA offenders (on average savings per offender were \$3,547 for prison, \$1,531 for jail, and \$221 for parole). Categories in which SACPA offenders had higher costs than pre-SACPA offenders were: probation (\$198 more), treatment (\$743 more), healthcare (\$230 more) and arrest and conviction costs (\$1,326 more). As expected, benefits increased as offenders spent more time in treatment. The study also revealed that 1.6% of SACPA-eligible offenders, those with five or more prior convictions, had post-conviction crime costs ten times higher than the average SACPA-eligible offender (Longshore et al., 2006).

In summary, UCLA found that SACPA is cost-effective for tax payers and that it has provided an incentive and an avenue for drug-addicted offenders to enter treatment, many for the first time. However, many of these clients are being under-treated because the supply of residential treatment facilities in California is grossly inadequate (California Legislative Analyst's Office, 1999; Hawken, Anglin, & Conner, 2007), particularly for dually diagnosed offenders. It is also apparent that most SACPA clients are not recreational users or “first time” offenders, and yet the “treatment completion rate” is similar to (and equally as low as) other client populations and programs studied (Longshore et al., 2004).

### *Orange County Studies*

#### Orange County Probation Department First-Year Study

Findings from Orange County studies echoed the statewide study conducted by UCLA in terms of offenders’ level of addiction and the inadequate number of residential treatment beds available for SACPA offenders (Hilger, Jenkins, and Nafday, 2005; Grand Jury Report, 2003). In Orange County, 3863 offenders participated in SACPA during 2001-02, the first year of implementation and a total of 11,700 offenders were involved during the first three years, 2001-2004 (Hilger, Jenkins, and Nafday, 2005). Offenders in Orange County during the first year of implementation had similar (though not identical) characteristics to the statewide sample: two-thirds were male (vs. 73% for CA) and 53% cited methamphetamine as their drug of choice (same for CA). The samples were different in that non-Hispanic

whites comprised a much larger proportion of offenders in Orange County (60% vs. 44.5% for CA) (Hilger, Jenkins, and Nafday, 2005).

**Table 1.3: Characteristics of Orange County Proposition 36 Probationer Sample Population Compared to California Probationer Population**

Proposition 36 Client Characteristics	Orange County	California
<b>Gender</b>		
<b>Male</b>	<b>66%</b>	<b>73%</b>
<b>Female</b>	<b>34%</b>	<b>27%</b>
<b>Drug of choice:</b>		
<b>Methamphetamine</b>	<b>53%</b>	<b>53%</b>
<b>Heroin</b>	<b>17%</b>	<b>10%</b>
<b>Crack/Cocaine</b>	<b>Unk.</b>	<b>13%</b>
<b>Marijuana</b>	<b>Unk.</b>	<b>12%</b>
<b>Race/Ethnicity:</b>		
<b>Non-Hispanic White</b>	<b>60%</b>	<b>45%</b>
<b>Hispanic</b>	<b>30%</b>	<b>31%</b>
<b>Black</b>	<b>5%</b>	<b>14%</b>
<b>Average Age</b>	<b>33</b>	<b>34</b>
<b>% of Prop36 defendants assessed for treatment</b>	<b>72%</b>	<b>85%</b>
<b>% of Prop36 defendants enrolled in treatment</b>	<b>59%</b>	<b>69%</b>
<b>% of Prop36 clients who successfully completed treatment</b>	<b>41%</b>	<b>34%</b>

Source: Hilger, Jenkins, and Nafday, 2005.

During the first year of implementation, 72.1% of defendants were assessed and referred for treatment and 58.5% of defendants actually enrolled in treatment (Hilger, Jenkins, and Nafday, 2005). These rates were considerably lower than the state-wide average of approximately 85% assessed and 69% entering treatment during the first year (Longshore et al., 2003). This was noted by practitioners in Orange County and steps were taken to increase the show rate in subsequent years (this will be discussed in chapter 6). Once an offender in Orange County entered treatment, however, they were more likely to complete treatment (40.9% Orange County vs.

34.4% CA) (Hilger, Jenkins, and Nafday, 2005). Additionally, researchers found that 23.9% of all SACPA offenders in Orange County completed treatment and 18.8% had their cases successfully dismissed. Of all the first-year SACPA probationers in Orange County, 42% had been terminated from probation (either successfully or unsuccessfully), 31% were still on active probation, 19% were out on warrants, and 7% were on conditional or relief of supervision status as of June 30, 2004 (Hilger, Jenkins, and Nafday, 2005). Of the total number of offenders terminated from probation, 45% had their cases dismissed while 39% went to state prison (Hilger, Jenkins, and Nafday, 2005).

Of *all* persons on probation as of July 31, 2004, 45% were either on PC1210 probation or had been (Hilger, Jenkins, and Nafday, 2005). The PC1210 probationers generally had a previous history of less dangerous charges than did the typical probationer in Orange County (Hilger, Jenkins, and Nafday, 2005). Researchers also noted significant improvement on a variety of factors for probationers who successfully completed treatment and had their cases dismissed as well as for those who terminated their PC1210 probation for reasons other than going to prison (Hilger, Jenkins, and Nafday, 2005).

Between November 2000 and July 2002, Orange County increased the number of residential treatment programs in the county by 36%; this compared favorably to a state-wide average increase in residential treatment programs of 22% (Hilger, Jenkins, and Nafday, 2005). This is interesting, given Percival's finding that liberal counties added more residential treatment facilities during the first year of SACPA than conservative or moderate counties did (2005) and Orange County is not usually

categorized as liberal. This finding suggests that what matters most are the beliefs of the county stakeholders responsible for implementing the law (in this case, criminal justice professionals).

### Implementation Study

On a different project, RAND researchers studied the Proposition 36 implementation process. They interviewed key members of the implementation team in Orange County (for instance judges, police commanders, public defenders, probation managers, district attorneys and treatment providers) to ascertain how individuals and agencies cooperated to implement Proposition 36 and to identify the lessons that were learned during the implementation process. They found that Orange County was particularly well prepared to implement Proposition 36 because of its prior experience with drug courts and that the county benefited from the prosecutor's "we will make this work" attitude (Martin Iguchi, personal communication, November 8, 2005).

At this point we know that approximately 190,000 people in California were eligible for SACPA diversion and that 165,000 offenders accepted SACPA and entered treatment during the first four years of the law, but we don't know whether these offenders who entered treatment would have gone to prison or jail but for this legislation, as many would have been sentenced to probation even without this law. Furthermore, we do not know whether local law enforcement officers are arresting more people in need of treatment simply because it is now available to people, regardless of ability to pay; or whether prosecutor charging behavior has changed as a result of this law. Also, all offenders sentenced to Proposition 36 are sentenced to

probation; how has the probation department handled the increased caseloads. Prior studies do not answer these questions. The only way to understand how these agencies and players responded to internal or external stimuli is by conducting field interviews to illuminate and interpret changes that occur in various places throughout the criminal justice system.

## **Research Questions and Methodology**

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SACPA was expected to dramatically change how drug offenders are handled in California; however, it's potential impact depends heavily on two issues (1) how many offenders who would have been sentenced to prison for drug possession prior to SACPA are eligible for diversion through the law and (2) how different criminal justice actors implement the law (Riley et al., 2000). The aim of the current research project is to address these two related issues; because while we know that approximately 194,000 offenders were sentenced under SACPA in the first four years of the law (Longshore et al., 2003, 2004, 2005; Urada and Longshore, 2007), we do not know how the system adjusted to procedural changes or how many offenders sentenced under SACPA would have gone to prison prior to the law.

The main research question, “what was the impact of Proposition 36 on drug offenders and the criminal justice system in Orange County, California?” is answered using both qualitative and quantitative research methodologies in a case study design. Research methods include: face-to-face interviews with criminal justice practitioners, observations of court proceedings, reviews of internal documents, interrupted time series and other data analyses. By combining multiple research methods (e.g. time series analysis and qualitative interviews) I was able to take advantage of the inherent strengths of each to identify policy impacts that could have been missed by using only one method. For example, interviews with practitioners provided explanations for difficult to understand arrest and sentencing

trends and quantitative data authenticated (and in some cases challenged) claims made by criminal justice practitioners. These methods will be described in depth in the following pages.

### *CASE STUDY COUNTY*

Proposition 36 placed the responsibility for implementation on California's 58 counties. For this reason, and because each county is uniquely situated, and because implementation was expected to vary between counties (Percival, 2004; Klein et al. 2004), it would have been imprudent to evaluate the impact of Proposition 36 on county-level criminal justice processes at only the state level of analysis. Furthermore, because each county is separate and data are not contained in a shared database, it is unrealistic to attempt to collect and analyze data for each of California's 58 counties. Moreover, the case study approach allows the researcher to identify attitudes and local practices that could not have been captured by existing quantitative data. Thus a single-county case study approach has unique advantages for understanding system response to and impact of this law.

Orange County, the second most populous county in the state (5<sup>th</sup> in the country), is the case study county. It is an ethnically diverse county located in southern California. Traditionally thought of as politically "conservative," it is much more complex than that; and because the political climate has changed considerably in recent years the label "conservative" is no longer accurate. It is urban (mainly suburban) and there are 34 cities and more than 3,000,000 residents within Orange County's 798 square miles. Orange County is home to 11 public and 7 private colleges/universities, including two major state universities and five community

colleges. In addition to a highly visible tourist industry, the county has vibrant technology, education, government, healthcare and service/retail sectors. Many people are familiar with Orange County because of Disneyland, the beaches, Richard Nixon, and/or recent television shows (such as Laguna Beach, The O.C., and The Real Desperate Housewives of Orange County). Unfortunately, these shows depict Orange County as one big suburb of rich white people who spend their days pampering themselves and going to the beach. The “real Orange County” is much different, much more ethnically, politically, and economically diverse than these shows would have one believe.

Orange County was chosen as the case study county for three main reasons: (1) generalizability; (2) volume of offenders processed; and (3) data availability. Orange County is very similar to the state on several measures related to SACPA (see Table 4 below), including: SACPA voting behavior, drug offender incarceration rate<sup>10</sup>, and proportion of felony arrests that are drug related<sup>11</sup>, as well as drug use prevalence, and some demographic indicators. Orange County is an urban county in which most residents live in small-medium sized suburban communities, which is typical of residents throughout the state. Although generally thought of as quite conservative, Orange County has liberal tendencies on some issues, such as attitudes toward drug offenders and criminal justice rehabilitation. While Orange County is not identical to the state on all matters, it is similar enough to be representative of other counties in the

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<sup>10</sup> On average, 18% to 27% of felony offenders in Orange County were sentenced to prison between 1990 and 1999 (California Department of Justice Statistics). This is in comparison to a statewide average of 19% to 21% of felony offenders sentenced to prison and to other counties in the state which sent as few as 7% to 11% of felony offenders to prison (i.e. Alameda, San Francisco, and Santa Cruz Counties).

<sup>11</sup> California Department of Justice Criminal Justice Profile, 2002 (Tables 6A and 3B).

state in regards to drug offender case processing and sentencing. Additionally, Orange County handles a high volume of offenders, which is necessary for statistical purposes and data provided by county agencies and the California Department of Justice are free from major errors and can be relied on as accurate for assessing patterns and trends over the study period<sup>12,13</sup>.

**Table 2.1: Comparison of Orange County to California**

<b>Variable</b>	<b>Orange County</b>	<b>California</b>
<i>% voted for SACPA</i>	60.8%	60.9%
<i>Criminal Justice Measures</i>		
Drug offender incarceration rate 1990-1999	~1/3	~1/3
Percent of felony arrests that are drug related	18%-27%	19% - 21%
Adult arrests for drug violation (rate/100,000)	900	1,030
<i>Measures of Drug Use<sup>1</sup></i>		
Deaths due to alcohol & drug use (rate/100,000)	12.5	18.0
Adult treatment admission rate (rate/100,000)	6.2	8.3
Hospital Discharge rate for Alcohol & Drug related causes	195.3	168.7
<i>Population Demographics<sup>2</sup></i>		
Median age	33.3	33.3
Race/Ethnicity		
Asian	13.6%	10.9%
African American	1.7%	6.7%
Hispanic/Latino	30.8%	32.4%
Non-Hispanic White	51.3%	46.7%
<i>Economic Indicators</i>		
% below the poverty line	9.7%	13.1%
% of adult population in the labor force	75.3%	72.6%
<i>Education</i>		
% of person age 25+ who completed high school	82.7%	80.1%
<i>Language Spoken at Home</i>		
% speak language other than English at home	43.8%	42.5%

<sup>1</sup> Data on drug use, adult arrests for drug violations are from California Department of Alcohol and Drug Programs, 2004 Community Indicators of Alcohol and Drug Abuse Risk Report for Orange County ([http://www.adp.ca.gov/Prevention/pdf/aod\\_profiles/Orange.pdf](http://www.adp.ca.gov/Prevention/pdf/aod_profiles/Orange.pdf)).

<sup>2</sup> Data on population demographics, economic indicators, education, and language spoken at home are from 2006 U.S. Census Bureau Household Survey (<http://factfinder.census.gov/>)

<sup>12</sup> This is based on conversations with data specialists at the California Department of Justice CJSC.

<sup>13</sup> After the study began the Orange County Sheriff's Department discovered some crimes from 2000 to 2002 had been under-reported to CADOJ. The problem was tied to a new dispatch system that automatically assigned report numbers to some citizen calls that deputies in the field determined did not require a report. The issue was limited to a very small number of minor crimes (<1%) and did not affect drug crimes (Kathy Reley, personal communication, May 8, 2008).

Also, Orange County is unique in some distinct ways that make it an especially valuable county to study. First, Orange County is one of the few counties with a single Proposition 36 court. This ensures that all Proposition 36 defendants are processed by the same judge and treated as consistently as possible. Having only one Proposition 36 court eliminates “judge shopping” by defendants and allows the judge to get a relatively holistic view of Proposition 36: the offenders, their past criminal and drug use histories, their success and the system’s response.

Second, Orange County has unusually forward-thinking criminal justice practitioners. Ex-Sheriff Carona, the county’s top law enforcement officer at the time Proposition 36 was passed, wrote a book advocating treatment instead of incarceration for drug offenders. Furthermore, not only do most law enforcement agencies ascribe to a community oriented policing philosophy, one department (Santa Ana Police Department) is internationally recognized for being a pioneer of community oriented policing (Boettcher, 1995; Skolnick and Bayley, 1986). Also, both the Orange County Probation Department and the Orange County District Attorney’s Office have well-trained research units with multiple highly-educated staff members (an oddity for these types of agencies). The probation department is well-respected throughout California for its research and its innovative programs, including the 8% program that provides wrap-around services for the most at-risk juvenile delinquents on probation in the county. Moreover, Orange County has particularly well-educated law enforcement officers and probation officers; a large percentage have bachelor’s degrees and many have master’s degrees.

Although some might argue that these factors make Orange County too unique to be a good choice for a case study, I disagree. Orange County is “middle-of-the-road” enough to be representative of the state but unique in specific ways that would suggest that if Proposition 36 was going to be embraced anywhere (other than San Francisco and a few other liberal counties in Northern California); Orange County might be that county. For these reasons it is a good place to test whether (and how) SACPA impacted drug offenders and the criminal justice system.

### *RESEARCH QUESTIONS*

The main research question is, “what has been the impact of Proposition 36 on drug offenders and the criminal justice system in Orange County, California?” More specifically, how has SACPA affected the case processing and sentencing of drug offenders and the actors and agencies tasked with processing and supervising drug offenders in Orange County? Research questions were designed to ascertain the impact of the legislation on the offender and the actor/agency at each stage of the criminal justice system; including planning and implementation of the law. Consequently, the research on the criminal justice system impact at each stage was guided by the overarching question “what were the expected and unexpected impacts of Proposition 36 on these agencies and the actors who work at these agencies?” Conversely, the research on offender case processing and sentencing was guided by more specific questions at each stage, as detailed below. Appendix A contains a list of specific research questions for each stage of the criminal justice process as well as information on the data used to answer the question.

### ***Law Enforcement***

The central issue for offenders at the law enforcement stage was whether there was any change in the number of arrests for drug crimes as a result of SACPA. Did SACPA have either a net widening effect or a pseudo-decriminalization effect? In other words, did law enforcement officers start arresting more drug offenders because treatment was available or did law enforcement officers discontinue arresting drug offenders because they opposed the law and felt that arresting drug offenders for the sake of treatment was a waste of their time?

What other impacts did the legislation have on law enforcement officers and agencies? For example, did officers change their arresting behavior? Did they know enough about the law to change their behavior in order to achieve their desired outcome? Did Prop36 impact the number of confidential informants? Were there any changes to the number of offenders released by law enforcement? Did it impact how patrol officers or narcotics officers spend their time (e.g. did it increase the number of arrests for bench warrants)? These are some of the questions that guided research at this stage.

### ***Court System***

The questions at the court stage focused on the impact of the legislation on the case processing of drug offenders from arraignment to sentencing. For example, were the numbers of drug cases filed by the district attorney or cases dismissed by the courts affected by the new law? Did SACPA change the number of court cases for drug crimes or how long it takes to process a typical drug case? Additionally, were

there any impacts on the plea bargaining process or the number of trials for drug possession offenders? Were offenders more likely to plea bargain, or less likely?

How did these changes impact the Orange County Superior Court, District Attorney's Office, Public Defender's Office and Anaheim City Attorney's Office? How did agencies cope with the new law and what was the associated workload impact on practitioners? What new procedures did practitioners implement? Did Proposition 36 negatively impact drug courts in Orange County, as anticipated by the California Association of Drug Court Professionals?

### *Sentencing and Corrections*

One of the key questions the current research is designed to address is whether there were fluctuations in the number and proportion of offenders convicted of SACPA-eligible drug offenses and sentenced to prison, jail, probation with jail, or probation prior to and following the enactment of SACPA. Additionally, another important research question is, "how many offenders have been diverted from incarceration (prison, jail, probation with jail) in Orange County?" Are drug offenders sentenced to probation after SACPA implementation more serious offenders than before SACPA implementation? Are drug offenders sentenced under SACPA spending fewer days in jail than drug offenders convicted of SACPA-eligible offenses prior to SACPA?

Moreover, what were the impacts on jail operations and jail deputies? Did SACPA increase the number of available beds in the Orange County Jail, as was expected? Were there any impacts on the jail inmate population or the length of time other offenders served on their sentences as a result of SACPA? Did it change how inmates interact with deputies or each other? Similarly, what were the impacts on

parole agents and probation officers? The probation department had a central role in implementing Proposition 36 and supervising the offenders, how did the department adapt to the new legislation? Did it change the number of parolees returned to custody on drug violations or the time spent in prison on drug violations?

These are some of the questions that the current research project was intended to address. The following sections describe the data used to answer the questions. The first section describes the qualitative data, including the study sample as well as the selection and recruitment method, interview process, and the interview instruments. Following the qualitative data section, the quantitative data section describes the method used to define “SACPA-eligible” offenses that are included in the study, as well as a description of the multiple data sources and statistical procedures utilized to assess legislative impact.

### *QUALITATIVE DATA*

The study uses qualitative data to ascertain the impact of Proposition 36 on offenders, practitioners, and criminal justice agencies. It includes field interviews with stakeholders and criminal justice system actors and observations of Proposition 36 Court proceedings as well as analysis of various criminal justice measures. This research method is the most effective for understanding system response to legislation, ascertaining policy effects on practitioners and offenders, and identifying mechanisms that accommodate cyclical or policy-induced fluctuations in the number of offenders processing through the criminal justice system at a given time. The overall aim is to understand the processes by which criminal justice agencies and actors in Orange

County adapted to this law and to identify the intended as well as unintended consequences of the legislation. I interviewed more than 60 practitioners who provided information about how the criminal justice system response was designed and orchestrated. The criminal justice system response was separated into two conceptual phases for data analysis purposes, (1) the planning and pilot study stage (November 2000 to June 2001) and (2) the execution stage (July 1, 2001 and after).

### *Study Sample – Agencies*

A total of 14 criminal justice agencies, representing every stage of the criminal justice process, were included in the research. Every criminal justice agency in Orange County that has sole responsibility for carrying out a specific criminal justice function at the local level was identified and asked to be part of the research (Orange County Probation Department, Orange County District Attorney’s Office, Orange County Public Defender’s Office, Orange County Superior Court, Orange County Sheriff’s Department, and California Department of Corrections and Rehabilitation – Division of Adult Parole Operations). Every agency agreed to participate except the District Attorney’s Office.

In addition, all agencies that provide local law enforcement functions in Orange County were identified. There are 20 law enforcement agencies (19 police departments and one sheriff’s department) that patrol the 34 cities and unincorporated areas in Orange County<sup>14</sup>. In addition, the sheriff’s department (and one police department) provides law enforcement services on a contract basis to cities in the

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<sup>14</sup> In California, police departments are responsible for law enforcement functions in incorporated municipalities while county sheriff’s departments are responsible for law enforcement functions in all unincorporated areas of a county.

county that do not wish to have their own police department. The Orange County Sheriff's Department provides law enforcement services for the entire southern portion of the county, either by statute or by contract (11 cities). One state law enforcement agency was not approached to be part of the study. The California Highway Patrol (CHP) is a state law enforcement agency that is primarily responsible for maintaining public safety and enforcing law on the state's highway system. It is not part of the study because the agency was not expected to be noticeably impacted by the law<sup>15</sup>.

**Table 2.2: Characteristics of Participating Law Enforcement Agencies and Population Served**

Agency	Location in county	Agency Size	Population served (approx)	Median HH income	% families below poverty	% White	% Latino/Hisp.	% Asian
A	Central	Large	328,000	\$47,122	2.3%	71%	12%	11%
B	Central	Large	338,000	\$43,412	16.1%	12%	76%	9%
C	Coastal	Large	190,000	\$64,824	4.3%	72%	15%	10%
D	All, South primarily	Large <sup>1</sup>	630,000	UTC <sup>2</sup>	UTC	UTC	UTC	UTC
E	Central	Medium	165,000	\$47,754	10.5%	33%	33%	31%
F	Central	Medium	143,000	\$72,057	5.0%	57%	7%	30%
G	North	Small	94,000	\$74,676	2.9%	71%	15%	10%
H	North	Small	46,000	\$64,377	4.6%	57%	16%	21%
I	North	Small	46,000	\$62,803	5.7%	54%	32%	11%

<sup>1</sup> Serves small and medium sized cities.

<sup>2</sup> UTC: Unable to calculate

Source: U.S. Census Bureau Household Survey (<http://factfinder.census.gov>)

Law enforcement agencies were evaluated to be part of the study based on size of the department, size and demographics of the population served, and geographic location within the county (north, central, south, or coastal). Of the 20 law enforcement agencies in Orange County, nine were approached and asked to be a part

<sup>15</sup> Driving under the influence of alcohol and driving under the influence of a drug are not SACPA-eligible offenses; therefore I do not expect the CHP to have been noticeably impacted by the legislation.

of the research study. All nine agencies agreed to participate. The county sheriff's department and the three largest city police departments were selected because any procedural changes that occurred within these departments would have a large influence on the processing of offenders within the county. Additionally, three small and two medium sized agencies that serve diverse populations throughout the county were selected to illuminate implementation and attitudinal differences that could vary by department size or population served. Together, these nine participating agencies provide law enforcement services for 77% of county residents.

### *Study Sample – Practitioners*

A variety of methods were employed to identify appropriate practitioners within each agency to interview. The method employed depended on the agency and whether I was seeking information about the planning/pilot study stage (November 2000 – June 30, 2001) or the execution stage (July 1, 2001 and after). To locate persons involved in the planning/pilot study stage, a snowball sampling technique was used. One person from the Orange County Probation Department who had a significant role in the planning stage was identified and interviewed. That person identified other key players in the planning process. Those individuals were contacted and asked to participate in the study. In all cases except one (the District Attorney's Office representative<sup>16</sup>), key players in the implementation process agreed to be interviewed. In some cases, I was introduced by someone within the agency but in most cases I called and introduced myself and told the practitioner that I was urged to call by the named informant. The sampling of practitioners involved in the execution

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<sup>16</sup> The District Attorney's Office turned down my request to interview agency personnel, so this person was not contacted.

stage (post July 1, 2001) occurred in multiple ways, depending on the agency. The sampling procedure for each agency type is explained below.

### Probation Department

The supervisor of the research unit of the Orange County Probation Department sent an email to current and past PC1210 unit<sup>17</sup> supervisors introducing me and the project. I then contacted the individuals who received the email and made arrangements to interview them and some of their staff at a convenient time. In some cases, the supervisors had chosen specific probation officers assigned to a PC1210 case load for me to interview. In other cases, I interviewed the PC1210 unit probation officers who were in their offices after I completed my interview with the supervisor.

### Parole Division

At the parole office, initial interviewees were selected by a supervisor and additional interviewees were identified through interviews with parole agents. On a couple of occasions, the parole agent I interviewed introduced me to other parole agents, who then agreed to be interviewed<sup>18</sup>.

### Courtroom Workgroup

Judges were selected to be interviewed based on their current or past assignment. Judges assigned to the Proposition 36 court were asked to participate for obvious reasons. Some drug court judges were also asked to participate based on their knowledge of drug court and drug offenders within the county. Also, in Orange County, all felony cases originate in a felony panel court. Two felony panel court

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<sup>17</sup> The probation department refers to Proposition 36 probationers as PC1210 probationers – this is taken from the penal code section created by the statute.

<sup>18</sup> Due to time constraints, not all of these additional parole agents were formally interviewed. In some cases, short conversations occurred as time permitted.

judges were interviewed to ascertain how decisions are made regarding an offender's eligibility as well as other procedural questions. These judges were identified through snowball sampling, as introductions by other judges proved to be important in this agency and with this practitioner population. Supervisors at the Public Defender's Office and a city Attorney's Office were interviewed based on their knowledge of Proposition 36 case processing and/or involvement in the planning/pilot study phase.

### Law Enforcement Agencies

Law enforcement personnel were selected to be interviewed in a variety of ways. In most cases, the Chief of Police assigned a specific person within the agency to be my department contact and instructed me to get in touch with this person when I was ready to set up interviews with agency personnel. The assigned contact was typically a narcotics unit supervisor or a patrol supervisor. When I made contact, this person would ask me who I wanted to speak to. At that point I would explain my research and request to speak to one or two officers and a supervisor assigned to the narcotics bureau, two patrol officers, an officer in a community policing role (if appropriate), and a supervisor who might have a "birds-eye view" of how the legislation may have impacted the department as a whole; as well as anyone else they (my contact) felt would be useful to interview.

I typically allowed my contact to identify appropriate individuals to interview based on the criteria I established during our telephone call or email correspondence. In some cases, the agency contact person made all arrangements for me (for example, I spent one day interviewing several people in succession at a few departments). In other cases the agency contact person provided me with telephone numbers and/or

emails for the persons he/she thought would be helpful and instructed me to call/email the individuals directly. Thus, some law enforcement officers were chosen by me to be interviewed due to their current assignment (for example, supervisor of the narcotics unit); some officers volunteered to be interviewed when asked, and yet other officers were chosen simply because they (1) were on duty, (2) had a beat partner (or someone to cover their area in their absence), and (3) were not on a call at the time I was ready to interview someone. As with other types of agencies, some snowball sampling occurred within law enforcement agencies also.

**Table 2.3: Number of Interviews Conducted by Agency**

<b>Law Enforcement Interviews Conducted</b>		<b>Corrections Interviews Conducted</b>		<b>Total Conducted</b>	<b>Interviews</b>
Agency A	7	OC Probation	7	Law Enforcement	39
Agency B	4	CDCR Parole	4	Court	7
Agency C	3	Jail	3	Corrections	13
Agency D	8	<b>Total</b>	<b>14</b>	<b>Total</b>	<b>60</b>
Agency E	4				
		<b>Court Interviews Conducted</b>			
Agency F	3	Judges	5		
Agency G	1	District Attorneys	0		
Agency H	5	Public Defenders	1		
Agency I	4	City Attorneys	1		
<b>L.E. Total</b>	<b>39</b>	<b>Total</b>	<b>7</b>		

### *Interviews*

Semi-structured interviews were conducted with 60 criminal justice practitioners (see Table 2.3 for details), including judges, public defenders, city attorneys, probation officers, parole agents, jail deputies, jail supervisors, patrol officers, special detail/drug enforcement team officers, community policing officers, and supervisors from nine participating law enforcement agencies in the focus

county<sup>19</sup>. Informants were promised confidentiality but were made aware that the case study county would be identified. Interviews lasted between 33 minutes and 2 hours and 13 minutes, and most lasted 45-55 minutes. Interviews were typically conducted at the criminal justice agency but occasionally took place at local eateries at the practitioner's request. Interviews were audio recorded and then transcribed by undergraduate research assistants. The format of the interviews was semi-structured to allow criminal justice professionals the opportunity to describe their agencies', as well as their own personal experiences adapting to Proposition 36. At the end of the interview, all interviewees were asked for their personal opinions about the effectiveness of Proposition 36 and what changes to the law they felt would be beneficial and would make it more effective.

In the tradition of grounded theory (Glaser and Strauss, 1967/2006; Glaser, 1978; Strauss, 1987; Strauss and Corbin, 1990), I allowed criminal justice practitioners in Orange County to describe their agencies' and their own experiences adapting to this legislative change. I used information gathered through multiple interviews as well as internal memos and documents provided to me by practitioners to reveal when and how policy changes occurred within Orange County agencies in response to SACPA. In addition, inter-agency and intra-agency hurdles and facilitators were identified through responses to interview questions.

It was evident throughout many of the interviews that my prior law enforcement experience facilitated the development of trust between interviewee and interviewer. As law enforcement officers are a notoriously difficult group to research

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<sup>19</sup> In addition to semi-structured interviews, I had formal and informal conversations with many more practitioners, including 3 treatment system stakeholders throughout the course of the research project.

(Skolnick, 1994), I believe that my prior experience enhanced officer candor and made the research findings richer than might otherwise have been expected. This prior experience proved helpful, but not integral, in interviews with other criminal justice professionals as well.

### *Interview Instruments*

#### Law Enforcement

The law enforcement interview instrument contained 25 open-ended questions and four vignettes. Questions asked of particular interviewees varied based on current assignment and experience with Proposition 36 or narcotics offenders. The interview instruments included questions that gauged the individual officer's knowledge and understanding of Proposition 36, experience with drug offenders and frequency of drug arrests, and perceived impact of the law on their job and their agency. Additionally, officers were presented with up to four vignettes to ascertain if and how SACPA impacted their decision whether to arrest a drug offender and/or what offense(s) to charge him/her with. The law enforcement instrument is Appendix C.

#### Courtroom Workgroup

The judge interview instrument contained 44 open-ended questions and the attorney interview instrument contained 48 open-ended questions. Questions asked of particular interviewees varied based on current assignment and whether the person had a role in planning for the implementation of Proposition 36. The instrument includes both instructional questions and change questions in order to detect any interpretational variations of court processes, policies, or responsibilities by other courtroom actors (such as PDs, DAs, judges) as well as to be able to accurately

describe offender processing in Orange County. The judge instrument is Appendix D and the attorney instrument is Appendix E.

#### Probation Officers & Parole Agents

The probation officer interview instrument contained 22 open-ended questions and the parole agent interview instrument contained 20 open-ended questions. Questions asked of particular interviewees varied based on current assignment (supervising officer/agent or deputy probation officer/parole agent) and experience with Proposition 36 probationers/parolees. The interview instruments included questions about Proposition 36 (PC1210) probation/parole and how it differed from “pre-PC1210” probation/parole for drug offenders, whether the typical drug offender on probation/parole were different as a result of the law, the officer’s experience working with PC1210 probationers or parolees, and perceived impact of the law on their job and their agency. The probation officer instrument is Appendix F and the parole agent instrument is Appendix G.

#### Jail Staff

The jail staff interview instrument contained 27 open-ended questions. Questions asked of particular interviewees varied based on current assignment and knowledge of Proposition 36 as it impacted jail operations since inception. The interview instruments included questions about Proposition 36 (PC1210) the impact of Prop36 on jail operations, specifically intake procedures, jail capacity and sentences. The jail staff interview instrument is Appendix H.

## Implementation Team

The implementation team interview instrument contained 30 open-ended questions. The instrument included questions about the planning and pilot study phase as well as the early implementation process. It was designed to allow practitioners to describe the process as it unfolded and to identify the obstacles, major and minor, expected and unexpected, that developed along the way. The implementation team instrument is found as Appendix I.

### *QUANTITATIVE DATA*

#### *Definition of “SACPA-eligible”*

SACPA applies to all “non-violent drug possession” offenses. However, the law was open to some interpretation when it was first implemented and there was no single agreed-upon list of all offenses eligible for SACPA sentencing in Orange County. Therefore, the dependent variable “SACPA-eligible offenses” needed to be defined. I employed a two-step process to do this. First, I used UCLA study findings to identify a list of all potentially eligible drug offenses. Second, I worked with a research analyst from the Orange County Probation Department to refine this list to include offenses most often considered “SACPA-eligible” in Orange County.

Counties throughout the state varied on their interpretation of the statute in regards to eligible “drug possession” offenses<sup>20</sup> (Longshore, et al., 2003). According to the UCLA study, three offenses qualified for SACPA diversion in all 58 counties in

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<sup>20</sup> Disagreement was limited to the first couple years of the law, prior to when the California Supreme Court established case law on eligible offenses.

California; H&S<sup>21</sup>11550 (under the influence of a controlled substance – a misdemeanor); H&S11350 (possession of a schedule I or II drug [a.k.a. “narcotic”]– a felony); and H&S11377 (possession of a schedule III-V drug [a.k.a. “dangerous drug”] – a felony). However, counties disagree on six other “drug possession” offenses: H&S11352 (transportation of a schedule I or II drug [a.k.a. “narcotic”] for personal use – a felony), H&S11357 (possession of cannabis – a misdemeanor), H&S11364 (possession of paraphernalia – can be either a felony or a misdemeanor), H&S11379 (transportation of a schedule III-V drug [a.k.a. “dangerous drug”] for personal use – a misdemeanor), B&P<sup>22</sup>4140 (possession of a syringe – a misdemeanor), and B&P4149 (possession of paraphernalia – a misdemeanor).

Based on this information, Sandy Hilger, Ph.D., a research analyst for the Orange County Probation Department, ran a query of all SACPA probationers charged with any of the above offenses (including all subsections of any of the above offenses). This query revealed that most probationers were on SACPA probation for (in order): H&S11377 (possession of a dangerous drug), H&S11364 (possession of paraphernalia), H&S11550 (under the influence of a controlled substance), H&S11350 (possession of a narcotic), and B&P4140 (possession of a syringe). A very small percentage of offenders were on probation for H&S11357 (misdemeanor possession of cannabis) and less than 1% of probationers were on probation for H&S11352 (transporting a narcotic for personal use), H&S11379 (transporting a dangerous drug for personal use), or B&P4149 (misdemeanor possession of paraphernalia). Based on

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<sup>21</sup> H&S is an abbreviation for the California Health and Safety code, which defines these crimes.

<sup>22</sup> B&P is an abbreviation for the California Business and Professions code, which defines these crimes.

the results I excluded the following offense codes that were on UCLA’s “sometimes eligible” list: H&S11357, H&S11379, H&S11352, and B&P4149. This left five offense codes that were consistently considered “SACPA-eligible offenses” in Orange County: H&S11350, H&S11364, H&S11377, H&S11550, and B&P4140. Therefore, for the purposes of this study, the term “SACPA-eligible offenses” includes: H&S11350, H&S11364, H&S11377, H&S11550, and B&P4140.

### *Data Sources*

Data used to assess trends are divided by criminal justice stage (arrest, court processing and sentencing, and corrections). The following sections describe the data used to answer the various research questions and explain the strengths and weaknesses of each data source. Data were collected from three sources: the California Criminal Justice Statistics Center (a secondary data collection agency), the Orange County District Attorney’s Office, and the Orange County Probation Department<sup>23</sup>. The California Criminal Justice Statistics Center (CJSC) is the data repository for all criminal justice data in the state of California. Local criminal justice agencies report criminal events to the state on a monthly basis. The state has two databases that are particularly useful for the current study, “Monthly Arrest and Citation Register (MACR)” and “Offender Based Transactions System (OBTS).” MACR reports the number of adult and juvenile arrests in the state of California for felonies and misdemeanors and OBTS reports final disposition data for all adults

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<sup>23</sup> I attempted, but was unable to secure admissions data from the California Department of Corrections and Rehabilitation and the Orange County Jail. Orange County Jail was unable to provide the data requested. California Department of Corrections and Rehabilitation was unwilling to provide the data requested.

arrested or convicted of a felony<sup>24</sup>. Both are detailed below and a matrix explaining the data used to answer various research questions is contained in Appendix A. Also a matrix describing the variables contained in each dataset is found in Appendix I.

### Arrest Data

A total of three datasets are used to analyze the impact of Proposition 36 on drug arrests in Orange County during the study period. Two datasets are from the MACR database and one is from the OBTS database. MACR includes arrest information for felonies and misdemeanors whereas OBTS contains *arrest and disposition* information, but only for *felony* crimes. All data are aggregate level data.

*CJSC -- Monthly Arrest and Citation Register* The first CJSC dataset (MACR #1) contains adult arrests for all drug crimes for the period January 1, 1995 to December 31, 2006. It is broken down into seven arrest categories (felony narcotics, felony dangerous drugs, felony marijuana, felony other drugs, misdemeanor dangerous drugs, misdemeanor marijuana, and misdemeanor other drugs). The “felony narcotics” category includes arrests involving schedule I or II drugs such as opiates (heroin) and cocaine. The “felony dangerous drugs” category includes arrests involving schedule III, IV or V drugs such as methamphetamine, ecstasy and other manufactured “club” drugs. The “felony marijuana” category is self-evident and the “felony other drugs” category contains felony arrests for everything else (false prescriptions, paraphernalia, etc.). The misdemeanor categories include the same types of crimes as the felony categories, but at the misdemeanor level. These data are

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<sup>24</sup> In California, there are three types of crimes: felonies, misdemeanors, and infractions. Felonies are the most serious and are punishable by more than one year in state prison. Misdemeanors are less serious and are punishable by no more than 365 days in county jail. Infractions are citable offenses (e.g. speeding ticket).

used to examine arrest trends for all drug crimes during the study period. They are also used to illustrate differences in arrest patterns for SACPA-eligible and not-SACPA-eligible drug crimes.

Next, data on arrests for the five SACPA-eligible offenses were obtained. The second CJSC dataset (MACR #2) includes a count of all adults arrested for H&S11550<sup>25</sup> (misdemeanor under the influence) on a monthly basis for the period January 1, 1995 to December 31, 2006. These data are broken down by law enforcement agency and are used to assess arrest trends and validate claims made by law enforcement officers during interviews that some officers changed their arrest practices in response to SACPA. Unfortunately, I was unable to obtain arrest data for H&S11364 (possession of paraphernalia<sup>26</sup>) or B&P4140 (possession of a syringe) because these offenses are contained in the felony or misdemeanor other drugs categories and cannot be queried separately.

*CJSC -- Offender Based Transaction System*      The third CJSC dataset (OBTS #1) comes from the OBTS database and contains aggregate-level case processing and sentencing information on all adults arrested for felony drug offenses H&S11350 (possession of a schedule I or II drug) or H&S11377 (possession of a schedule III-V drug) for the time period January 1, 1995 to December 31, 2005. This dataset separates the two drug offenses, so patterns can be analyzed separately or together. This dataset is preferred to the MACR dataset broken down by offense category because it removes all the offenses that are not considered “SACPA-eligible”

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<sup>25</sup> H&S11350 and H&S11377 arrests are analyzed using data from the OBTS database.

<sup>26</sup> H&S11364 (possession of paraphernalia) is a wobbler and can be either a felony or a misdemeanor.

in Orange County and contains only the two primary felony offenses that offenders sentenced to SACPA are arrested for.

Additionally, this dataset provides monthly counts of 15 variables, including: felony arrest dispositions, law enforcement releases, complaints filed, cases dismissed, offenders convicted, and offenders sentenced to prison (for a complete list, see Appendix B). Therefore, this dataset is also used to ascertain court processing and sentencing trends for drug possession offenses. It does not provide offender characteristics data.

#### Court Processing and Sentencing Data

Court processing and sentencing trends are analyzed using data from CJSC's OBTS database and the Orange County District Attorney's Office. In addition to the third dataset mentioned above that includes aggregate level case processing and sentencing information on all adults arrested for felony drug possession offenses H&S11350 or H&S11377, I utilize two additional OBTS convictions datasets. As with the arrest datasets, one is broken down by drug category (e.g. felony narcotics) and the other is broken down by SACPA-eligible drug offense (e.g. H&S11377).

*CJSC -- Offender Based Transaction System*      The fourth CJSC dataset (OBTS #2) contains sentencing information on *adults arrested for a felony and convicted of any drug crime* for the time period January 1, 1995 to December 31, 2005. This dataset is broken down into seven drug conviction categories (felony narcotics, felony dangerous drugs, felony marijuana, felony other drugs, misdemeanor

dangerous drugs, misdemeanor marijuana, and misdemeanor other drugs)<sup>27</sup>. These categories contain arrests for crimes that are not eligible for SACPA diversion. The dataset provides monthly counts of 8 variables, including: offenders convicted of a given crime and sentenced to various punishments (for a complete list, see Appendix D). It does not provide offender characteristics data. A large benefit of this dataset is that it includes only misdemeanor convictions that resulted from a felony arrest. Thus it is possible to identify changes in conviction trends that affected the level of crime convicted of (misdemeanor or felony).

The fifth CJSC dataset (OBTS #3) contains sentencing information on all adults arrested for a felony and *convicted of a SACPA-eligible drug crime* for the time period January 1, 1995 to December 31, 2005. This dataset is broken down into five drug conviction offenses: felony H&S11350, felony H&S11377, misdemeanor H&S11550, felony & misdemeanor H&S11364, and misdemeanor B&P4140. Once again, it is important to keep in mind that only misdemeanor convictions that resulted from a felony arrest are represented in this database. In fact, the number of misdemeanor convictions in each category per month is quite small in most cases. The small cell counts increase the variance and make the data unusable for time series analyses using a monthly time interval. Thus, the misdemeanor conviction data has limited usefulness and cannot be used for any analyses beyond evaluating basic trends toward more or fewer misdemeanor convictions.

#### *CJSC – Data Limitations*

There are some data limitations that must be discussed. The first limitation is that the OBTS database I rely on only contains

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<sup>27</sup> The database contains information on felony arrests only. Misdemeanor conviction data represent only the cases that started as a felony arrest and resulted in a misdemeanor conviction.

disposition information on felony arrests (not misdemeanor arrests). This is unfortunate, but according to data from the probation department, approximately 75% - 90% of Orange County probationers on probation for a SACPA-eligible offense are on probation for a felony, either H&S11350 or H&S11377. Therefore, this is not expected to be a significant issue. Another standard limitation of arrest data is that in the event a person is arrested for multiple offenses, only the most serious offense is reported, thus it may underestimate the number of drug arrests. Also, only final disposition of an arrest is reported (intermediate dispositions are not entered).

The data from CJSC are approximately 25-35% under-reported for the entire state. Also, various data limitations occur periodically and apply to specific years or counties that must be taken into consideration. For instance, dispositions can not be separated by offense (ex. drugs) for the year 2002 due to a data entry error (Linda Nance, personal communication, May 5, 2004). Thus, all of my time series from the OBTS datasets are missing 12 data points after implementation for the year 2002. This is not ideal, however, I have at least three other post-implementation years of data to work with and STATA time series software can navigate the gap without problems. CJSC data, besides being under-reported state-wide, is relatively good and free from serious issues for the offenses and time period I am looking at for Orange County. Furthermore, this under-reporting is consistent between years, so year-to-year comparisons can be made with confidence. In addition to these data from the California Criminal Justice Statistics Center (CJSC), data from the Orange District Attorney's Office are also used to assess the impact of Proposition 36 on court processing and sentencing trends.

*Orange County District Attorney's Office Data* I have one dataset from the Orange County District Attorney's Office. This dataset includes information on all adults charged with a SACPA-eligible drug offense between July 1, 1998 and June 30, 2004. For each felony case, I have the offender's charged offense/s, offender's race, gender, and age at time of arrest and disposition. For each misdemeanor case, I have all of the above except final disposition. The District Attorney's Office does not keep records of an individual's arrest offense so the information is on charging offense only. These data are used to discern case processing and sentencing trends, such as the number of drug cases filed by the District Attorney, and to illuminate changes in characteristics of offenders prior to and after the law.

#### Corrections Data

The Orange County Probation Department (OCPD) was the primary data source at the corrections stage. OCPD provided three datasets for research purposes<sup>28</sup>. As previously stated, I was unable to secure prison admission data for drug offenders from the California Department of Corrections and Rehabilitation. Furthermore, Orange County Jail admission data for drug offenders could not be obtained without incurring great financial expense.

*OCPD -- Number of New Probationers* The first dataset includes: the number of new admissions of drug offenders placed on probation for SACPA-eligible offenses on a monthly basis from July 1, 1995 – May 30, 2006. This indicates whether the probation department is supervising a larger number of drug offenders after SACPA went into effect than before. I use this data in conjunction with CJSC

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<sup>28</sup> I also requested a 4<sup>th</sup> dataset, the number of drug possession offenders who received treatment as a condition of probation prior to SACPA. Unfortunately this information was not easily available.

disposition data to get an overall picture of how offenders in Orange County were sentenced before and after SACPA went into effect.

*OCPD -- Number of SACPA Probationers*                      The second dataset contains a count of new SACPA-referred probationers each month for the period, July 1, 2001 to May 30, 2006. It does not include offense or offender information. It indicates how Orange County Probation Department caseloads changed as a result of SACPA. It does not necessarily tell me how many more (or fewer) probationers are being supervised as a result of SACPA because we do not know how many would have been sentenced to probation before SACPA. However, this information does tell me how many drug offending probationers are on SACPA.

*OCPD – Probationer Seriousness*                      The third dataset provides risk and needs information for the population of offenders on probation for SACPA-eligible offenses between July 1, 1995 and May 30, 2006. One of the most important questions to answer in this dissertation is whether observed changes are due to SACPA, offender characteristics, or other factors. This dataset contains more than 25 variables, including: offender characteristics, initial risk score, the number of probation violations, criminal history, financial issues, family issues, and other information pertinent to an offender's risk profile for all probationers for the past 15 years. However, the scores after June 2002 are not reliable due to different assessment strategies by probation officers (Shirley Hunt, personal communication, October 22, 2005). Therefore the study period for this question is limited to July 1, 1998 to June 30, 2002.

I utilize this information to answer the question whether any changes in the number of offenders sentenced to prison, jail or probation are due to SACPA, differences in offender characteristics, or other factors. For instance, if SACPA is actually diverting offenders from prison, I expect to find higher risk scores for offenders sentenced to probation after SACPA implementation and as a result of SACPA than before. The dataset illustrates how the drug offender sentenced to probation has changed over the years. This could lend credibility to the assertion that the drug offenders sentenced under SACPA are indeed the offenders with higher risks and longer criminal histories than past offenders sentenced to probation. This information would suggest that the SACPA-diverted offenders are precisely those who would have been sentenced to prison in the past.

### *Data Analysis*

The current research project uses interrupted time series analysis, analysis of variance and chi-squares to interpret the quantitative data. Interrupted time-series analysis was used to ascertain whether any observed sentencing changes could be attributed to Proposition 36 implementation. ANOVAs were used to evaluate the observed differences in sentencing trends before and after Proposition 36. Chi-squares for cross-tabulation tables were used to determine whether observed offender characteristics were different after Proposition 36 than before Proposition 36 for data from the district attorney's office and probation department.<sup>29</sup>

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<sup>29</sup> Chi-squares are suitable to answer the questions of interest in the current project. However, it is possible that more-advanced statistical techniques will be performed in the future to exploit the information about individuals contained in these datasets.

### Interrupted Time Series Analysis

Time-series analysis involves collecting many time points of aggregate level data before and after an intervention (in my case, SACPA implementation on 7/1/01) to determine if that intervention (SACPA) had any effect on the issue being studied (case processing and sentencing trends). Time series analysis requires an analysis of each trend prior to an intervention (SACPA implementation) to create a projection of what that trend would have looked like after the intervention (implementation date), had the intervention (SACPA) not occurred. It then compares this predicted trend to the actual trend after the intervention (SACPA implementation) took place to determine if they are statistically different from one another.

Time-series analysis is particularly useful for evaluating the effects of full-coverage programs (interventions which apply uniformly to an entire population, such as policy interventions) like SACPA (Rossi, Freeman, and Lipsey, 1999). Time series designs “are the strongest way of examining full-coverage programs” (Rossi, Freeman, and Lipsey, 1999: 268). A minimum of 30 time points are recommended before an intervention in order to obtain a correct projection of the trend line. I have a minimum of three years of data before and after SACPA implementation for this reason, as monthly observations for three years will yield 36 time points before intervention and 36 time points after intervention. This should be enough to ensure proper modeling and fit of each time-series. In most cases, I have many more time points<sup>30</sup>.

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<sup>30</sup> To maximize internal validity I collect data from January 1995 to December 2006 (providing 144 time points of data), when possible.

Because SACPA was passed at a discrete point in time, interrupted time-series analysis is a powerful statistical procedure which identifies and controls for both the seasonal variation and the long-term trending of the data (Shadish et al., 2002). This makes it a particularly strong and useful research strategy that is considered an “alternative to randomized designs when [randomized designs] are not feasible and a time-series can be found” (Shadish et al., 2002: p174)<sup>31</sup>.

ARIMA (Auto Regressive Integrated Moving Averages) models were built using the methods described in Box and Jenkins (1970; 1976). Additionally, McDowall, McCleary, Meidinger, and Hay (1980) and McCleary and Hay (Chapters 2-5, 1980) which provide more accessible developments of ARIMA model-building were also used. Data series were transformed into their natural logarithm when it was necessary (see McGarrell et al., 2006). STATA 10 was used to build ARIMA models. It was evident, however that the series were extremely complex and SCA 8 software was used at the end to identify the best fit ARIMA models for some of the series.

#### Analysis of Variance

Analysis of variance (ANOVA) tests whether the independent variable has an impact on the dependent variable by comparing the pre and post experiment levels of the dependent variable. A dummy variable is used to differentiate the pre-intervention period from the post-intervention period. ANOVA then compares the mean of the pre-intervention period to the mean of the post-intervention period to determine

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<sup>31</sup> The main threat to validity is history. The best way to control for this threat is to collect information on similar “no treatment” jurisdictions – jurisdictions which are similar to Orange County, California but which did not experience any change in policy affecting drug offenders. In this study, history is not controlled for directly.

whether the difference is statistically significant<sup>32</sup>. This technique is used in conjunction with time series analysis to assess the impact of Prop36 on sentencing variables.

### Chi-Squares

Chi-square ( $X^2$ ) is a statistic used to test whether there is any association between two (or more) variables using observed and expected values. It is particularly useful for investigating whether there are any differences in drug offenders before and after the law. Chi-square is based on the null hypothesis, which is the assumption that there is no relationship between the two variables of interest (such as offender gender and Proposition 36) and computes expected values based on the observed values. The value of chi-square tells us the likelihood of the observed value and the expected value being different by chance. Data from the probation department and district attorney's office contain nominal and ordinal level individual data that are easily interpreted using chi-square analyses.

*DA Data – Offender Characteristics* Chi-square tests were run on DA data to determine if there was any impact of Proposition 36 on the type of crime (felony or misdemeanor) offenders were charged with, the offense charged with, or the disposition. In addition DA data were analyzed to determine if there were any legislative impacts on the characteristics (race, gender, age) of offenders charged with SACPA-eligible drug crimes.

*OCPD – Probationer Seriousness* Chi-square tests were also run on the risk/needs data from the probation department to identify changes in average drug

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<sup>32</sup> The limitations of this test for time series data are acknowledged.

probationer risk score over time. If SACPA is diverting offenders from prison, I expect to find offenders sentenced to probation as a result of SACPA have higher risk scores than offenders sentenced to probation prior to the law. Such a discovery would indicate that drug offenders sentenced under SACPA are indeed more serious offenders than past offenders sentenced to probation and may signify that SACPA offenders are precisely those who would have been sentenced to prison prior to 2001.

In order to establish comparable pre- and post- intervention time periods, analyses were limited to one year before the law and one year after the law took effect. The pre-intervention period was January 1, 2000 to December 31, 2000 and the post-intervention time period was July 1, 2001 to June 30, 2002. January 1, 2001- June 30, 2001 was not used because Orange County conducted a pilot study in early 2001 prior to the start of Proposition 36 and it was possible that the pilot study population could confound the results of the analyses in unknown ways.

## **Chapter 3**

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### **Proposition 36 and the Orange County Experience**

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Proposition 36 completely changed how California deals with minor drug offenders – from a crime control model to an addiction treatment model. It was written by drug reformers and opposed by many in the criminal justice system. The California District Attorney’s Office, the California Association of Drug Court Professionals, the California Peace Officer’s Association, judges, Attorney General Bill Lockyer, and U.S. Drug Czar Barry McCaffrey all came out against the law when it was on the ballot (Booth and Sanchez, 2000; Sauer, 2000; Wallace, 2000). These same groups that opposed the law were then required to implement it – not just adjust to it – but proactively create the infrastructure and shape the philosophy that would guide and govern how “Proposition 36” worked in Orange County. This was a monumental task, not only because of the new procedures that had to be put into place, but also because the scope was so large (36,000 expected offenders state-wide). So just how does a county go about implementing a new protocol for thousands of offenders each year? This chapter describes Orange County’s experience implementing Proposition 36.

The law was passed on November 7, 2000 with a mandatory implementation date of July 1, 2001. State, County and local agencies had slightly less than eight months to react to, plan and prepare for the law change. The statute mandated sentencing changes, required probation departments to work with treatment providers, and prescribed how probation violations (both drug and non-drug related) would be

handled. However, it did not dictate how counties had to organize the various pieces of the process. Structural issues were left almost completely up to individual counties. Thus, counties varied widely in their implementation strategies.

### *PILOT STUDY PLANNING*

Planning in Orange County began almost immediately after the law was passed. An Orange County judge, who incidentally gave anti-Proposition 36 speeches up to Election Day, drafted Orange County Superior Court's position statement within weeks of the election (Confidential Informant ECV, personal communication). It is clear from interviews with multiple criminal justice practitioners involved in the implementation of Proposition 36 that Judge Day<sup>33</sup> took the lead and spearheaded the effort to organize Orange County's implementation effort. Judge Day organized a meeting of drug court managers in December 2000 to discuss the law and strategize how Orange County should proceed.

He anticipated that many defendants arrested in the first half of 2001 would postpone their hearings until Proposition 36 became effective on July 1, 2001. If many offenders postponed their hearings, it would put pressure on both the jail and the court because many of these defendants would be in jail awaiting their postponed hearings and court staff would be unable to support the expected bulge of offenders. He felt that if they "got moving quickly," Orange County could avoid this anticipated bottleneck.

They were just going to plug up our courts. We were going to have gridlock and that wasn't going to help their (District Attorneys and Public Defenders) clients. It wasn't going to help the DA's office. The defense could just go to trial with all these Prop36 cases. That would

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<sup>33</sup> Not his real name. All names have been changed to protect informants' identity.

just prolong it for sentencing until Prop36 became law and they'd get Prop36. So the trial was just a waste. ... Both sides had to look at their position that this wasn't going to be good for the clients.

As Judge Day saw it, no one benefitted from waiting. He believed the best solution was to conduct a pilot study prior to the official implementation of Proposition 36 to reveal the issues that had to be worked out, as well as to move eligible offenders through the system prior to July 1, 2001 to avoid the anticipated bottleneck. Other key stakeholders agreed and credited him with "excellent judgment and foresight" on this issue. Although not a supporter of the measure he (and others) felt it was their duty to implement Proposition 36 as best they could, as that is what California voters wanted and what the offenders were entitled to. "Whether we liked it or not, we felt obligated to make it work. That's the law. We had to get on board" (Confidential Informant ECV, personal communication). In order to do this, key stakeholders came together to discuss the various issues associated with implementation and to develop a strategy to proceed.

Informal meetings with a core group of key stakeholders (primarily Drug Court managers) began in November or December, 2000. This core group tackled the immense task of organizing and structuring Proposition 36, from scratch. They had to address questions regarding eligible offenses, program structure, case flow, client flow, and supervision. They had to create procedures and pathways for collaboration and information sharing between agencies and actors not accustomed to collaborating (at least not on a large scale). They had to do this while navigating numerous obstacles and relying upon group strengths to build trust and move forward.

The core group included a representative (or two) from Orange County's Health Care Agency (HCA), Probation Department, District Attorney's Office (DA), Public Defender's Office (PD), and Superior Court (SC), the same agencies that were (and are) involved in drug court in Orange County. This small, core group of stakeholders had experience working together, which proved extremely beneficial (according to every stakeholder interviewed).

Core stakeholder meetings progressively picked up speed and members in early to mid 2001. The pilot study began sometime in the beginning of 2001 and ended on June 30, 2001. Key stakeholders had difficulty remembering the exact start date, but the most likely start date was March 1, 2001 (four months prior to the official Prop36 implementation date). The "pilot program was the first definitive plans that the county took to implement Prop36." As part of the pilot study, district attorneys and public defenders identified eligible offenders using criteria set out in Proposition 36. They then offered these eligible offenders a sentence of probation with a condition of drug treatment; a sentence equivalent to Proposition 36. Practitioners in Orange County used the pilot study as a "dry-run" for when the legislation took effect. "It [the pilot program] allowed us to work through a lot of the issues before the implementation went through. It allowed us to see what some of the real-life problems were going to be" (Confidential Informant).

### *IMPLEMENTATION PLANNING AND EXECUTION*

Additional stakeholders began taking a more active role in implementation planning sometime around February or March, 2001. The small group of core

stakeholders (5 or 6 people) who planned the pilot study grew into a semi-official “Prop36 implementation planning group” of approximately 20-30 members around this time<sup>34</sup>. Additional stakeholders from agencies already involved were incorporated, as were representatives from the Sheriff’s Department<sup>35</sup>, California Department of Corrections and Rehabilitation – Parole Division<sup>36</sup>, and the County Executive’s Office (CEO). Additional interested stakeholders involved themselves from time to time and attended meetings occasionally as well. Together this group made decisions that would impact hundreds of practitioners and thousands of offenders throughout the county.

With the pilot program up and running, core stakeholders turned their full attention to the main issues that had to be resolved prior to the official launch of Prop36 on July 1, 2001. There were several key aspects of Proposition 36 that the implementation team needed to come to a consensus on and carry out (each of which will be discussed in detail below). First<sup>37</sup>, they needed to decide on a structure for the processing of Proposition 36 defendants from conviction through completion of treatment and supervision, including an agreement of qualifying offenses and an estimate of the number of offenders expected to be processed. Second, they needed to

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<sup>34</sup>On July 1, 2001 an official SACPA oversight committee was formed. This committee acted as an advisory board only and was not a decision-making body. This was a requirement set by the California Department of Alcohol and Drug Programs.

<sup>35</sup> It is also possible the Orange County Peace Officer’s Association had a representative as well. Stakeholders interviewed recalled non-OCSO law enforcement officers at some of the meetings but could not recall who the law enforcement representative/s were or which organization (city police department or union) they represented.

<sup>36</sup> The parole representative was a military reservist who was called to active duty shortly after the 9.11.01 terrorist attacks. Unfortunately, this was essentially the end of parole’s involvement in the process.

<sup>37</sup> I have chosen to put the tasks in numerical order for organization purposes only. In reality, these tasks were addressed simultaneously.

determine how information would flow between agencies as well as create a mechanism for sharing that information between agencies (including individual treatment providers) in a timely manner. Third, they needed to establish treatment requirements and determine which treatment modalities would be available to Prop36 clients. Fourth, they needed to decide how SACPA funds would be distributed between the agencies involved. They also needed to address a multitude of other issues prior to and during implementation, such as project the number of offenders they expected to enroll in Prop36 and train key practitioners (judges, DA's, PD's, treatment providers) in the new law. On top of this, several key stakeholders also had to create new protocols and procedures within their own agencies for handling these offenders as well (and train affected personnel).

The enormity of the project was evident. In order to accomplish the goal, the group established sub-committees for the major tasks. Each core stakeholder served on at least one sub-committee, and often times two or three. Some of these sub-committees were: the shared data system, confidentiality issues, qualifying offenders/offenses, and treatment services. In addition to the frequent sub-committee meetings, core stakeholders also attended regularly scheduled implementation planning meetings as well. As one core stakeholder stated, "this core group of individuals lived and breathed Prop36. It seemed like we were constantly in meetings. Literally I would see the same people three or four days a week in different locations. I [spent] approximately 70% of my time on Prop36 and everything else [took] a backseat...for two years" (Confidential Informant DAK, personal communication)

### *Structure of Proposition 36*

In deciding upon a structure for Proposition 36, many options were considered. Ultimately, core stakeholders aimed to create a structure that was efficient and effective for practitioners and offenders alike. Based on prior experience with drug offenders and reading the legislation, stakeholders anticipated that this group of offenders would likely require numerous “report backs” to the court for progress monitoring and adjudication of expected probation violations. As far as structure, key stakeholders had several viable options to choose from (all of which are in place in counties throughout the state). The “report backs” could be contained in one “Prop36” specialty court or spread across several “Prop36” specialty courts located throughout the county. Alternatively, they could be spread across multiple, non-specialty felony and misdemeanor panel courts. The text of the law gave counties wide latitude in implementing Proposition 36.

At the time that Orange County practitioners were meeting to create the structure for Proposition 36 cases and develop a pilot program (December 2000/January 2001), there was no formal dialogue between counties or the state – Orange County was on it’s own at this point<sup>38</sup>. However, as previously stated, core stakeholders were convinced that starting early was important for Orange County. As one core stakeholder said, “we weren’t sure if different ideas were going to come from the state or not, but [we] didn’t think we could just wait around... We just needed to get started. Once we got things going in the courtroom, then there were still more

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<sup>38</sup> Eventually the state organized semi-annual technical training conferences to bring practitioners together to share ideas and experiences.

things to be worked out. At least we had the thing going” (Confidential Informant ECV, personal communication).

Orange County chose to structure Proposition 36 like drug court as much as possible. This was natural, as all core members had experience with drug court as it existed in Orange County, and all members had positive feelings about it. Drug court was a model they could easily “take off the shelf” and modify for this new legislation and new population. Key stakeholders thus made the important decision to have one courtroom with a dedicated staff for all felony Proposition 36 offenders<sup>39</sup>. This meant there would be one judge responsible for monitoring all felony Proposition 36 offenders. The model would encourage consistency between offenders and would provide the presiding judge with a holistic view of the program and the offenders in the program. The judge could make adjustments as necessary to ensure the highest level of success possible for offenders and could react to the varying numbers of offenders processing through the court at any given time by altering procedures and practices. Furthermore, having the same attorneys, probation, court, and health care staff on a daily basis would provide stability and would encourage efficiency. A single court model would eliminate “judge shopping” by defendants, would be less confusing for other practitioners, and would be less costly for agencies both in terms of staffing and resources.

### *Eligibility Guidelines*

The group also had to set guidelines for which “non-violent drug possession” offenses and which offenders would qualify for Proposition 36 sentencing. The

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<sup>39</sup> Based on the estimated number of offenders, core stakeholders felt one court could handle the entire felony Prop36 population.

District Attorney's Office and the Public Defender's Office took the lead on this task. According to several stakeholders, this was a very contentious issue that on at least one occasion involved a "shouting match." There were many disagreements about how concurrent offenses and/or past criminal history would impact a defendant's eligibility for diversion. "One day we almost had a big impasse where we had eight or nine or eleven DA's on one side and the same number of public defenders, and oh my god, they wanted to combat. Finally everybody said, 'We can make this work.' The public defender said that. When that was said, it just all seemed to come together" (Confidential Informant). This was a turning point that was, at least partially, made possible by the public defender's prior experience with drug court collaborations (Confidential Informant).

### *Estimating the Impact*

Core stakeholders gathered information from multiple sources in an attempt to estimate the impact that Prop36 would have on the criminal justice system in Orange County. How many offenders would need to be monitored in court on a monthly basis? How many additional probationers would need to be supervised? How many offenders would need treatment and what type of treatment would the offenders most likely need? The answers to these questions would be used to guide implementation and make crucial service delivery decisions. Research analysts from the probation department calculated an estimate based on the number of probationers on probation in early 2001 for SACPA-eligible offenses. The courts, district attorney, public defenders office, parole and jail also tried to estimate what the impact would be on their respective agencies. The official estimate of the number of offenders expected to

receive treatment during the first year was 4,157 (3,500 probationers and 657 parolees) (Ford and Smith, 2001).

### ***Information Sharing***

One of the most time-consuming and labor-intensive tasks of the implementation process was information sharing between agencies. Beyond basic computer networking and hardcopy paperwork processing issues the team had to navigate strict confidentiality laws that impeded the entire process. The process was wrought with obstacles, including both fiscal and time constraints, technical limitations, confidentiality issues and distrust between core stakeholders. As one stakeholder said, it was akin to “negotiating the Israeli peace agreement because it was that contentious.” The planning and implementation process was aggravated by the fact that they had “very different philosophical groups” involved in the collaboration process and often times they did not *want* to share information with one another for various reasons. For example, health care representatives did not want to share client’s urine analysis results or treatment progress because they were concerned that probation officers would simply arrest everyone for non-compliance. Certainly there was the issue about *what* information could be shared legally, but there was also a major concern about what probation (or the court) would do with the information if Orange County Health Care Agency (HCA) shared it (Confidential Informant).

Despite these obstacles, core stakeholders had to figure out how to put a system into place that facilitated the flow of information between the various entities responsible for supervising and/or providing services to these offenders. By default this burden fell disproportionately on the probation department (as the legislation

placed the information sharing responsibility on them) and to some degree, HCA (as they were entirely responsible for treatment activities). According to the law, it was the probation department's responsibility to ensure that the Prop36 probationer enrolled in treatment within a specified time period and to report that information back to the court, as well as to provide quarterly updates to the court on the individual's progress. According to Section 5, subdivision (c) of SACPA, the probation department must notify the drug treatment provider designated to provide drug treatment of court ordered probation and treatment within seven days; and the drug treatment provider must prepare a treatment plan and forward it to the probation department within 30 days. Furthermore, the drug treatment provider must prepare progress reports on a quarterly basis and forward those on to probation, which then forwards them to the court.

### *Confidentiality*

In order to assure compliance with state and federal confidentiality laws (ex. 42CFR and HIPAA), the core stakeholder group created a "release of information" form that all Proposition 36 clients signed in court immediately upon acceptance of Proposition 36 diversion. This proved to be very important, as many offenders fell out of the system before reporting to probation or treatment. Having the waiver signed immediately protected the county from potential lawsuits and allowed agencies to communicate with one another and share basic information regarding program compliance right away. Eventually a high court ruled that such waivers were unnecessary and permission to share information was automatically granted by offenders upon acceptance of Proposition 36 diversion (Confidential Informant).

However, as will be discussed below, some client information is still subject to stricter regulation.

Both criminal history records and substance abuse treatment records are governed by “right to know and need to know” laws. Only individuals who have a “right to know” (for instance as part of their employment) and a “need to know” (justified by current assignment and task) can access these types of records. In terms of Proposition 36 this means that most treatment providers have a “right to know and a need to know” treatment information about their clients (how many meetings they have attended, dates and results of drug testing, etc.); however they do not have a “right to know and a need to know” criminal justice information about their clients. The same issue exists for probation officers, district attorneys, public defenders, and court staff. This means that most practitioners who work with Proposition 36 offenders generally will not have a “right to know” and a “need to know” both criminal justice and treatment information. This issue posed considerable problems for Orange County’s core stakeholders as they attempted to build a database to share information.

### *Shared Database*

In many ways Orange County was unique in its approach to Proposition 36. One thing that Orange County did that other counties did not do (at least not right away) was to use some of their initial allocation of SACPA funds from the state to create a shared database that all practitioners could use to view current information on Proposition 36 clients. The “vision was to have a shared database where probation could go in and keep track of cases and other entities could and we could just see

what's going on with the case" (Confidential Informant DDA, personal communication). However, the process was very tedious because there was no prototype for this type of information sharing, "we designed it from scratch, from the ground up". Core stakeholders, specifically the ones who served on this sub-committee, had to "literally walk through the process of what the probation department does when [they] get new cases and to some degree what the healthcare agency does [when it gets new cases]" (Confidential Informant). Core stakeholders had to figure out a way to capture information from multiple agencies (including each and every approved treatment provider) located at multiple sites throughout the county.

The database was designed to allow multiple users to input information on a single individual, so information would always be up-to-date and correct. Probation department staff, health care agency staff and individual treatment providers are responsible for inputting case management information and updating the information on their cases as necessary. Depending on the module, information can be viewed by staff at those agencies as well as Prop36 court staff and attorneys. The database contains a multitude of information on each person assigned to Proposition 36 probation. For example, information on conviction date and offense information, offender contact information, date reported to probation, probation case number, probation officer, and dates of meetings with probation officer and relevant notes, treatment provider information, results of treatment severity index (at treatment intake interview), treatment progress including dates of meetings, test dates and results, court appearance information, progress reports and other pertinent information. In order to

comply with confidentiality laws, data modules are separated and can only be accessed by individuals with the proper “clearance.”

In addition to the strict confidentiality laws that had to be navigated, other hurdles emerged. For example, not all treatment providers had computer systems (and therefore were not be able to access the shared database that core stakeholders spent so much time and effort creating). “Once we got the computer system going, getting the providers to use the database was huge. They definitely struggled with that. It was something that wasn’t anticipated I think as to how hard it was going to be” (Confidential Informant). “There was a huge learning curve for them (treatment providers)...trying to understand what their role was and how to work it (the database)” (Confidential Informant).

### *Client Treatment*

Deciding on the scope and duration of treatment that would be provided to Prop36 offenders was also a major task. The legislation limited the duration of treatment to no more than 12 months plus up to six months of aftercare. It did not dictate, however, the type or length of treatment that was required to be provided by counties. Given that each county received a set amount of funding for all Prop36 related expenses (treatment and criminal justice); core stakeholders had to make difficult decisions regarding the intensity, duration, and types of treatment that would be offered. Several factors were considered, including: best practices in substance abuse treatment (treatment modality, duration, etc), capacity of current treatment providers, ability to expand treatment capacity within a short time period, expected number of offenders, expected treatment severity of enrolled offenders, cost of

criminal justice and other necessary expenditures, in addition to philosophical discussions about where core stakeholders believed SACPA funds should be primarily spent (supervision or treatment).

Orange County was unique in that core stakeholders chose to provide clients with treatment for the maximum duration allowed by law, one year plus aftercare treatment – this was significantly longer than neighboring counties and was more than most counties in the state offered. This decision was grounded in best practices research that finds the longer a person is in treatment, the better the outcomes. Toward this end, Orange County HCA attempted to create a menu of treatment options that would apply to the vast majority of clients they expected to encounter. Originally HCA offered six levels of care for Prop36 clients: educational services, medical model inpatient detoxification, social model residential detoxification, methadone maintenance, outpatient treatment (three levels) and residential treatment (90 days)<sup>40</sup>. Offering three levels of outpatient treatment was somewhat distinctive to Orange County in that most other counties only offered one level of outpatient treatment (Confidential Informant).

Unfortunately, Orange County found itself dealing disproportionately with offenders with severe addictions and other co-occurring disorders, which impacted the treatment the County required and the treatment that the County was able to and could afford to provide. As a result of system constraints (an unexpectedly large number of offenders with more severe addictions than anticipated combined with inadequate funding) treatment durations were shortened. “We were constantly having to adjust

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<sup>40</sup> Orange County HCA has since added a perinatal program as well as a 30-day sober living option.

the program requirements as to how long people would be in. The model, your best practices says the longer the better. We had to keep shortening [the time clients could spend in treatment]” (Confidential Informant). For example, level one outpatient treatment was originally six months long but was reduced to four months, level two was reduced from nine to six months, and level three was reduced from 12 to nine months. “We realized that if we funded those people for all that time, we’re going to run out of money” (Confidential Informant). Furthermore, the number of clients requiring residential treatment constrained the system.

What we didn’t anticipate was how many people needed residential (treatment). We expected it to be kind of like a bell curve, so the levels and the way the providers were selected was (sic) kind of designed around that idea – that the majority of the people would be in the middle. Really, the number of people that needed residential surpassed what we expected.

Moreover, residential treatment capacity was not easily increased. “If you put all those people in residential, the money was (sic) gone” (Confidential Informant). Despite the desire to provide clients with the most appropriate treatment for their addiction need, Orange County was not able to do so consistently due to budget and system constraints.

### *Distribution of SACPA funds*

Proposition 36 allocated \$60 million to be split between California’s 58 counties to cover implementation and operating expenses from July 1, 2001 to December 31, 2001. It allocated \$120 million annually for additional operating expenses for the years 2002 – 2004. It was stipulated in the legislation that California State Department of Alcohol and Drug Programs (ADP) would be responsible for

overseeing the implementation of SACPA state-wide, including the distribution of funds. In order to receive funds, ADP required counties to designate a lead agency. Originally Orange County designated the Health Care Agency as the lead implementation agency and the County Executive Office (CEO) to be the receiver of funds from the state and distributor of funds to county agencies. Eventually HCA became the lead agency for all implementation related activities (including distribution of funds).

As would be expected, money was a hotly debated issue. Beyond substance abuse treatment and case management/criminal justice activities, counties could spend SACPA funds on other types of services for offenders, such as: literacy training, family counseling, vocational training, or similar types of services. In order to determine how Orange County's share of SACPA funds would be dispersed, each agency had to argue their case to the CEO. Each agency had to estimate the extent to which they would be impacted by Proposition 36 and approximate the additional cost associated with supervising, monitoring, or serving those offenders. HCA received the bulk of Orange County's allocation (approximately 80%), the probation department received approximately 17% of the funding during the first year and the other agencies (DA, PD, SC) shared the small amount that was left. It was agreed by every stakeholder interviewed that funding was (and continues to be) inadequate for the number of offenders in Proposition 36 and the services they require. Insufficient funding drastically limited the case management and treatment services the county was actually able to provide. Services needed to be cut due to funding shortfalls.

We had some really intense, very intense, discussions at that meeting when it came time to cut services. At one point we cut back some treatment services. We had to cut back some probation services. When it was time to cut, and where to make those cuts, a lot of good old fashioned backdoor arm-twisting, and politicizing, and things like that would take place.... if you're familiar with the dynamic where you're all around the table and everybody's got their polite faces on, but when the meetings are broken up, then everybody's calling and or they're emailing and saying 'I want your support on this', or 'I want your support on that' that sort of thing happened.

As one stakeholder said, "everybody was dedicating resources specifically to deal with this Prop36 population, but the funding wasn't there for the level of resources it was taking. Pretty soon it was so overwhelming that people just started backing off and saying 'we can't give you any more people. You got what you got'" (Confidential Informant). In response to the unexpectedly large volume of offenders, there were discussions about adding additional Prop36 courtrooms. However, agencies were spread too thin and "nobody could fund all those specific attorneys just to handle [Prop36 cases]. It [was] very difficult in terms of the resources that it was sucking up in compensation to the individual agencies" (Confidential Informant). Agencies could not increase capacity and many services had to be cut because there was no SACPA money available and the CEO refused to use non-SACPA county funds for SACPA clients. The county simply could not afford their vision with the number and the addiction severity of the offenders in the program.

#### ***Other Issues: Training***

In addition to the major tasks described above, core stakeholders had a multitude of less contentious and less time-consuming tasks as well. One in particular, training key practitioners, merits discussion. Once the structure was laid out and

eligibility criteria were established, core stakeholders trained panel court judges and other key courtroom actors on how to identify and process Prop36 qualified cases. Training sessions were held at courthouses throughout the county and every panel court judge was expected to attend. Unfortunately these training sessions, run by key stakeholders (including a judge), were only slightly successful. In some cases the training sessions were sparsely attended and/or filled with uninterested or distracted participants. As one stakeholder pointed out, “judges don’t like to be told what to do...they like to interpret on their own.” So, although core stakeholders attempted to “get judges on the same page” prior to implementation, it did not happen as they had hoped.

Judges and District Attorneys exercised a lot of discretion when it came to Prop36. This issue will be discussed in detail in the court results chapter. However, it is important to point out here that “quite a few” defendants were sentenced to Prop36 even though they did not qualify (either because of a concurrent offense or their past criminal history). A few offenders were not sentenced to Prop36 despite being qualified, but this seemed to occur less frequently than the reverse scenario. These mis-sentenced cases had implications for every agency involved in Prop36, especially in the beginning. Key stakeholders tracked inappropriately sentenced cases and “were making copies of minute orders left and right and taking them to the various court administrators, saying ...’this probably shouldn’t have happened’” in an effort to educate/re-educate key courtroom actors on qualifying case characteristics (Confidential Informant). Education/re-education was a burden on core stakeholders; but the added strain these inappropriate cases placed on the system was even more

problematic due to the sheer volume of cases and the level of criminal sophistication that some of the offenders displayed.

### *HURDLES, STRENGTHS, AND LESSONS LEARNED*

Core stakeholders encountered many obstacles as they moved forward to implement a law that was disliked, if not despised by many criminal justice practitioners. Some of the hindrances were expected, many were unanticipated. Some dragged on for years after initial implementation. Some of the obstacles were relatively small and easy to negotiate while others were much larger and required considerable tenacity to overcome. In some cases, adequate solutions were never truly identified. Core group members relied on their personal commitment and group strengths to surmount the obstacles and implement their shared vision for Prop36.

Two types of hurdles were identified and will be discussed –implementation hurdles and workgroup hurdles. Implementation hurdles are obstacles that core stakeholders had to react to during the implementation process, issues that arose as a result of the law, or funding, etc. Workgroup hurdles are obstacles that involved workgroup dynamics – concerns such as trust, personality issues, etc.

#### *Implementation Hurdles*

Some of the implementation hurdles that core stakeholders dealt with were discussed in preceding paragraphs, including: insufficient money, vague legislation, navigating confidentiality laws, getting treatment providers access to the shared database and training them how to use it, negotiating eligibility criteria, educating judges on eligibility criteria, and getting courtroom actors to consistently apply eligibility criteria, amongst other things. In addition to the above, other

implementation obstacles the core group had to work around included: getting a courtroom, negotiating out-of-county transfers, the unexpected number and addiction severity of offenders, and the negative attitude of many practitioners.

### Securing a courtroom

Once it was decided that all Prop36 cases would be monitored in one courtroom, there was the issue of finding a courtroom and adapting that courtroom to the needs of Prop36. Getting a workable courtroom was a more complicated and political process than one, not accustomed to court politics, would expect. As one stakeholder pointed out, “when you get a courtroom, you’re taking a courtroom from some other type of work. [We] weren’t exactly welcomed with open arms.” “We had to take this courtroom, but the work here had to be put elsewhere.... Where do you find a courtroom for all this court work? That would upset people who had to move. Everyone’s very territorial.” Once they got the courtroom, they then needed to figure out how to transport and accommodate the prisoners in custody. This is just one example of the incredible logistics involved in implementing this law.

### Unexpected Offenders

After the law had been in effect for a short while it was apparent that the number of offenders being sentenced to Prop36 probation exceeded the estimates. Core stakeholders found themselves having to develop solutions for problems that were unanticipated, at the agency, county, and state levels. One issue that Orange County (and many other counties) experienced was more severely addicted offenders who required long term, intensive treatment. Although this issue was briefly mentioned earlier, it is important to reiterate because it created more dilemmas for

practitioners than any other issue and forced core stakeholders to search for solutions. As previously mentioned, HCA had to decrease the time offenders spent in treatment and had to steer offenders into the most economical, indicated treatment option so that the county would not run out of money. The probation department had to re-orchestrate their entire response to Prop36 and the court had to alter ideal practices in order to accommodate all the probation violation hearings and monitoring review sessions that were necessary with this population<sup>41</sup>. As a result of this, stakeholders had to spend a lot of time making adjustments to the county plan. The scope and nature of these changes would have been unnecessary if the actual number and the addiction-severity of offenders more closely matched expectations. Surprisingly, not all counties had significantly more offenders than they expected (some had significantly fewer). Many counties had a very difficult time correctly estimating how many Prop36 clients would need to be served, as evidenced by the widely divergent year-to-year estimates that counties submitted to ADP (Ford and Smith, 2001; Ford, 2003; Ford and Hauser, 2004).

### County Transfers

Unlike other issues that were settled at the county level – between core stakeholders – the issue of out-of-county transfers required the state to intervene and set policy. The term “out-of-county transfer” refers to a person who is arrested in one county but who lives in another county. This is a common situation that is usually not problematic – typically the sentencing county supervises the offender unless the resident county agrees to do so (which often happens with geographically distant

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<sup>41</sup> Probation and court responses will be described in detail in following chapters.

counties)<sup>42</sup>. For example, someone who lives in Los Angeles but was arrested, convicted and sentenced in Orange County would typically be supervised by Orange County, unless Los Angeles County agreed to supervise the case. What made this situation problematic with Prop36 clients was the treatment component. Treatment was expensive, supervision was expensive and SACPA funds were scarce. No county was willing to voluntarily accept (and pay for) treatment and supervision of offenders who were arrested outside their jurisdiction. Of course, there were also the issues of monitoring the offender and getting them into appropriate treatment near their residence. It was a bureaucratic nightmare that disproportionately affected Orange County (due to the large tourist industry). Eventually the state mandated that the “county of residence” would accept all Prop36 offenders sentenced in other jurisdictions and would pay for their treatment. This relieved some of the fiscal and resource pressure on Orange County.

#### Practitioner attitudes

One of the anticipated issues that core stakeholders had to navigate was the negative attitude most practitioners had toward Proposition 36. As we shall see many, if not most, criminal justice practitioners viewed it as “a get out of jail free card” for undeserving offenders. They felt the law was too lenient and that it lacked the “stick” required to motivate offenders to stop using drugs. These staunchly held beliefs proved difficult to get beyond and made training and implementing the new procedures challenging.

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<sup>42</sup> In such cases, the sentencing county assumes financial responsibility for supervision costs.

### *Core Group Hurdles*

Much can be learned by examining how this group worked together, despite its differences, to overcome hurdles and implement one of the largest criminal justice policy changes in California's history. Some of the main obstacles the core group had to work around included: difficult personalities, a lack of trust between members, confidentiality issues, and the competing goals of core agencies. Furthermore, some stakeholders were concerned that other stakeholders would not "play nice" on a large scale. The core agencies and actors had learned to play well in the small, confined environment of drug court, which served approximately 500 offenders per year, county-wide. However, there was concern that this attitude of cooperation would not extend to the larger environment of Proposition 36 (approximately 3,500 offenders per year). As one stakeholder said,

Even with the benefit and prior history of having successful drug courts in the county, one of the issues was how well all of the agencies would work together on a more broad scale. [We] had a conversation about that... and [another stakeholder said to me] 'we're a little leery doing it on a broader base because in the drug courts we know the judges really well, we know all the players more intimately, but now we're talking on a much broader scale.' So there was some concern about how well we would all play together as a group.... We took steps so that agencies continued to work effectively together on this scale, just as we had on a smaller scale with drug court.

This concern primarily reflected an acknowledgment of the differences in populations served – Orange County drug courts served hand-selected and motivated drug offenders, while Proposition 36 served (almost) anyone who wanted it. Furthermore, because of the onerousness of the program, drug court was seen as a

suitable “alternative to incarceration”, it was seen as punishment, whereas Proposition 36 was seen as a “get out of jail free card.”

Ultimately, the difference between drug court and Prop36 was, Prop36 was an entitlement. You didn’t have to do anything except be arrested for the right offense to get Prop36. Drug court, you had to be willing to accept the ramifications of the program in order to participate. The difference was that you got people who were motivated to participate in drug court.

Core stakeholders had to draw upon group strengths to develop trust between agencies and actors with very different philosophical viewpoints in order to build bridges where none existed prior to Prop36 implementation and strengthen the bridges that were weak when the process began. Despite the hurdles, practitioners in Orange County came together to “make it work.”

### *Core Group Strengths*

Core stakeholders identified and used their pre-existing strengths to overcome obstacles that arose during the implementation process. As previously mentioned, Orange County benefited immensely from having a working drug court. The drug court model came to Orange County in 1995 and was well established and successful prior to the passage of Proposition 36. This was a major asset because, unlike counties that did not have a drug court, collaborators in Orange County were already working together successfully. Key stakeholders were accustomed to collaborating and working through their agencies’ differences for the sake of the client.

Orange County is far more experienced in collaborative models than a lot of locations. For us to come to the table wasn’t new. Drug court was already running and all of those people were at the same table for drug court....Didn’t mean we still didn’t have our issues, but I think we’re more experienced at that than a lot of other places. I know other counties that you would hear ‘there was no way their public defender

was going to sit down at the same table with the district attorney and probation.’ While we certainly had our issues, the idea of sitting down at the table wasn’t foreign to us at all.

Experience with drug court also fostered a teamwork approach and a “we can make this work attitude” which were crucial for successful planning and implementation, according to key stakeholders interviewed. Having participated in successful drug court collaborations allowed core members to persist and work past their (sometimes major) differences of opinion during the planning and implementation stages of Proposition 36. Having this strong base and shared vision turned out to be indispensable as the team encountered obstacles from all sides.

### *Lessons Learned*

It was clear that the personalities and viewpoints of the core stakeholders really drove implementation. My impression is that, had it not been for some of the specific members of the implementation team, Proposition 36 in Orange County would look very different, specifically, less rehabilitation-oriented. Percival (2004) examined how political ideology at the county level affected implementation. However, I think more important are the philosophical ideologies of the core stakeholders, those making the decisions. For example, had the public defender’s representative not sent the message that we ‘will make this work,’ the dialogue could have ended in a stalemate and the disagreements would had to have been settled in courtrooms across the county (probably with different outcomes). Furthermore, if the probation department representatives at the table had ascribed to the typical line officer’s mentality (that Prop36 was a “piece of shit”) instead of having a strong belief in treatment, the collaboration efforts that defined Orange County would have been significantly

different. As it was, the practitioners at the Orange County Prop36 implementation table had high hopes that Prop36 would work and they had the desire, courage, and determination to work hard for a model focused on offender treatment rather than one focused primarily on supervision and sanctions. Unfortunately, insufficient funding exacerbated by an unexpected clientele, forced Orange County practitioners to abandon their vision and structure a more frugal response to Proposition 36.

## **Impact on Law Enforcement Officers and Agencies**

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Prior to conducting this research, it was discussed whether much would be learned by interviewing law enforcement officers. After all, Proposition 36 is a sentencing policy, not a law enforcement policy. It plays out in the courtroom, not on the street corner. Some academics and many law enforcement acquaintances and friends argued that “beat cops are not going to know anything about Prop36” (Confidential Informant NAD, personal communication). Of course, that was one of the research questions-- what do officers know about Proposition 36, how do they know it, and how do they act on it? Does it change their behavior in any way?

As street-level bureaucrats with considerable discretion, police officers can have a profound impact on how Proposition 36 impacts the criminal justice system. This is because officers (and other street-level bureaucrats) “retain a considerable amount of flexibility in implementing formal rules” (Aaronson et al., 1981: 78). They choose how they will conduct business within the confines of the law. Thus, as first responders and gate keepers, law enforcement officers have a direct impact on how “law on the books” plays out as “law in action.” The impact of Proposition 36 partly depends on whether and how officers alter their discretionary arrest practices.

Together, the quantitative data and the qualitative interviews tell a story of how this legislation, enacted by the voters, had several unintended consequences for law enforcement officers. This study describes how officers feel about the law and illustrates how they opted to respond. As will be revealed, while most officers are not

well versed in the nuts and bolts legalese of Proposition 36, the law has had an impact on their job, and many officers actively engage in practices intended to keep offenders from benefiting from this voter-mandated diversion.

One thing that law enforcement professionals agree on, unanimously, is that Proposition 36 is not working for the vast majority of drug offenders. Over and over, law enforcement officers voiced their frustration at a system that, in their view, hands out yet another “get out of jail free card” to drug offenders who “have to screw up more than five times before they see the inside of a jail cell.” They are exasperated at “the revolving door” of justice and wonder aloud “what’s the point?” of arresting drug offenders with Proposition 36 as law. There is consensus among officers that Proposition 36 is a massive failure; as it makes the job of narcotics investigators more difficult, discourages patrol officers from making drug arrests, and sends the message to drug offenders that felony drug possession is “no big deal.”

Every officer interviewed argued that “burglars” are benefiting from this law. As one officer put it, “most of the people that do burglaries and robberies and that stuff are narcotics offenders and you get them on something to take them off the street and they are right back out doing their thing again (because of Prop36)” (Confidential Informant, personal communication). This issue is an important one for officers and highlights their underlying belief that Proposition 36 undermines their job and what they are trying to achieve, which is to “put bad guys away.” Thus, one of the most interesting findings is that, although most officers know very little about Proposition 36, they know just enough about the law to intentionally circumvent it. Findings, which are presented below, are grouped into five main topics: (1) officer frustration;

(2) patrol officer arrest practices; (3) narcotics units; (4) court time; and (5) citizen satisfaction. The major findings in each category, as well as possible causes and impacts, are explored below.

### *FRUSTRATION*

It is clear that law enforcement officers are frustrated by Proposition 36. Officers are crime-fighters and problem-solvers and for a number of reasons, they view Proposition 36 as subverting their efforts to clean up the streets and decrease crime. They want offenders held responsible (punished) for their behavior and believe that Proposition 36 is allowing offenders to escape penalty for their actual (as well as assumed) crimes. The frustration expressed by law enforcement officers is based on their view of themselves as crime fighters (not social workers) and is fueled by several key issues that are interconnected. First and foremost, officers are frustrated that they are entangled in a revolving door of justice in which offenders are arrested, released from jail, commit more crime, and are arrested again, frequently. They blame Proposition 36 for speeding up this cycle. Law enforcement officers are frustrated with the proponents of the legislation because they believe “the public was misinformed about who the true drug addicts are.” Also, they are incensed by the perceived lack of punishment associated with Proposition 36 and believe Proposition 36 is a failure as a deterrent. Finally, officers are frustrated because, in their opinion, treatment is not working for the vast majority of offenders.

#### *Frustration: The Revolving Door*

Law enforcement officers, by virtue of their job, see the worst segments of society on a regular basis. Proposition 36 has not changed this, and it may have

unintentionally magnified the situation. Officers contend they are arresting the same people over and over without the 90 day pause (typical jail sentence) that was customary before Proposition 36 went into effect. They argue that Prop36 simply accelerated the speed of the revolving door<sup>43</sup>. The following comments are representative of the general feeling amongst patrol officers interviewed:

Prop36 is a piece of shit. I don't think it has done one bit of good.

I arrest them. They get out on Prop36. They violate their probation while out on Prop36, get arrested for that, then go to court for that and get Prop36 again; repeatedly violating Prop36...it is lunacy. You've created a second chance and within that second chance you've created a third chance and a fourth chance.

I can't tell you how many times you get a dope charge on someone and they [shrug] and say "I'm just going to get Prop [36]."

It creates frustration within the police department. It is an absolute revolving door.

It's so frustrating. These people [drug offenders] laugh at you [police officers].

You can arrest somebody 2-3 times in the same month and that can be frustrating.

Actually, it turned out worse than I ever thought it would. Really. I didn't think it would be this bad as far as the revolving door and recidivism. I'm a pessimist by nature 'cause I'm a cop, but even I didn't think it would be this bad.

Only the bad guys are benefiting from Prop36. When we can arrest a guy four or five times and he just keeps going to Prop36 something is wrong with the system.

I've arrested people 5-6 times for possession of meth. They laugh and then say they'll just go to more classes.

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<sup>43</sup> Pittman and Gordon (1958) and Aaronson et al (1981, 1984) reported the same finding in separate studies of public drunkenness policies.

The issue, as officers see it, is that addicts are criminals. Not necessarily because they take drugs, but because they commit other crimes to support their habit. For officers, this appears to be the main concern with Proposition 36, as every law enforcement officer interviewed emphasized that drug offenders (at least the ones they arrest on a regular basis) are also committing other crimes such as burglary, fraud, and identity theft. Research supports their contention (Chaiken & Chaiken, 1982). In fact, a recent National Drug Intelligence Center bulletin revealed that methamphetamine abusers and distributors throughout the United States, but especially in California and other Western states, commit a significant amount of identity theft (MacCoun & Reuter, 1998; National Drug Intelligence Center, 2007). The bottom line is that officers do not believe that most drug offenders, especially parolees, are deserving of Proposition 36 diversion.

If it were based on criminal history we would have no problem with it. If I have an offender who has a couple speeding tickets and a possession charge; I have no problem with him going into rehab. The problem I have is the people arrested for robbery, burglary, crimes against people that are getting this when they should be locked up.

Probably the majority of people I arrest for theft-related crimes have been through Prop36 or are narcotics offenders. The same people getting treatment are the same people out breaking into cars and houses, cashing checks, and identity theft.

It's always talked about this poor guy or gal who gets arrested for drugs. But how many of these offenders who get arrested for drugs are auto thieves, robbers, and any other crime you can think of. They are in jail now because of possession but their background is in robbery, auto burglary, residential burglary, you name it.

How do you make the connection between the four meth freaks we hooked up two nights ago for stealing all that mail, and mail (theft)? Because at no where on this arrest form (for mail theft) is there going to be any charges for drug related crimes. Yet, they are stealing the mail

to create identity theft to get cash to buy drugs. Every police officer will tell you that, that is common sense.

Officers are primarily interested in the effect that drug addiction has on crime rates and “innocent” victims (children, spouses, nameless victims). As crime fighters, officers rely on a variety of tools to prevent and control crime. Proposition 36 nullified the extended benefit of one of the most popular tools they use, narcotics violation arrests. Frequently an officer can arrest an individual he/she suspects of committing property (or other types of) crime on a drug violation, as drug violations are relatively easy to articulate and prove, unlike property crimes. The purpose of arresting on the narcotics violation is to incapacitate the offender in jail for a period of time so they cannot commit other crimes. Whereas a narcotics arrest would often keep an offender off the streets for up to 90 days prior to Prop36, it now only puts offenders out of action for a weekend (and sometimes only a couple of hours). This once commonly used tool no longer serves its intended incapacitative function because Proposition 36 eliminated jail sentences for narcotics offenders. This is frustrating for officers and substantiates their belief that Proposition 36 undermines their efforts at crime control.

It’s not the possessing of the drugs. But that is what you can arrest them for, because if you’re not there to catch ‘em breaking into cars and you’re not going to be; to get to the root of the problem, you’re going to have to incarcerate them.

It is difficult to catch him in the act of that (burglary) unless you are in a position where you can set up and surveil him, so you are going to trying to get him off the street because he is causing you problems. You are taking a bunch of theft reports regardless of which city he lives in and you know he is doing it, people are telling you he is doing it. So you arrest him for dope and he is out a week later and the burglaries continue again then you arrest him again.

### ***Frustration: The Big Lie***

Law enforcement officers feel the public is not well informed about who the typical drug users are in society. They feel embittered by a campaign that, they feel, misled the public and portrayed drug users as young, clean-cut, college-bound men who made a one time mistake. The high functioning, low-level users portrayed in the campaign commercials are not representative, they argue, of the low functioning, high-level users arrested by law enforcement officers on a regular basis. UCLA studies confirm that most Proposition 36 clients are in fact, long-time users who have more severe addictions than stakeholders had initially anticipated.

I think the voters in California were duped into believing, and this is my opinion, that drugs are an illness and it's not a crime. People were compassionate about wanting to help other people. Their hearts are in the right place. But I don't think the information they were given was completely correct. I think the way it was sold to them was that all these offenders for minor offenses are being sentenced to prison sentences for a long time for minor drug offenses and I don't really think from working here that is true. It is not what we see.

All these people see these commercials and think that could be my son or daughter; I have to vote for this. They don't show the offender who has been doing this for 10-20 years, who has been in and out of jail. That is the side of the proposition they never talked about.

### ***Frustration: It's Not Punishment***

Law enforcement officers contend that offenders are "not hiding [their drugs] as much. They don't care if they get popped" (Confidential Informant, personal communication) because Proposition 36 removed the sanctions for drug crimes and probation violations. Officers are frustrated because they feel that Prop36 sends a message to offenders that drug use is no big deal. Law enforcement officers view drug possession as a serious crime for several reasons, including, as several officers

pointed out, “it is a felony.” As far as offense seriousness is connected to punishment, officers feel that Prop36 sends the message that drug possession is not a serious crime because the sentence offenders receive (probation and treatment) is not sufficiently punitive. Officers want a stricter law, with some teeth and bite.

The frustration is that these people are offending multiple times and they are not getting anything compared to if they spray painted a wall multiple times.

You can’t expect any change in regards to offenders because there is no accountability, there is not punishment or penalty for repeat offenders.

I see the drug problem getting worse and worse because of the amount of opportunities we give people to turn themselves around and they don’t because there are no harsh punishments anymore.

The way you teach anybody is through sanctions. Whether they are positive or negative, whatever they are. Human beings require sanctions to learn. Prop36 doesn’t work.

The people who are career dopers... these are the guys who watch and keep an eye on the current laws and what our sentence recommendations are and as soon as we passed Prop36 and did all this diversion, the dopers started running amuck because there was no penalty for them.

Essentially, the guys who are on this are the ones doing all the other crimes because they have to support their habit. If you make it more strict and specific and enforce it that way, it will give us a little bit more of a hope instead of knowing that all our hard work is being pissed down the drain.

Furthermore, many officers are discouraged by this perceived lack of punishment because they feel their hard work is no longer validated. Officers, like most workers, want to know the work they do is important and appreciated. They derive satisfaction when their efforts are acknowledged. For officers, one of the main ways they derive satisfaction is when the courts endorse their arrests and offenders are

suitably punished (preferably with a sentence involving incarceration). Because Proposition 36 changed how offenders are punished, it also inadvertently changed how officers feel about the work they do as it involves drug possession arrests.

I think the frustration is the fact that people are out there, officers are out there doing hard work arresting people, taking these people off the streets, and in return they're not seeing anything that's being done in the justice system, as far as seeing them go to jail for an amount of time. I think that's the frustration... I mean I can only speak for myself, but that's the frustration that I have. ...So I think the frustration goes back to getting these people off the streets and not getting anything in return as far as justice being served.

What's frustrating is we've got a stack of [arrest reports] out there which represents thousands of man hours spent following these people, catching these people, doing the reports, going to court and everything else and they just prop them anyway. What's the sense of me doing it? If tonight at 6:00 I'm working on an 11377 [possession of a dangerous drug] report that I know is not going to go anywhere, don't you think I would rather be at my son's open house? That stuff gets into play here. Hey, why would I spend all this freaking time putting an airtight case together when the DA is just going to say "prop, prop, prop." It takes them three seconds which just took me three hours and a weekend away from my family, doing follow-up...If you let all the dopers go down here, pretty soon the cops are going to be like "why do it?" Isn't there something better I can be doing with my time? Cause the courts don't care.

### ***Frustration: It's Not a Deterrent***

According to officers, offenders are not deterred from possessing drugs because they don't perceive probation to be a significant punishment; offenders see Proposition 36 only as "a chance to get out of jail," not as a punishment or a chance to get clean. Furthermore, officers argue that many offenders do not take Proposition 36 seriously because there are so many allowances for failure. For example, most offenders are aware that they may have multiple Prop36 cases at a given time and that the court has limited ability to punish them, besides send them to additional classes.

They also realize that they can violate probation three times before the judge can revoke their Proposition 36 sentence and send them to jail. Officers strongly believe that “it is not a big enough slap on the hand for them to be deterred from doing what they were doing” (Confidential Informant, personal communication).

First time offenders before Prop36 were worried, “Oh, my gosh I’m going to jail.” Now you’re riding a free pass. I might go to jail tonight but tomorrow I’ll be out because of the new law. That is all it really did. It’s a slap on the hand. Go to class. Do it again, get another slap on the hand. Do it again, get another slap on the hand until finally they say “ok, that is enough.” You’ve been slapped too many times.

It increased arrests for drug crime because it [drug possession] is not taken seriously by the crooks. They know that if they are Prop36 eligible that all they have to do is attend class. They also know that if they don’t attend the class, they’ll have a warrant for their arrest, they’ll go to court. The judge will ask, why didn’t they attend their Prop36 class? They’ll give some excuse. The judge asks “will you attend your class?” The offender says “yes, I’ll attend my class.” Then they get released.<sup>44</sup>

Yea, I don’t think it is doing what it intended to do which is put someone in, get them off drugs and they would go back on the streets and be productive, a productive citizen. But it looks like the crooks know “Well I’ll get Prop36 and go to a few classes and no jail time.” So it might even have an adverse affect... [Because there is] no jail time hanging over their head and know they’ll go to a rehab instead. I think they are less worried about being arrested.

I think it has had a negative effect because it is a get out of jail free card. Some guy gets pinched and they think “I don’t really give a shit. I’ll do a day or two in jail and I’ll Prop36 and get out and I’m good to go. I can go on with my normal life.”... They are not worried about doing jail time because they’ll Prop36 and go to classes and counseling. They’ll be out the next day.

They’re sitting there bragging about it. “Yeah, I’ll be out in two days on Prop36 so I’ll see you then.” And they’re snubbing their noses at the system.

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<sup>44</sup> Although this officer admittedly had never observed Prop36 court, he described the process accurately.

When I first started, when you arrested somebody for under the influence ... it was 90 days, period no questions asked.... If you were under the influence, you're gone; and that was a major, in my opinion, that was a major deterrent. People kept their drug use in shadows. They kept it indoors. They knew they didn't want to walk around in the mall loaded. They didn't want to walk down the street high because they knew I'm going away for 90 days and I can do nothing about it. That's changed tremendously. People walk down the street thinking nothing of it now, just high as a kite<sup>45</sup>.

### ***Frustration: Treatment is Not Working***

Officers admit they do not know much about the treatment requirements but argue that the treatment provided is inadequate for these offenders, based on their experience. Some also worry about the consequences of placing the few young, novice users in treatment with experienced, hardcore addicts. Law enforcement professionals strongly believe that coerced treatment does not work; despite research evidence to the contrary (Hepburn & Harvey, 2007; Young & Belenko, 2002).

I think it helps a small percentage, a very small percentage of the people who go through Prop36. Maybe first time offenders, recreational users, young, impressionable people – I think it might help them. But the day to day people we deal with – they think it is a joke. They are getting free passes because of it. I think it is just going to get worse.

The problem is that when it was sold to the voters, they were selling it as a rehabilitation act; they're going to get rehabilitated. The truth is no one is going to quit until they hit rock bottom and they are not getting any jail time so they are not hitting rock bottom.

They are hanging out with the same people, they are not changing their environment and they are not hitting rock bottom.

I think probably one percent of the population who are addicts, maybe it's helped. But we're seeing these people over and over and you're arresting these people and they're saying "oh no problem, I'll get

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<sup>45</sup> Informal conversations with a drug addicts support this statement and in fact suggest addicts are, in some cases purposely high in public, subconsciously hoping to get arrested so someone will force them to go to treatment (and pay for it).

Prop36” and they’re actually saying that. These criminals know more about Prop36 than we do, and I find that amazing.

However, one astute officer noted that although very few offenders he knew turned their lives around, “I’m sure it works for some people. But I don’t see those people come back. I never have to chase those people down so I don’t see them. They are just kind of out of sight, out of mind” (Confidential Informant, personal communication). This officer makes an excellent point; that treatment could be working for some offenders and officers just don’t see the offenders it has helped and instead focus their attention on the folks they see everyday, those for whom Proposition 36 is not working. So it is entirely possible that Proposition 36 is effective for a higher proportion of offenders than law enforcers give it credit for helping.

#### *PATROL OFFICER ARREST PRACTICES<sup>46</sup>*

This high level of frustration leads some officers to purposely change their arresting behavior. Specifically, some officers state that they are now arresting fewer people for being “under the influence of a controlled substance.” Also, some officers state that they are adding additional charges in the hope of disqualifying potentially eligible offenders from Proposition 36 diversion. This involves charging the accompanying misdemeanor crimes that, before Proposition 36, would have been ignored; but it also includes taking extra time to investigate evidence of ancillary crimes. This response is not completely unexpected, as Aaronson et al. (1981: 88) found “a common response of street-level personnel is to reformulate public policy

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<sup>46</sup> Preliminary results and prior studies on police discretion (Chappell, MacDonald, & Manz, 2006) suggest this may be partly a function of size and philosophy of department. Future analysis will reveal if this is true.

goals by developing informal norms, practices, and routines of exercising discretion that sometimes adjust and at other times clearly violate the aims of codified law.”

### *Fewer “Under the Influence” Arrests*

Officers are frustrated because they feel the time they put into effecting a narcotics arrest is wasted since it does not result in a jail sentence. They point out that it takes several hours to investigate possible drug activity, write the report, book the offender and complete any other necessary actions (such as booking evidence, having blood drawn, or going to the hospital to get a medical clearance for the jail). Patrol officers expressed frustration that they are doing their job (getting offenders off the streets) but the court system (due to Proposition 36) is not supporting their efforts. Some officers believe that if they make a good felony arrest, the offender should spend time in jail (not only for the sake of punishment but also of incapacitation – so they are not out committing more crime). As previously discussed, officers derive personal satisfaction from seeing the court validate their efforts by punishing an offender for the crime they committed. This disappointment, or perceived loss of validation, combined with the effort required to effect a drug arrest, has driven some officers away from making narcotics arrests, in particular “under the influence of a controlled substance” arrests.

It turned a lot of people who aren't dope cops completely away from dope arrests ... It takes a lot of work to put together a self-generated narcotics arrest. It is not easy. You have to develop your probable cause, everything has to be in line, you have to find the time during [your shift] between calls to do it, and realize while you're doing it that you're also screwing over your beat partners because you are going out-of-service for this proactive activity and it takes up a lot of time and a lot of effort, and you're probably looking at a hospital run because a lot of these narcotics users have medical issues so you are looking at

tying yourself up at least 3-4 hours during [your shift] and then writing the report afterwards as well. So you take that type of effort to make a narcotics arrest and then you turn around and tell the cops “just to let you know, he’s going to get Prop36 and that is all he is going to get.” It’s frustrating. It turns a lot of cops away from dope.

Under the influence is a lot of paperwork. You are talking one hour minimum of just “evals” and documenting your notes. On top of the other hour or two of writing the report and other stuff, you’ve got blood tech stuff and all that work so they can get Prop36 and go use again. What’s the use?

It is a waste of time. It is almost not worth making drug arrests because they don’t have any penalties attached to it.

I personally don’t like arresting for UI (under the influence). It is a waste of time.

You see a lot of cops foot test dope now.<sup>47</sup>

But that is the biggest complaint, officers have a general feeling that it is a waste of time and I think that is why our 11550s [under the influence arrests] went down. People feel that ah, it’s not worth it. People view it as an arrest that takes some effort to accomplish.

We don’t really have rapists and murderers driving around our cities here everyday. When you’re talking about arrests that really can affect public safety everyday, DUI’s and this kind of stuff [11550’s] is very significant; DUI’s in particular. I believe when officers started seeing no penalty, in their mind, no penalty coming out of an 11550 arrest you started seeing that go bye-bye. They kind of felt it was a waste of time. Why am I going to do this if all they’re going to do is send them to some counseling program that they are going to fail out of? That’s the way the officers look at it. That’s the cynical side of law enforcement.

This response is dependent on the officer as well as the department. Officers at one large police department that has its own jail (which employs nurses) stated that they still arrest a lot of people for H&S11550 (under the influence). These officers

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<sup>47</sup> “Foot test” is a term used by officers to indicate they destroyed the small amount of drugs (usually marijuana) the offender had in their possession in the field by stepping on it (rendering it useless). Offenders are not arrested for possession in such instances. In California, marijuana possession is a misdemeanor punishable by a \$100 fine.

stated that having nurses at the jail makes under the influence arrests easier and less time consuming for the officer, which makes them more likely to arrest and use it as a crime control tool.

The field-training officers are really training their guys on how to do the 11550 arrests. The guys are in and out in an hour, real quick. ... It's gonna [sic] be a cite-release anyways, [but] at least it gets them off the street and stops what they're doing. There's a reason they [offenders] were out at 3 in the morning. They [officers] see it as a kind of means to an end. It at least gets them [offenders] off the street. They won't be released for 6 hrs, until they sober up from our place. It at least maybe allows you further investigation, too, as to what they may have been involved in. Our culture looks at that [under the influence arrest] as a resource for us. We [officers] all know, the majority of us know, they're [offenders] not going to be getting any time on it. It's just a resource for us for possibly bigger things. I equate it to a pretext [traffic] stop in law enforcement, with probable cause for a stop, it's the same. It's a pretext arrest.

### *Additional Charges*

Proposition 36 deters some officers from making narcotics arrests but officers also admitted that it increases the number of law violations offenders likely to be sentenced under Proposition 36, are charged with. Officers learned within the first year of the law that offenders arrested for a non-drug misdemeanor or felony crime along with their drug possession charge are theoretically disqualified from Proposition 36 sentencing. Some officers openly acknowledge that because of Proposition 36 they charge every law violation present at the time of arrest to prevent an offender from being eligible for Proposition 36<sup>48</sup>.

Law enforcement officers, as is well documented, have a tremendous amount of discretion whether to charge a person with a crime and what crime(s) to charge a

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<sup>48</sup> There is some indication that Deputy District Attorneys have adapted to this practice by dismissing the additional charges and allowing offenders to plea guilty to possession in order to take advantage of Proposition 36 sentencing.

person with. Very often in the course of an arrest, an officer will find multiple law violations. Some officers use their discretion to charge a person with every offense the person committed. Other officers use their discretion to charge a person with only the most serious crimes and give the offender “a break” on one or more minor law violations. For example, a driver is pulled over by a law enforcement officer and found to be driving on a suspended license and in possession of a user amount of methamphetamine. Many officers will ignore the “driving on a suspended license” charge because it is a misdemeanor and would not add any jail time to a conviction for felony possession of a controlled substance. “It’s like adding insult to injury” stated one officer. This changed after Proposition 36. Now, those officers who were formerly inclined to “let the minor stuff go,” do not. They charge the offender with everything they can; to decrease the likelihood that the offender will be offered Proposition 36.

Now you are looking for those additional charges, the 14601 [driving on a suspended license], the 470 [fraud], the 148 [false information to a peace officer] so that you can make the 11550 [possession of a controlled substance] charges stick. Those are gold now.

The only thing I’ve changed is that I will try to find some other charge. I’m not saying make something up but try to find some other violation of the law besides the drugs. ...There is usually more, and in the past I wouldn’t charge them with it. I would just charge them with the narcotics possession violation because that is a felony and that typically used to do the job of putting them in jail for awhile, at least for a little while. Now it doesn’t. So now I’ll try to find some other type of charge, say possession of a switchblade or something else to go along with it that holds them and doesn’t make them eligible for that diversion.

[For example] driving on a suspended license, a lot of these people [drug offenders] don’t have licenses and in the old days we would overlook it. But now, there’s your non-drug misdemeanor right there

so we'll tag them with 14601, driving with a suspended license and hopefully the D.A. doesn't drop it and that will void the Prop36.

You realize you want to put every nail in that coffin of your arrest as you can. You charge them with everything you can because if something falls out through the court process ... you want to have all those factors in there because if one falls out, you want the others to fall back on.

It creates a nightmare because you certainly have to make a lot of additional crimes that you didn't have to in the past stick to make Prop36 go away.

It took us a while to learn to, I don't want to say learn to work the system, but, a lot of the smaller misdemeanors, non-drug misdemeanors that we were overlooking, that, "hey, we got a good felony here, let's just go with that [because] it's a stronger case." Well now we've changed to, 'let's tack 'em with everything' and if there's one non-drug misdemeanor or felony on there that's gonna [sic] void their chance of Prop36. So we started changing our tactics. It doesn't apply in all cases but that's the only thing we can do on the enforcement end. And of course it's still up to the D.A. whether they want to file those charges or not.

This is a clear indication that some officers consider Proposition 36 when arresting an offender for drug violations and actively try to circumvent the law. The rationales espoused suggest that officers feel that Proposition 36 goes against their goals as law enforcement officers. The general feeling of many law enforcement officers is summed up by this narcotics officer who states:

I train them on how to look for things to not make Prop36 work. If I can help the patrol officer understand that if we can look for an associated crime or a more serious charge that is going to make this Prop36 ineligible then they are not going to get Prop36 and they are going to jail. If we can arrest him on a more serious drug offense such as possession for sales or transport then let's do that because that way they will not get Prop36 and they will go to jail. The reason I am saying this is, I'm not trying to be a jerk, I don't have some ill will toward these people, but what we see is that these people who are using drugs are not just drug users, they're committing crimes. They are also stealing and committing crimes to support their habits and the best way

for us to affect the crime rate is to put those people in jail because those 30, 60, 90 days or whatever it is they do in custody are crime free for that person out on the streets in whatever city they live in.

There are many forces at play in the criminal justice system and actors at one stage have only limited power on the process and outcome. Police officers admit that while they may try to circumvent the law by charging an offender with multiple crimes in order to disqualify the offender from Prop36, district attorneys often dismiss those additional charges in order to allow offenders to plea and accept Prop36 diversion. They acknowledge that they only have discretion up through the point of arrest. After the arrest discretion shifts to district attorneys, at which point law enforcement officers are (essentially) powerless to affect the ultimate outcome (whether an offender is offered Prop36 or not). This knowledge, coupled with an understanding of the D.A.'s job, has led law enforcement officers to adapt to the D.A.'s behavior as well as the law.

[Stacking charges] was much more prominent at the beginning of Prop36. Tack on the non-drug crime, that way they're no longer eligible for Prop36. At least that was the thinking then. But I think they've just, of course, it didn't really work. [The DA] would work around them. Other times they'll drop the possession of burglary tools along with the drugs, they'll drop that so now they're eligible for Prop36 and just keep the straight possession case. I know that others were thinking early on, I don't know if that still is [the case]. ...Cops aren't gonna [sic] be able to manipulate the court system. The court system's gonna [sic] do whatever it does.

I just think that if the courts want the person on Prop36, they're gonna [sic] find a way to do it. And whatever the officer does at the time [is not going to matter], unless they have something ... that the court's not going to be able to ignore. But usually when you're talking low level misdemeanor charges, they (DA's) can add or drop any of the charges that they want. Make it fit whatever they want.

The situation described by these officers was brought up by several of the officers interviewed. Some claimed that Deputy District Attorneys (DDA) told them how to circumvent the law (by adding additional charges) in the beginning only to drop the charges in order to allow an offender to plea to Prop36 diversion later. Some officers attributed DA's actions to their desire for high conviction rates, but most officers recognized that it was more likely that high caseloads necessitated resolving cases quickly (which coincidentally served to bolster their conviction rate).

### *Proactive arrests for treatment*

A very small minority (approximately 5%) of officers stated that, in addition to a plethora of other factors, they consider Proposition 36 in their decision whether to arrest a person because of the treatment component. These officers stated they would arrest a person in order to get them into treatment if they felt the offender would benefit. In the words of one of these officers,

Their [the offender's] attitude towards the whole thing in general. Are they honest? Are they forthright? Are they just totally denying they have a problem? Then the whole "I'm going to help you" comes into play with me personally. People are just playing drug addict and deny it. This is my personal way of saying, "Hey, at least I'm going to mandate you some help."

(Same officer) The only way it impacts whether I arrest somebody or not is I know that they're going to get some sort of treatment. There'll be times where somebody who maybe has a decent standing in the community. They're actually giving something back to this community. They actually have a job. Maybe just partying a little too hard, got in with the wrong crowd. Maybe really young, 17-18 years old. Maybe that person I could've had an impact [on], maybe just a conversation, maybe calling mom and dad out there. Now I know that if I arrest this person, they're actually going to get some help. Maybe somebody before where I could've said, "Nah, I'm not going arrest you. This is your first offense, no criminal history." I'd legitimately believe them for whatever reason that this is their first time or second

time, they're experimenting. That may be a person, "Hey, call mom and dad, let them know what's going on," and kind of handled it that way, by not involving the courts. Now I know, hey this is an option that if I arrest them, they will get treatment. That's something that parents too, or loved ones, husbands and wives, "Hey, if I arrest her now, she is going to be mandated by the courts to get help." "Oh, really? Please do that then." Before, I couldn't say that. I'd have to say, at least what I knew, "You need to go and seek your own help." So that's a positive impact on it, I guess.

It was unclear in the interviews whether the officers actually had arrested individuals specifically to get them treatment, or if these officers spoke theoretically. If they spoke based on their experience of having arrested individuals they would not have arrested in the past (for the sake of treatment), it would indicate a possible net widening effect. Depending on the number of officers who reacted in this way (arresting more people), or how often officers took this action, it could have significant implications. This would be an important finding; however, results from interviews suggest that the magnitude is likely quite small.

### ***Not All Officers Changed Their Behavior***

Of course, some officers that were interviewed stated that they do not consider sentencing when arresting someone. Some, particularly those with a long time on the job, feel strongly that their job is public safety and law enforcement. They do not concern themselves with punishment, either because they have been on the job long enough to have gained some perspective or learned to distance themselves emotionally from the rest of the criminal justice process.

I don't think about Prop36 when I'm arresting somebody. The only time when I think about Prop36 is... when you arrest somebody and you see him walking down the street three days later and you ask him what happened and he says he got Prop36'd and you think "what a load

of crap this is.” That is the only time I think about Prop36. I don’t think about Prop36 when I’m arresting some guy and do I really want to spend three hours on this guy because he’s under the influence when he is just going to get two hours? To be honest, it’s not about Prop36. It is about the process of being arrested and going to jail for several hours. It only comes into play a week later when you see him out. You pinched him for a good pinch and a week later he’s walking the streets.

We are still going to arrest. It just sucks because the work you are doing is kind of blown off for them to go to class and hang out with other tweakers and learn new ways how not to get caught... It frustrates me because if you get a guy who is a real jerk and you do all this work to get him hammered and he gets off on Prop36 and he is out again and you know he is a dirt bag and you know he is going to re-offend. You know he is going to go do some other crime whether it is a burg or id theft or whatever. It’s job security.

A few, typically older and more experienced, officers stated they do not get frustrated when an offender they arrest gets diverted through Proposition 36.

...you arrest the individual. If he is out the next day, I did my job. I don’t take it personally if he gets released. I don’t get upset. That is what I stress to the new guys. Don’t take the job personally. If you can arrest someone you can, if you can’t you can’t. If you don’t get them today, you’ll get them another day. They’ll do something again. That is why they are called repeat offenders.

You learn to let it go. Otherwise it will drive you nuts.

Interestingly, several officers claimed they had not changed their behavior, but they knew of other officers who had. Often these officers would say in the same breath, “it hasn’t changed what I do at all” or “it doesn’t affect us, it’s a court thing” and a few sentences later, in the same monologue, say “here is how we changed our tactics.” The following quotes illustrate this nicely.

No, because really on our end, business didn’t change. You still arrest them. That was more of the courts... [one sentence later]...it took us a

while to learn to, I don't want to say learn to work the system, but ... we started changing our tactics.<sup>49</sup>

No, I've always been the type to stick as many charges as I can and let God sort them out later. If I've got you for a specific crime, Prop36 did not change that. I would always put as many charges on you as I could and let the DA figure it out later. If I have the elements of a crime, I'm going to charge you with it regardless of if you are Prop36 eligible or not. That's how it has not changed my job. I know that the conversations occur, you know if we get him for a driving charge or a 459 [burglary]. ... Here's the classic example, shoplifting. The guy goes in to shoplift; he's got a dime bag of dope in his pocket. If we charge him with 459 [burglary] coupled with the dope charge he's not going to get propped. So that conversation does occur. It absolutely does. But it doesn't change the way I've done it; I would have charged the guy with 459 [burglary] in the beginning.

These findings based on what officers *said* are informative; however, what may be just as illuminating is what officers *did not say*. Fascinatingly, officers did not mention that offenders sentenced under Prop36 for a felony drug offense are on formal, felony probation – with search terms. Yet, they are. Only one officer recognized this and he was a narcotics officer explaining the difficulty he has recruiting confidential informants as a result of Prop36. This is an important point, because offenders on felony probation (80% of Prop36ers in Orange County) can be searched by law enforcement officers *without* probable cause at any time, as a condition of their probation. Officers are aware of the resource as it applies to felony probationers; they simply do not recognize that most offenders on Prop36 probation are on “felony probation” and have search terms. This is a major crime control tool that law enforcement officers could be using but are obviously unaware of. If understood, this would certainly be considered a positive benefit of Prop36 by law

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<sup>49</sup> The full quote is provided on page 114, under the heading “additional charges.”

enforcement officers. As it stands, it further demonstrates that officers do not really know a lot about Proposition 36

### *NARCOTICS UNITS*

The most frequent complaint by narcotics officers and supervisors in the focus county was that the law reduced the number of people willing to be confidential informants (CI's). A confidential informant is an offender arrested for a minor crime who helps officers identify and arrest more serious criminals (such as drug dealers) in exchange for a less serious charge or a lighter sentence for his/her crime.

This unit works on the sharing of information. If patrol arrests you and you've got a baggie of dope in your purse and I come in and say "Look, you, you're screwed. What do you know? What can you do to help yourself out?" You tell me, "Well, I know this guy who's got an ounce." So then, I'm trading information with you and I'm dropping your charges down, which they're not going to show on your graph. But then I go after this guy for the possession for sales and then he says, "Hey, I know a guy who's got a pound." So, now I'm whittling away his charge to get to that pound level. We're always trying to work up the ladder. So you could get busted with 11377 (possession of dangerous drug), give me a 78 (possession of dangerous drugs for sales) and then I'm going on. This guy says, "Hey I know Juan over here's got a gun." So I trade him his dope charge for a gun charge, we're in the business of messing up your charts! That's what we do.

Prior to Proposition 36, many drug offenders were "eager to work off their case because they were looking at jail time." Since Proposition 36 went into effect, there are significantly fewer offenders who want to "work off their case" because offenders know that they will be sentenced to probation regardless of whether they cooperate with law enforcement. The reduction in CI's described by these officers is particularly profound when one considers that the number of offenders arrested for minor drug violations has increased dramatically since 2001. Other things being

equal, the number of CI's should have increased as arrests for minor drug crimes increased; it should not have decreased.

CI's (Confidential Informants) have gone down because they realized "I don't need to work any case off. I'm going to get out the first 2 or 3 times under Prop36. I'm going to get these free passes. So I'll wait until I use up my passes then we'll talk."

[We've seen] at least a 75% reduction in number of CI's and that is a conservative estimate.

We used to have 15-20 CI's at any given time, now we have maybe 5.

I went from 50-60 CI's a year down to less than 10; immediately....I'm lucky if I get 10 a year [now].

Before Prop36 we had no problems getting CI's – they were coming to us, knocking down our doors. We had attorneys bringing clients to us – "hey what can we do with this?" Now we have changed our tactics as far as how we deal with them, we have to play games as far as getting informants, in comparison to what it used to be. Now we have to offer that their case not go to court.

Officers in narcotics units contend they are less efficient as a result of Proposition 36. This is because they must do more "leg work" to identify dealers and distributors, secure search warrants, and make arrests.

Has it changed the way we do business now? Yes, in the sense that we have to do a lot more surveillance cases now and those are a lot more time consuming. The nice thing about informants is, you give them money, send them into a house, they buy drugs and they are done. We could get our search warrant and go on... What takes a week or two in surveillance activity now; we could do in one day and get a search warrant. So it has definitely changed the way we do business... It is much more time consuming.

Additionally, some narcotics units have chosen to expand the scope of their narcotics investigations to include the additional crimes drug offenders are involved in (such as stolen property) in order to disqualify offenders from Proposition 36.

You go from a dope crew to a theft crew in a way because now you are trying to research to make that dope charge stick to get other charges so it doesn't get Prop36'd out. You jump over a lot more hurdles. You do a lot more work.

[It used to be that] we got our dope, we got our felony. They are going to go to jail or prison on this felony. That is great; we'll take this mail [that the offender had in his possession at the time of arrest] and book it so they don't get it back [in cases they suspect theft of mail]. Now they are going to greater lengths. Now they [narcotics officers] are looking more into those other crimes to try and get more charges because they realize that dope has been cut down to its knees. There isn't the force behind the dope charge anymore.

Before, we [the narcotics unit] would turn away from getting involved in identity theft or checks or something. Now we'll say, hey we're doing this too because it makes it a non-Prop36 eligible case. To make it more worth our while to suit what we are trying to do which is really closely tied with citizen complaints...

Narcotics officers anticipated a drop in the number of CI's and adapted in three ways: (1) by using alternative methods to identify drug sellers (as discussed above), (2) by working CI's immediately, and in some departments, (3) by increasing the number of paid CI's. When a person offers to be a CI, narcotics officers obtain as much information as they can from the person right away because if they do not, offenders often change their mind after they discover there is no incentive to work with law enforcement. Also, some departments now pay CI's.

Working dope 15 years ago as an officer and working dope 5 years ago as a supervisor was night and day because of Prop36. Because people knew [about Prop36]...you might sign them up that day, then they go home and talk to their buddy and find out they'll get Prop36 and they don't want to work with you. Hey it ain't worth it. I know Prop36 is going to get me off.

When you get that informant, you try and do as much as you can that day that they want to work. Because when they get home they won't be back. Because they go home and figure it out. Or they talk to their

buddies who say “what are you giving up your friends for when you can just go and get Prop36?”

We’ve switched tactics again for just simple possession cases of meth, a little half gram, quarter gram ...a good solid Prop36 case, and we know it. We found a few people that are tired of going through Prop36 because it is a hassle for them, so we’ll just kind of straight deal with them and say “Hey, I’ll take a report on this if you want to work for me, if you don’t, just let me know and I’ll file the case and you’ll get an appearance letter in the mail and do your Prop36, and they just don’t want the hassle of doing it, so they’ll just work and turn in their drug dealer, and we’ll dismiss the case.”

### *OTHER IMPACTS*

In addition to the unit specific effects described above, officers and supervisors also described other impacts of the legislation. One unanticipated impact was that Prop36 significantly reduced court time for officers. Another unanticipated effect was the perceived impact on resident satisfaction.

### *Court Time*

Officers agreed that spending less time in court is “the one benefit” of Proposition 36. Offenders are pleading guilty to their drug charges much more frequently than in the past. In some cases, the court is allowing the additional charges (intended to disqualify an offender from Proposition 36 sentencing) to be dropped and allowing an offender to plea to a qualifying drug possession offense and receive Proposition 36 probation. As a result, there are fewer preliminary hearings, fewer trials, and fewer officers testifying in court. As one officer noted, before Proposition 36, “[we] would constantly get subpoenaed for 11377 (possession) and 11550 (under the influence) charges because there was nothing else to do. The guy was going to go to prison so he might as well fight it; whereas, a lot of them are pleading guilty now”

(Confidential Informant, personal communication). One narcotics officer observed, “It used to be that you went to court on almost everything (every dope arrest). Now guys will be here 5 years who haven’t been to court to testify on a dope case”

(Confidential Informant, personal communication). While officers may enjoy this benefit, supervisors believe officers are missing out on valuable training.

Experience-wise for the officers, going to court is a valuable learning experience for a police officer. It helps you do your job better because you go into court and tell what happened, then you get slapped by the defense attorney for doing it the way you did it and find that you are not going to do it that way again. You are going to get smarter and you are going to do it different next time. You learn from both the DA and public defender that there is a better way to do this. So it educates the officer, so the officers aren’t getting the education they should be getting because they are not going to court anymore.

We talk about the downside of it in regards to court appearance and courtroom testimony, which is a huge thing for new officers. They’re not exposed to court testimony. Prior to prop36, we had a huge amt of preliminary hearings on 11377 [possession] and 11364 [paraphernalia] cases. You don’t see that anymore. There’s no need for prelim anymore because they just do the prop36, PC1000. By the time these officers now are going to trial maybe on a murder or assault with a deadly weapon, they don’t have that courtroom testimony practice and the grilling they got from DA’s and defense attorneys. We think it’s a negative impact. I guess it’s a good thing that people don’t have to go to court, but at the same time it’s a bad thing because they don’t get that experience.

According to several training officers and supervisors, testifying at preliminary hearings for drug cases exposes an officer to testifying and increases their confidence on the stand. It also teaches them how to anticipate questions and respond appropriately on the witness stand, skills that are particularly helpful in serious cases.

### *Citizen Satisfaction*

Narcotics officers and community policing officers stated that citizen complaints have increased as a result of Proposition 36. They assert that citizens, particularly those living in high drug crime neighborhoods, are increasingly dissatisfied with the level of police service they receive. Residents report drug activity in their neighborhood, give officers details about specific suspects and expect a resolution to the drug problem. Residents are disappointed, though, because the offender was arrested and convicted, but not incarcerated. They did not receive the outcome they desired; an end to the drug activity which was negatively affecting their quality of life. This suggests that the public is also frustrated and putting pressure on law enforcement.

There is a new found level of dissatisfaction with police service. We hadn't done our job properly because that guy was out of jail right away. Police are not as effective at doing their job and taking care of a problem.

The impact is the community pays for it. I get yelled at constantly by the community. You're the police. You arrested him. Why is he out? ... Yes, I did arrest him. But the courts let him out. ... That's what the people voted for.

I think we know how to get around the law. I think what the problem is, that we deal mostly [with], and most of your narcotics units are dealing with, community issues and you will have a whole neighborhood complaining about one individual and we repeatedly arrest him, repeatedly, and they are constantly diverted, giving him Prop36.

### *DRUG ARREST TRENDS<sup>50</sup>*

Almost all officers stated that they or other officers they know have changed arrest tactics as a result of Proposition 36. The big question nevertheless, is: did Proposition 36 affect the number of people arrested for SACPA-eligible crimes? When asked this question directly, some officers said “yes,” some said “no,” and others admitted they had no idea. Throughout the interviews, though, officers repeatedly argued that Proposition 36 has had several observable (and possibly testable) effects: (1) the same drug offenders are re-arrested more frequently than prior to Prop36, (2) drug offenders are not afraid to carry drugs or be under the influence while out in public, (3) officers are less inclined to make “under the influence” arrests, (4) officers are tacking additional charges on to drug possession arrests in order to disqualify offenders from Prop36 diversion and (5) there are fewer confidential informants.

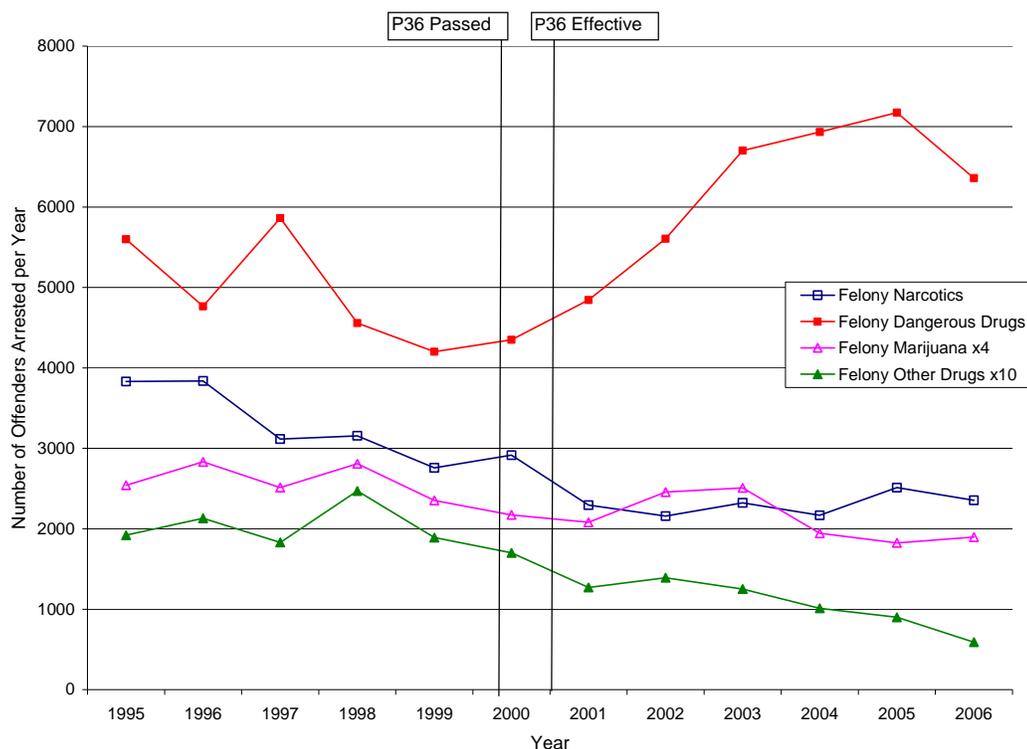
Figure 4.1 shows the annual number of felony drug arrests in Orange County by category for the years 1995 to 2006. It includes all felony drug crimes, regardless of SACPA-eligibility. Similarly, Figure 4.2 (below) depicts the annual number of misdemeanor drug arrests in Orange County by category, regardless of SACPA-eligibility. These figures are useful because some of the categories contain several SACPA-eligible offenses and other categories contain few/no SACPA-eligible crimes.

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<sup>50</sup> One question I proposed to answer was whether Proposition 36 had any impact on law enforcement releases. Originally it was thought that this statistic would provide a reasonable gauge of the number of confidential informants working for law enforcement agencies. Research revealed that, because it is used in so many different situations, it is not a reliable indicator of CI participation. Therefore, this question is moot and will not be addressed.

Comparing the categories with many SACPA-eligible arrests to categories with few SACPA-eligible arrests isolates the effect of SACPA on various drug crime categories. As only categories with many SACPA-eligible offenses and arrests should be affected by the passage of the legislation. There should be no discernable effect on those drug categories with few/no SACPA-eligible offenses.

**Figure 4.1: Orange County Felony Drug Arrest Trends, 1995 - 2006**



Source: California Criminal Justice Statistics Center (CJSC), MACR database.

Most offenses in the felony marijuana category and felony other drugs categories (Figure 4.1) are not Prop36-eligible<sup>51</sup>. As expected, there is no indication that Prop36 had any impact on arrests in either of two these categories. The number of

<sup>51</sup> Felony Marijuana contains predominately sales offenses (which are not SACPA-eligible) and Felony Other Drugs contains 46 offense codes, only a few of which are SACPA-eligible (such as possession of paraphernalia) (CJSC, 2002).

arrests for felony marijuana offenses remained relatively stable, with a slight downward trend and arrests for offenses in the felony other drugs category declined from 247 in 1998 to 59 in 2006.

The felony drug categories most affected by Prop36 are felony narcotics and felony dangerous drugs – the categories that contain arrests for felony possession offenses. These categories show different arrest patterns. The number of arrests for felony dangerous drug offenses (mainly possession of methamphetamine and ecstasy) increased from 1999 through 2005, with particularly significant gains (15% and 20% increases respectively from 2001 –2002 and 2002-2003) in the years immediately following Prop36 implementation. At the same time, the chart shows that the number of arrests for felony narcotics (mostly possession of cocaine, crack, and heroin) declined from 1995 to 2002.

During interviews, many law enforcement officers were shown a graph similar to the one above and asked if they had any insight on the trends and if so, to comment on what they thought might explain the different arrest patterns<sup>52</sup>. According to officers, a few things likely account for the patterns, (1) some users switched from cocaine and/or heroin to methamphetamine and ecstasy; (2) new users are using methamphetamine and ecstasy; and/or (3) methamphetamine users are being re-arrested more frequently.

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<sup>52</sup> Some may argue that such an exercise is futile and pointless because officers are on the ground level and are unable to discern county level trends. I disagree because this argument, while valid, discounts officers' ability to recognize trends in their own patrolling area and city. Officers share information routinely during patrol briefings and throughout their shift. For this reason, I contend that the exercise is useful in that it points the researcher to potential hypotheses. It is then up to the researcher to ascertain the plausibility and value of each hypothesis offered.

I think there are more users, but that's [2001-2003] a dramatic spike. You're not going to see that dramatic a spike just because there's [sic] that many more new users. I think it's a combo. New users and these are the re-arrests [pointing to the 2001-2004 period]. Same people getting arrested over and over again.

I look at this probably different than you. Everybody's afraid of getting caught [pointing at 1995-97], everybody's afraid of getting caught [pointing at 1997-99] and now [pointing at 2001-02] all of the sudden every dooper on the street knows "hey dude I'm good for three".

This jump here, this peak you're seeing here is the end result to the revolving door. These people have probably burned through all of their Prop36 chances and are back out. And one person is arrested how many times now? You're re-arresting the same people and so that's what's generating the numbers. Without looking at charts or at stats but just based on what I'm seeing, our drug arrests are up from... well, I can't say about incarceration rates but I know that we're arresting more people.

What could fall in here [1999-2004 dangerous drugs] is ecstasy becoming more popular.... Right around this period 2000-04, the rave parties were at a peak.

Right about the time Prop36 and everybody on the dopers' side knows that they are not going to go away for their first offense, their second offense, their third offense; it's going to take much longer. I think you found people who became lax at hiding it from us because they know once they get caught they've got a couple 'oops' before they are going to start doing hard time.

And heroin is on the come-back, marijuana is just as high as it ever was, if not getting more prevalent, mushrooms and ecstasy are also coming back, in our area we haven't seen much acid, not much P.C.P., Peyote or any of that stuff, but mainly in my area, that's not what's getting to 'em. In [x city] we're getting killed with heroin like you wouldn't believe [in 2007].

The most popular (though not necessarily the most plausible) reason cited by officers for the remarkable increase in felony dangerous drugs offenses is that the same users are being re-arrested at a record pace. The problem with this hypothesis accounting for the entire felony dangerous drugs trend is (1) many factors influence

crime trends that are not accounted for in this simple analysis, and (2) the same pattern should emerge for both (dangerous drugs and narcotics) trends. According to Figure 4.1, this is not what occurred; so there must be more to the story. Another hypothesis offered by some officers is that the laws limiting sales of pseudo-ephedrine in California (and the United States) decreased the number of methamphetamine labs in Orange County. According to officers, labs relocated to Mexico as a result of these laws and product is now hand carried up to Orange County by couriers. The net result of this, according to narcotics officers, is that possession arrests increased while distribution arrests and lab arrests decreased significantly because offenders are carrying meth, but not making it<sup>53</sup>.

As shown in Figure 4.2, there is no indication that Proposition 36 had any impact on misdemeanor marijuana arrests. Misdemeanor marijuana arrests, which are punishable by a \$100 fine and thus not likely to be affected by Proposition 36, increased at a relatively steady pace from 1997 to 2003. There is, however, some evidence that Proposition 36 may have impacted misdemeanor other drugs and misdemeanor dangerous drugs arrests<sup>54</sup>. Arrests for offenses in the misdemeanor other drugs category (mainly possession of drug paraphernalia, under the influence of a controlled substance, and drunk in public) were stable until 2001, at which point they increased in a pattern similar to arrests for felony dangerous drugs. This is partly the result of more 11550 (under the influence) arrests, but may also be attributable to more misdemeanor rather than felony arrests for possession of paraphernalia. Arrests

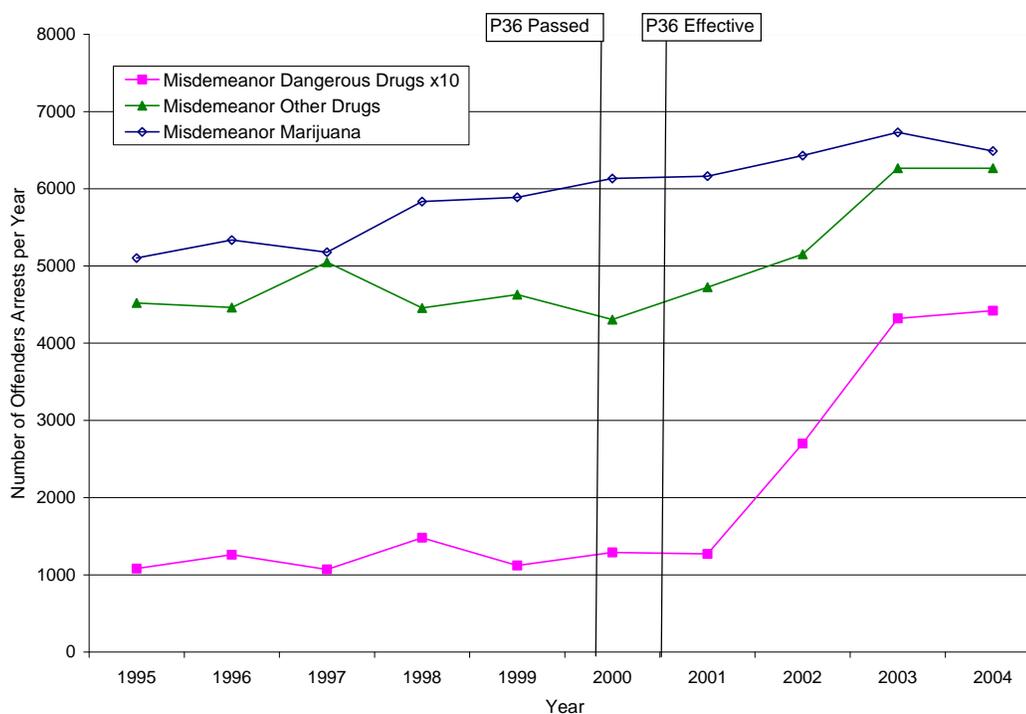
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<sup>53</sup> This is an interesting hypothesis; however, the current research project is not designed, nor able to test it using available data.

<sup>54</sup> Time series analysis was not conducted on either of these series'. The misdemeanor dangerous drugs category does not contain enough arrests per month to make time series analysis useful.

for misdemeanor dangerous drug offenses also appear to have been affected by SACPA. Arrests for misdemeanor dangerous drug offenses fluctuated between 107 and 148 (averaging 126) per year between 1995 and 2001. In 2002, however, arrests for misdemeanor dangerous drug offenses more than doubled to 270 and by 2003 they had increased by more than half again, to 432 in a single year.

**Figure 4.2: Orange County Misdemeanor Drug Arrest Trends, 1995 - 2004**



Source: California Criminal Justice Statistics Center (CJSC), MACR database.

Explaining these trends is difficult because there are likely many contributing factors, none of which can be adequately isolated. Performing time series analysis would yield incomplete results due to the mixed categories (that contain both SACPA-eligible and non-SACPA-eligible offenses). The increase in misdemeanor other drugs can be partially, though not wholly, explained by more under the influence arrests.

The change in arrests for misdemeanor dangerous drugs, though small in actual number is very dramatic and worth trying to explain. One possible rationale for both categories is that officers used their discretion to arrest offenders for a misdemeanor section of a violation rather than a felony section. Exercising discretion in this fashion would be consistent with officers' articulated practice of "cutting a break" to certain offenders (for example, those who are cooperative or are seen as contributing members of society). An officer's rationale might be that the offender is going to get Prop36 anyway, so they might as well charge them with the misdemeanor section as a courtesy. Prior to Prop36, this courtesy might have taken the form of an arrest on a single charge instead of multiple charges (or no arrest at all). No officer discussed this practice, so it is purely speculation. Furthermore, whereas this hypothesis might explain the small *number* of additional arrests in the misdemeanor dangerous drugs category, it is not adequate to explain the large *number* of additional arrests in the misdemeanor other drugs category (even after accounting for additional under the influence arrests).

Another possible explanation is that the California Supreme Court made a decision in 2001 or 2002 regarding the Prop36 eligibility of a particular drug offense in one of the categories and that the decision affected arrests for that crime. A review of appellate cases, however, did not reveal any particular cases that likely would have been responsible for this trend. Furthermore, for this to be plausible, it would require that officers' became aware of this particular change in policy and adjusted their

practices accordingly<sup>55</sup>. This is theoretically possible, but much less plausible than the first conjecture. Finally, it is feasible, though highly unlikely, that the trend is completely unrelated to Proposition 36 implementation.

Because the above arrest categories include all types of drug arrests, not just SACPA-eligible arrests the figures could be masking some of the effect of SACPA. Figure 4.3 accounts for this limitation by including only SACPA-eligible arrests, those for felony possession of narcotics, felony possession of dangerous drugs, and misdemeanor under the influence. The figure is imperfect because it does not contain all SACPA-eligible offenses, only the three offenses that comprise the majority of Prop36 cases in Orange County<sup>56</sup>.

Figure 4.3 reveals some important differences to Figures 4.1. First, it illustrates that arrests for *possession of narcotics* (cocaine, crack, heroin, etc.) were stable and slightly increasing during the late 1990s and that these arrests increased more dramatically beginning in 2003 (or 2002). This is in contrast to the declining trend that one would have expected by looking at Figure 4.1 (all felony narcotics arrests). This is an important point because *possession of narcotics* data (Figure 4.3), show a different pattern than *felony narcotics category* data, one that is congruent with (not opposite of) the post-SACPA trend in dangerous drugs. Consequently, narcotics possession data could be interpreted as supporting law enforcement officers' contention that offenders are being arrested more frequently. Second, the spike in

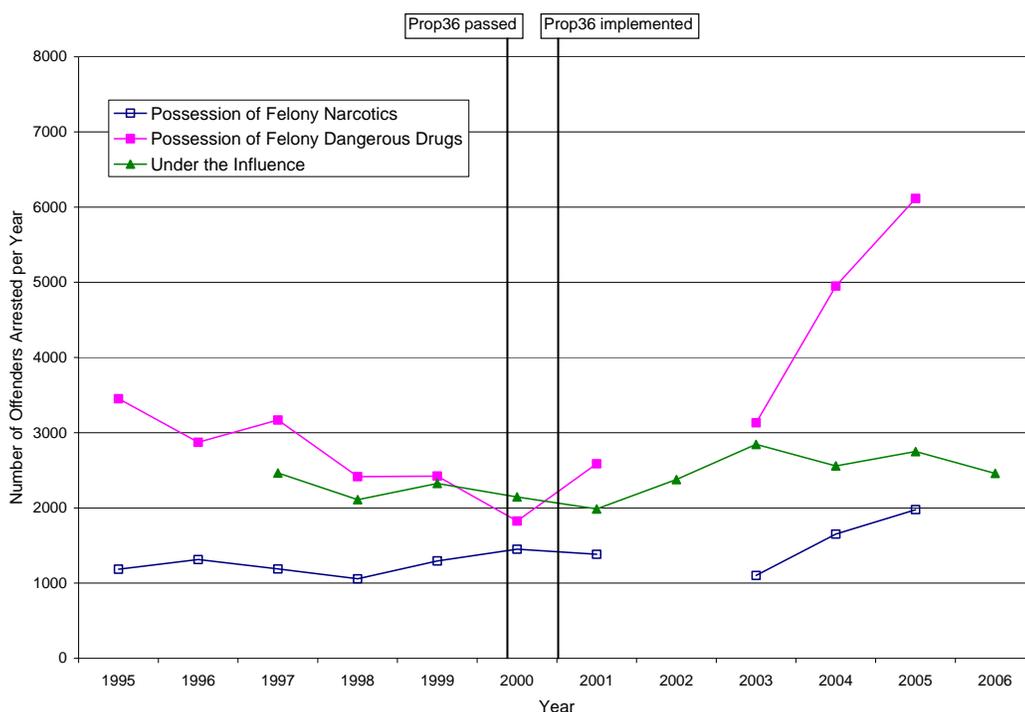
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<sup>55</sup> This would require prosecutors or other knowledgeable stakeholders to intentionally train officers on the new case law.

<sup>56</sup> The other offense that accounts for a large percentage of Prop36 cases is HS11364 (possession of paraphernalia). Unfortunately, HS11364 arrests can not be separated from other, non-Prop36 eligible offense codes (Linda Nance, personal communication, March 12, 2008).

arrests for possession of dangerous drugs is much steeper than would be expected looking at Figure 4.1 and indicates a net widening or a faster revolving door effect. Both of these trends demonstrate the danger in using categorical data to determine policy impact.

**Figure 4.3: Orange County Arrest Trends for SACPA-eligible Drug Offenses, 1995-2006<sup>1</sup>**



Source: California Criminal Justice Statistics Center (CJSC). 2002 data are missing from possession arrests due to a data entry error at CJSC that affected the OBTS database. Under the influence arrests are reported for 1996-2006 and possession arrests are reported for 1995-2005.

<sup>1</sup> Monthly data are available, however month to month fluctuations make it difficult to visualize long term trends.

All three SACPA-eligible drug arrest series' provide evidence supporting a net widening effect. Figure 4.3 shows that, contrary to the opinions of officers interviewed, arrests for under the influence (11550) increased after SACPA. This argues against SACPA having a pseudo-decriminalization effect on under the

influence as suggested by officers<sup>57</sup>. How do we balance law enforcement officers' contentions that they stopped making under the influence (H&S11550) arrests with data to the contrary? One explanation is that there are more drug offenders under the influence of controlled substances in public spaces (as argued by law enforcers) and police officers, although less inclined to make these arrests, continue to do so because it is their job. Informal conversations with drug addicts confirm that some addicts are more likely now than before Proposition 36 was law to go out into public while under the influence. Thus this is a plausible explanation. It is also possible, that law enforcement officers by and large described what they thought other officers were doing, as opposed to what they actually were doing.

Time series analysis reveals that the impact of Proposition 36 on under the influence arrests was statistically significant but that the impact on drug possession arrests was not statistically significant.<sup>58</sup> This means that part of the increase in the under the influence arrest pattern can be attributed to the implementation of Proposition 36, but that the increase in drug possession arrests can not be attributed to Prop36. This finding may seem contrary to expectations given the visual account depicted in Figure 4.3, which shows a dramatic increase in the number of arrests for possession of felony dangerous drugs<sup>59</sup>. It is important to remember that although time series analysis is considered a quasi-experiment, other factors that are not

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<sup>57</sup> When officers choose to not arrest for a particular crime, the net effect is de-criminalization of that crime, regardless of officers' moral views about it.

<sup>58</sup> See Appendix K for a discussion of time series analysis and a description of time series models and significance levels.

<sup>59</sup> This is because arrests increased so dramatically from 2003 to 2005 that the ARIMA model is unable to recognize the change in arrest level as anything but noise. The large amount of noise increases the variance, and thus causes the impact analysis to find a non-significant result, despite the presence of an actual effect.

measured, such as number of police officers on the street or number of officers assigned to full-time narcotics investigation bureaus, can and do influence arrest patterns. For these reasons and others, we cannot estimate how much of the impact can be attributed to SACPA, even though we can visually see there is an impact.

As a result of this research we know that Orange County drug arrests for under the influence of and possession of controlled substances increased and that the increases were partially attributable to Proposition 36. However, it is difficult due to rival hypotheses that are not controlled for, to determine the magnitude of Proposition 36's impact on these Orange County drug arrests. It is most likely a combination of the explanations provided by officers – more users and users who are not afraid of getting caught and are therefore repeatedly arrested. The amount of the increase attributable to a net widening effect, as opposed to changes in drug trends and/or user behavior, is unclear. Regardless of the reason, however, law enforcement officers are definitely making significantly more arrests for low-level drug crimes, in particular possession offenses in the years since Proposition 36 took effect. This has clear implications for the courts and corrections (these effects will be discussed in subsequent chapters).

### *CONCLUSION*

Proposition 36 represents a major paradigm shift in drug policy and law enforcement officers do not believe it is working. Law enforcement groups came out against Proposition 36 at the time it was on the ballot, and the overall feeling of law enforcement officers has not changed. By and large, officers are resisting Proposition 36 because they feel it subverts their goals of law enforcement and crime control by

allowing career addicts to remain in the community, in their opinion, without punishment and free to commit more crime. Underlying their frustration is a view of drug offenders as criminals (not addicts), a belief that coerced treatment does not work, and a stance that custody is the best response to drug abuse.

This study reveals not just frustration, but active circumvention on the part of some law enforcement officers who admit to changing their arrest practices as a result of Proposition 36. Most officers said they actively seek out other charges in order to disqualify offenders from being diverted through Proposition 36. Also, some officers said they or other officers they know of have decreased, or ceased, making “under the influence” arrests because they no longer feel it is an efficient use of their time or department resources. Only two officers said they would arrest an offender they would not have arrested in the past, just to get them into treatment. These findings are even more remarkable given that Proposition 36 is a sentencing policy that was not intended to affect police behavior.

The desire to circumvent the law stems from a very real issue – one that law enforcement officers are uniquely situated to observe – that many drug abusers are highly addicted criminals. They are criminals who are enmeshed in relationships and environments that are not conducive to rehabilitation or change and leaving these offenders in the community (realistically speaking) “unsupervised,” devoid of direct control agents that encourage (or force) abstinence and without perceived sanctions for their law breaking behavior is not working with this population. Although quantitative data disputes the claim made by officers that they reduced the number of under the influence arrests, the change in perspective nonetheless can be attributed to the Prop36

sanction being perceived as inadequate by officers and to the fact that a felony possession arrest lost much of its usefulness as a crime control tool when Prop36 eliminated incapacitative sentences.

What officers know about Proposition 36 was primarily learned “through the grapevine,” either through fellow officers or offenders, and on occasion a district attorney or probation officer. During, or at the conclusion of the interview, many officers asked this researcher if Prop36 was working. They wondered whether their negative perception was correct. Officers complained, “there is no feedback, official memos from the court, stats saying this is how many people we’ve prosecuted, this is how well it’s working, how well it’s not working; nothing.” Interestingly, when asked whether they would be more supportive of Proposition 36 if they saw treatment was working, most officers answered emphatically “Yes.” This suggests law enforcement could get behind the law if it were made more onerous and intensive for offenders; if they saw that their job was becoming easier as a result of addicts being successfully treated (and presumably getting jobs and halting their criminal behaviors).

## **Impact on the Court System and Courtroom Actors**

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Unlike law enforcement officers, courtroom actors expected significant organizational and procedural changes to result from Proposition 36. Because it was intended to change how the court sentences non-violent drug offenders, managers and key employees of agencies responsible for criminal justice case processing functions anticipated workload changes that would require additional staffing as well as the creation of new policies and procedures. They did not, however, anticipate the large number of offenders qualified for Proposition 36 diversion, the level of criminal sophistication displayed by some Prop36 offenders, or the amount of Prop36 offenders with co-occurring mental disorders. Each of these unanticipated outcomes had implications for how the court adjusted to the legislation. This chapter will (1) acquaint the reader with case processing procedures for offenders arrested on Proposition 36 eligible offenses; (2) detail the impact of Proposition 36 on the court system at each stage of the court process; and (3) explain how each agency (superior court, public defender's office, city attorney's office) adapted to the legislation.

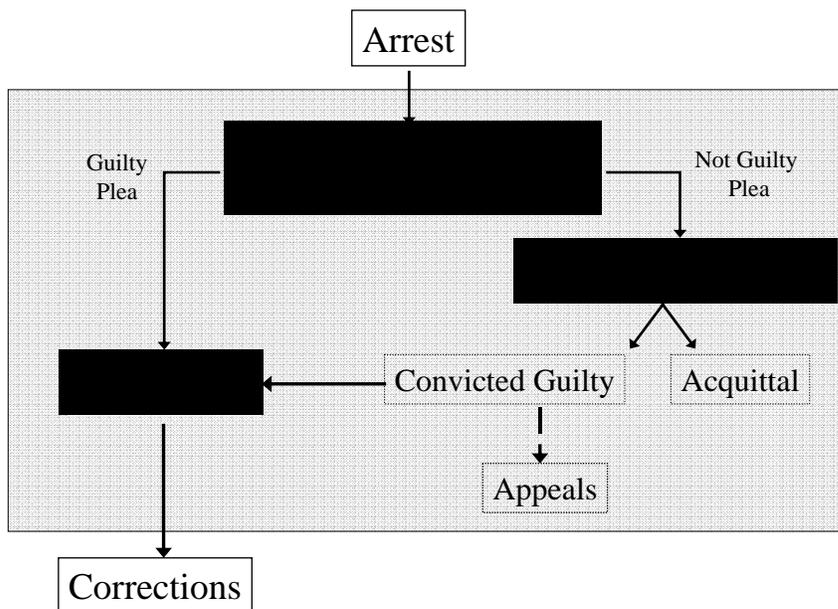
### *HOW A DRUG CASE PROCESSES THROUGH THE COURT SYSTEM*

The court system is the second stage in the criminal justice process. It is in this stage that cases against criminal defendants are adjudicated and convicted offenders are sentenced to a variety of punishments. The process is somewhat complicated and governed by a series of complex rules and laws intended to protect each individual's

due process rights. This section will describe the various steps in the court process for individuals charged with drug crimes and explain how these processes have (or have not) changed as a result of Proposition 36.

Figure 5.1 (below) depicts a simplified version of the criminal justice process by phase. The process generally starts with an arrest by law enforcement. It is followed by a determination of guilt or innocence in the court (the shaded section). Finally, court-imposed sanctions are carried out by corrections agencies (county probation departments, county jails, and the California Department of Corrections and Rehabilitation).

**Figure 5.1: California Criminal Justice System Process for Adult Felony Defendants**

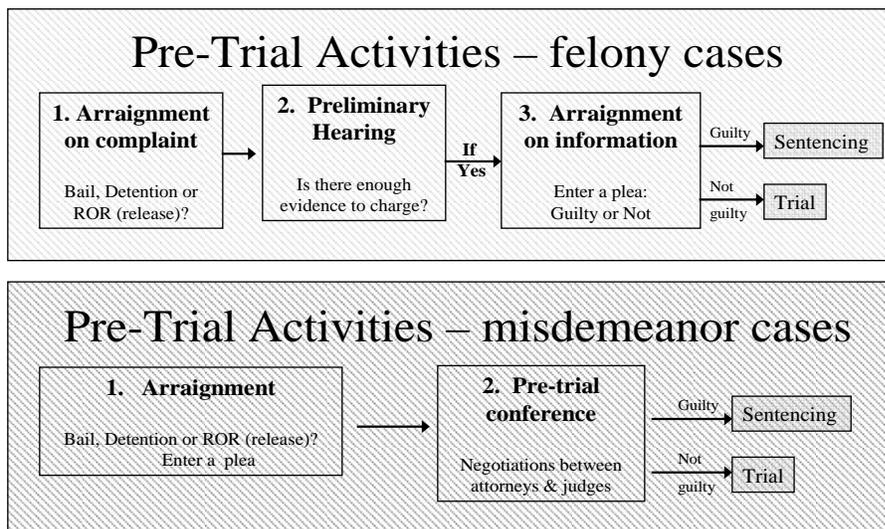


Most offenders arrested for a felony drug offense are booked into jail upon arrest. While some offenders are offered and do post bail, others remain in jail until their arraignment (within 48 hours of arrest – unless the arrest occurred on a

weekend). The initial arraignment is the offender's first appearance before a judge (and is considered the first event in the pre-trial process, see Figure 5.2). During the initial arraignment, the judge explains the charges to the defendant, appoints a public defender (if necessary), and sets bail or releases the defendant on his own recognizance. A defendant can enter a plea at this time, but it is not very common. Also, a district attorney can choose to not file charges against the defendant, in which case the defendant is released with no further action against him/her. This too, is uncommon. Figure 5.2 provides a visual representation of the court process for drug offenders (felony case processing is in the top box).

If a defendant pleads not guilty to a felony drug charge, a preliminary hearing is held. This is the second event that occurs during the pre-trial phase of case processing. At this hearing the district attorney must show evidence that there is probable cause that the defendant committed the felony for which she/he was arrested and should be brought to trial. If the judge decides that there is enough evidence to proceed, the defendant will be arraigned on information (the third step). At this arraignment, the defendant will be formally charged, have his/her rights explained, and will enter a plea (not guilty or guilty). If the defendant pleads guilty, the judge can sentence the offender immediately or delay sentencing in order for the probation department to prepare a pre-sentencing report. If the defendant pleads not guilty, he/she has the right to a trial within 60 days (unless he/she waives that right). Most drug possession cases get settled at, or before, the information arraignment by plea bargaining that occurs between the district attorney and the defendant's attorney. Less than 10% of felony drug cases go to trial, and most of those cases involve sales.

**Figure 5.2: Sequence of Events During Pre-Trial Stage of Court Process**



As can be seen in Figure 5.2 above, the process is much simpler for offenders charged with misdemeanor drug crimes. Offenders arrested for a misdemeanor “under the influence” charge will typically spend only a few hours in jail (until they sober up enough to be released). Offenders arrested on other misdemeanor drug charges (for example, possession of paraphernalia) may spend the entire time before their arraignment in jail, but it is less common. Most often, individuals arrested for misdemeanor crimes are booked (photographed and fingerprinted) and released from the local police department and given a notice to appear for their court arraignment. Offenders charged with misdemeanors will only be arraigned once and there is no preliminary hearing. At the arraignment, bail will be set (if the offender is still in custody), he/she will be informed of the charges against him/her and appointed a lawyer (if necessary). The defendant will also enter a plea at this hearing. If the defendant pleads guilty, the judge can sentence him/her immediately or order a pre-sentence report from probation. If the defendant pleads not guilty then the judge will

set a date for a pre-trial conference between the attorneys and the judge in hopes of resolving the case without going to trial. If an agreement can not be reached, a trial date is set. Very few (less than 5%) misdemeanor drug cases go to trial.

The case processing steps that offenders go through (as described above) did not change as a result of Proposition 36; but what did change was the proportion of cases that are settled earlier in the process, the sentences that offenders receive, and the number of times a Prop36 offender must report to court post- conviction. These changes have had an enormous impact on the court, courtroom workgroup staff and attorney's offices tasked with prosecuting or defending drug offenders. The section below describes in detail, how an offender sentenced to Prop36 probation experiences the court process throughout his/her time in Prop36 probation.

#### *HOW PROPOSITION 36 WORKS*

Drug offenders sentenced to Proposition 36 are initially adjudicated in a panel court (felony or misdemeanor – depending on offense type), just like all other offenders in Orange County. If the offender is convicted of a qualifying non-violent drug possession offense, and is not disqualified by past criminal history or a concurrent non-drug offense, he/she can be sentenced to Proposition 36 (three years probation with a condition of participation in and completion of a drug treatment program). Offenders are given the option of participating and must agree to the terms and conditions prior to being sentenced to Proposition 36 diversion. Most offenders, greater than 95% based on practitioner estimates, choose to participate and are sentenced accordingly.

Upon official Proposition 36 sentencing, an offender is instructed to (1) report to probation, (2) get signed up for treatment through the Health Care Agency, and (3) report to Prop36 court in two weeks for a progress review<sup>60</sup>. If the offender is convicted of a felony drug possession offense, he or she will report to department C58 at Central Superior Court (the sole felony Prop36 court in the county) and will continue to be monitored in this courtroom the entire time he or she is on Prop36 probation. If the offender is convicted of a misdemeanor drug possession offense, he or she will report to one of several misdemeanor Prop36 courts throughout the county. Approximately 80% of Proposition 36 offenders in Orange County<sup>61</sup> are convicted of felonies and supervised in C58 at Central Superior Court.

Felony offenders report to C58 two weeks after being sentenced to Prop36 probation for a progress review. During the progress review, the judge verifies that the defendant met with probation and enrolled in treatment and has been attending their daily meetings and completed the other tasks required by the court (for example, providing a DNA sample). If the defendant successfully accomplishes all the tasks ordered by the court, the judge will typically order the defendant to appear for a monitoring review in three months. If not, the judge will order the defendant to appear within a shorter timeframe to provide the necessary documentation proving compliance. Depending on the offender, additional monitoring reviews will be scheduled at least quarterly<sup>62</sup>. During a monitoring review, the judge “will find out

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<sup>60</sup> Defendant is given a specific date/place to report. Typically misdemeanor defendants have one progress review 2 weeks after being sentenced to Prop36 but are not regularly monitored by the court.

<sup>61</sup> The proportion of felony/misdemeanor cases varies by county.

<sup>62</sup> Originally all Prop36 offenders saw the judge at least quarterly for monitoring reviews until treatment was completed, however judges found that low level offenders with good support systems did not

where they are in treatment, are they in good standing at treatment, is there a problem with the treatment, are they missing meetings, is there something going on where they may need to be bumped up” (Confidential Informant EZJ, personal communication). For the few offenders who do not violate probation and make adequate progress in treatment, this is the only time they see the judge. Once treatment is completed, a successful defendant will not appear in court again until they petition the court to dismiss their original case (upon successful completion of treatment and supervision). Theoretically, a defendant could complete treatment within a year and have their case dismissed within 18 months if they do all that the court requires.

Most offenders do not succeed the first time through according to practitioners. Most offenders violate probation at least once and usually two or three times. These offenders are in court much more frequently – pleading to violations and reporting for monitoring reviews. Offenders with one Prop36 probation violation or with a state prison prior will have monitoring reviews scheduled at least every 90 days and sometimes more frequently depending on what the judge feels the individual offender needs. Anyone with two violations or other problems that affect their ability to do the program (e.g. physical or mental health problems, or affiliation with criminal gangs) are monitored more closely, at least every 60 days and sometimes every 14, 30, or 45 days.

The law allows offenders three violations before they are terminated from Prop36 probation. The court may revoke probation for non-drug violations of probation and for new offenses that are not drug related. Prior to Proposition 36, most

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significantly benefit from monitoring reviews and thus eliminated reviews for offenders they found did not need them and instead focused their time on the bulk of offenders who did benefit from them.

offenders convicted of a felony drug possession offense were sentenced to 30, 60, or 90 days in jail and three years on probation. As a result of Prop36, judges can no longer sentence offenders to prison or jail for their original possession offense nor for any drug-related violations of Prop36 probation (including new drug offenses). It is not until the third violation that an offender can be terminated from Prop36 without their permission and sentenced to jail or prison. How much time an offender is sentenced to after being terminated from Prop36 depends on the reason for the third violation, but is typically 90 days in jail<sup>63</sup>. Most offenders on Prop36 will appear before the court on two probation violations (often involving new charges) and quarterly monitoring reviews while on probation.

### *IMPACT ON THE COURT SYSTEM AT EACH STAGE*

Prop36 had several distinct effects on the court system. At the pre-trial stage, it increased the use of plea bargaining at early stages and decreased the number of preliminary hearings. It decreased the percent of cases that went to trial and affected sentences for original drug crimes as well as violations. It also radically increased the amount of cases that return to court post-conviction, for violations and reviews.

#### *Pre-Trial Activities*

##### More Plea Bargains

The two main effects of Proposition 36 on pre-trial activities were: more plea bargains and fewer preliminary hearings. Practitioners anticipated an increase in plea bargains because, as one pointed out, “Proposition 36 is a good deal (for drug

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<sup>63</sup> Sentencing for probation violations involving new offenses is tricky and depends on whether the new charge is drug-related or not as well as whether the offender has prior prison terms. Table 5.1 on page 151 illustrates how sentencing changed for most drug offenders after Proposition 36.

offenders); they can't do any better" (meaning that Prop36 is the lightest sentence an offender could hope to receive) (Confidential Informant, personal communication). Because the law mandated a customary, non-custodial sentence, offenders are less likely to contest the charges against them and more likely to accept the DA's (now standard) offer of probation with treatment (aka Prop36). Hence, offenders are more likely to plea bargain their case prior to the preliminary hearing now.

It may actually accentuate the effectiveness of pleas ...let's say [the offer is] 90 days in jail on 11550 [under the influence]. Well, if all he had to face was 90 days then the case is not going to resolve. It's probably going to go to trial or right up to trial. That is typically what happens. But if at the arraignment or pre-trial [conference] he's offered a non-jail Prop36...then the case will be dismissed. They jump at that [the opportunity to get out of jail]. (Attorney)

#### Fewer Preliminary Hearings

Because drug possession cases are resolved more quickly and at earlier stages than was customary prior to the law change there are fewer preliminary hearings as a result. This change has several benefits for courtroom actors, particularly prosecutors. For example, city attorneys (and presumably district attorneys) spend less time and effort preparing for the preliminary hearing, where they must show probable cause that the defendant committed the crime he/she was accused of. Attorneys also spend less time locating and subpoenaing witnesses for the preliminary hearing. This effect, as we have seen, was also observed by law enforcement officers who stated that they spend less time in court as a result of Prop36. The fact that officers spend less time in court is a direct result of the increased use of plea bargaining prior to the preliminary hearing. Before Prop36 became law, much of the plea bargaining occurred on the day

of, or after the preliminary hearing; at which point law enforcement officers would have already received their subpoenas and would have reported to court to testify.

And objectively the good part of Prop36 is that you have more cases resolved at an earlier stage, which requires less effort on the part of the prosecution and the defense. [It] saves costs. We don't have police officers being subpoenaed and on standby. (Attorney)

Undoubtedly, city and district attorneys reap more of the benefits that accompany fewer preliminary hearings. This is because public defenders (and private attorneys) do not have the burden of establishing probable cause; but it is also because these attorneys must spend more time advising clients of their rights and the requirements and the ramifications of Proposition 36 participation. According to one attorney, advisement takes significantly more time than it used to.

Prop36 actually takes longer because there's a whole litany of things that the attorney needs to advise the client about. So even in a case that settles going into Prop36, it takes longer than a case that in the old days would settle for a 90-day sentence....The amount of advice that the lawyer has to give these clients is about double or triple what it used to be, whether they want to do Prop36 or not.... It used to take fifteen minutes, probably now it takes thirty to forty minutes [*per client*].

### ***Trials and Convictions***

Just as there are fewer preliminary hearings, there are also fewer trials as a result of Proposition 36, though not dramatically fewer. Theoretically these two changes (fewer preliminary hearings and trials) should have created more space on the felony panel court calendar for additional cases; however that was not an effect observed by panel court judges. This is probably because, in reality, few drug possession cases went to trial before Prop36 and although there may be even fewer now, the difference is not great. Furthermore, the number of arrests for drug crimes

increased dramatically in the years after Prop36, so it is unlikely that judges would feel any relief due to fewer hearings; rather it is more likely that they would feel increased pressure stemming from additional arraignments brought on by more arrests.

An analysis of state criminal justice statistics suggests that both the complaints filed rate and the conviction rate for felony possession<sup>64</sup> arrests increased after Proposition 36 was implemented. From 1995 to 2000, the complaints filed rate (the number of complaints filed as a percentage of arrests) averaged 94.5%; after Prop36 it averaged 95.7%. It is unknown whether the increase is directly related to Proposition 36, as 2002 data are missing and it appears the increase is primarily a function of higher complaints filed rates for 2004 and 2005 (96.1% and 97.7% respectively), a couple of years after Proposition 36 took effect.

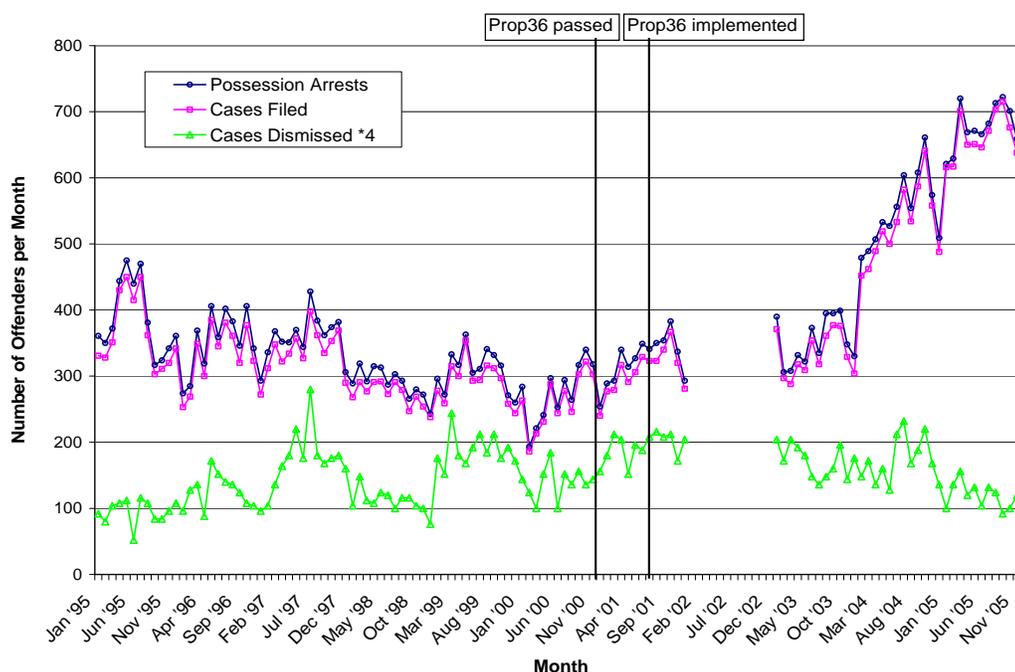
Conviction rates also increased after Proposition 36 became law. Prior to Proposition 36, an average of 79.8% of drug possession cases filed each year resulted in a conviction. After Proposition 36, an average of 81.6% of drug possession cases filed each year resulted in a conviction; an increase of approximately 2%. Once again, it is unknown whether it is directly related to Prop36 implementation, as factors that would be expected to affect the rate were not taken into consideration (ex. staffing levels, caseload, etc.); however the conviction rate for each post-Prop36 year was higher than any pre-Prop36 year (except one, 1998). The proportion of acquittals remained stable at less than .3% of cases each year. The number of felony drug possession cases filed increased after Prop36 but the number of cases dismissed by the court did not. Time series analysis indicated that the increase in the number of cases

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<sup>64</sup> Felony possession includes HS11350 and HS11377 arrests.

filed was not due to Proposition 36<sup>65</sup>. The number of cases dismissed by the court was not statistically significant and thus was not impacted by Proposition 36.

**Figure 5.3: Number of Felony Drug Possession Cases Filed and Cases Dismissed in Orange County, 1995 – 2005**



Source: California Criminal Justice Statistics Center (CJSC), OBTS database

### *Sentencing*

As mentioned, Proposition 36 changed sentences for most drug possession offenders, from a typical 30-90 days in jail with three years of probation to three years of probation with the condition of participation in drug treatment. It did not, however, change initial sentences for all drug offenders. As Table 5.1 illustrates, offenders eligible for PC1000 (a pre-plea diversion program for first-time drug offenders) continue to take that option because it is less onerous than Proposition 36 (and the benefits are greater because a conviction is never recorded on the offender’s criminal

<sup>65</sup> See Appendix K for a description of time series models and significance levels.

history file, this has particularly significant benefits for immigrants). Meanwhile offenders eligible and suitable for drug court now choose to accept Proposition 36 because, once again, it is less onerous than the alternative (drug court) yet still provides the benefit of no added jail time.

Proposition 36 also prohibited the use of incarceration as a tool to encourage compliance or as punishment for probation or court violations. According to practitioners, this changed how judges sentence offenders for probation violations and new charges related to drug use by dramatically decreasing the amount of time offenders spend behind bars for violations and new charges (see Table 5.1). For example, before Prop36, offenders would be sentenced to 16 months in prison after their third violation, now they will not be sentenced to prison until their fifth (or later) violation. Depending upon which side one is on, this can be viewed as a positive outcome, or a negative one<sup>66</sup>. Some practitioners, however, assert that a few offenders are sentenced more harshly when failing out of Prop36 than they would have if they had just taken the jail time in the beginning (at sentencing for their original crime). It is unknown whether this is still a problem, but research suggests that stiffer sentences occurred more frequently at the beginning of Prop36, before the “standards” shown in Table 5.1 were established.

What has been disappointing about Prop36 is that when a ... client has failed Prop36, sometimes the judge treats it as multiple probation violations and ends up sending the client for a longer jail sentence than they originally would have had, or in some cases to state prison usually the lower-term sentence, say out in sixteen months....Sometimes people fail the drug treatment and end up with longer sentences than if they hadn't tried them at all. (Attorney)

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<sup>66</sup> Practitioners claimed that some offenders are unmotivated to comply with the rules and work the program because they view the repercussions for non-compliance/failure to be inconsequential.

**Table 5.1: Examples of Typical Sentences for Initial Crime and New Violations for Offenders Before and After Proposition 36**

	PC1000 eligible		Typical Offender <sup>67</sup>		Drug Court Suitable	
	Before Prop36	After Prop36	Before Prop36	After Prop36	Before Prop36	After Prop36
<b>Initial crime</b>						
Under the influence (misdemeanor)	Diversion	<i>Diversion</i>	90 days jail + 3y probation	<i>Treatment + 3y probation</i>	90 days jail + 3y probation <sup>68</sup>	<i>Most take P36; Treatment + 3y prob.</i>
Felony possession	Diversion	<i>Diversion</i>	30 - 90 days jail + 3y probation	<i>Treatment + 3y probation</i>	Intensive drug court	<i>Most take P36; Treatment + 3y prob.</i>
<b>Violations</b>						
1 <sup>st</sup> New drug felony	30 - 90 days jail, removal from PC1000	<i>Prop36, removal from PC1000</i>	90 days in jail	<i>Continue probation, add a 2<sup>nd</sup> term of P36 prob.</i>	Varies, typically continues in program	<i>See typical offender, Prop36 1<sup>st</sup> viol.</i>
2 <sup>nd</sup> New drug felony	90 days in jail	<i>See Prop36, 1<sup>st</sup> violation</i>	180 days in jail	<i>Continue prob., (1<sup>st</sup> viol. on 2<sup>nd</sup> term; 2<sup>nd</sup> viol. on 1<sup>st</sup> term)</i>	Varies, typically continues in program	<i>See typical offender, Prop36 2<sup>nd</sup> viol.</i>
3 <sup>rd</sup> New drug felony	180 days in jail	<i>See Prop36, 2<sup>nd</sup> violation</i>	16 months in prison	<i>3<sup>rd</sup> viol. on 1<sup>st</sup> term = Removal from Prop36; 90 days in jail<sup>69</sup></i>	Varies, typically continues in program	<i>Enroll in drug court in lieu of jail now; or 90 days in jail</i>
4 <sup>th</sup> New drug felony	16 months in prison	<i>See Prop36, 3<sup>rd</sup> violation</i>	Parole violation (rtn'd to prison)	<i>180 days in jail</i>	Varies	<i>Enroll, or continue in drug court; or 180 days in jail</i>
5 <sup>th</sup> New drug felony	Parole violation (rtn'd to prison)		Parole violation (rtn'd to prison)	<i>16 months in prison</i>	Varies	<i>Enroll or continue in DC; or 16 mos prison</i>

<sup>67</sup> This chart is meant to simplify the sentencing complexities of Proposition 36. For the purposes of this chart, a “typical offender” is one who is eligible for Prop36, but who is not eligible for PC1000, nor suitable for drug court.

<sup>68</sup> There are no misdemeanor drug courts in Orange County; only felony drug courts. Therefore defendants charged with under the influence would not have the opportunity at initial crime to enter drug court.

<sup>69</sup> This is considered the offender’s 1<sup>st</sup> violation “outside” Prop36.

## *Post-Conviction*

### Report Backs

All offenders are required to report to court when they violate a term of their probation or when they commit a new crime. Proposition 36 offenders are no different; they simply violate probation and are caught committing new crimes more frequently than other types of offenders. This is because there are a lot of rules to comply with in Prop36 and according to practitioners, drug addicted individuals find it difficult to adhere to all the requirements (numerous treatment group meetings, drug testing, probation officer meetings, etc). In addition, the court takes a more active role in monitoring program compliance with this population than it does with other populations, save drug court and other collaborative courts participants. The large number of report backs increased the workload for judges, court staff, public defenders, city attorneys, and presumably district attorneys as well.

The most typical sentence would be a 90 day-sentence, the client would negotiate a plea to something, be served a 90-day sentence, and we had a couple of court appearances with those cases and then they were finished. After Prop36, those cases were subject to continuous report back appearances in C58 (Prop36 court), so the workload increased. (Attorney)

The bad part is, is that so many of these cases come back when the person fails to make their points or comes in with a dirty test or picks up a new drug related offense that they get diverted on or excuse me, re-referred Prop36 on. So we're handling the cases multiple times down the line; after the people have pled guilty. (Attorney)

A few of them (drug cases) might [have] come back for probation violations under the old system if they tested dirty or violated probation, or allegedly did something. But because they're in Prop36 and they're being more closely monitored, because they're going to treatment ... those cases tend to come back much more frequently than they would have under the old system. (Attorney)

Because these cases are re-handled so frequently attorneys report that they end up spending more time on the cases than was customary before Prop36 became law. So, whatever time was saved by fewer hearings or trials or earlier plea bargains is expended with the added time devoted to report backs. One practitioner estimated that attorneys spend two hours more on standard drug possession cases now (including all the report backs) than they did prior to Proposition 36. In addition to the increased time involved, each agency had to create a new system to handle the case files of all these defendants. It required new (or adapted) filing systems and case handling procedures as well as dedicated staff. Proposition 36 funding allowed some agencies to hire more personnel; but other agencies had to absorb the extra workload without added resources. Re-handling cases on such a large scale required agency-wide procedural changes and workload increases that had to be addressed by each agency.

### *IMPACT ON COURTROOM AGENCIES AND ACTORS*

#### *Orange County Superior Court*

The sentencing and post-sentencing changes dictated by Proposition 36 led to obligatory changes in some court procedures and created unexpected changes in other courts in the system as well. For example, unlike other cases in the criminal court system, Prop36 cases are re-handled multiple times due to report backs and frequent probation and court violations. A new courtroom, devoted solely to Proposition 36 cases, was created in order to handle this extra workload. The court encountered challenges as it struggled to accommodate the volume of offenders as

well as the seriousness of their addiction problems. Eventually, two programs (Intensive Twelve-Ten and Dual Diagnosis Court) were created to deal with the difficult-to-treat Prop36 clients. Moreover, Orange County struggled as Proposition 36 decreased participation in, and changed the makeup of, existing drug courts in the county.

### Prop36 Court Created

Orange County anticipated multiple report-backs and designed its response around the issue by creating one specific court to handle the cases. Department C58 (a.k.a. Prop36 Court), located in the central superior courthouse, has three public defenders, a district attorney, a probation officer, a health care worker, and a judge, as well as a court clerk, an assistant court clerk and a courtroom assistant. It is a very busy and chaotic court. The first time I visited the court, I was struck by how crowded it was, not only with defendants in the gallery (it was standing room only for at least an hour and probably closer to two hours) but also with the entire courtroom staff that was required to process all of the cases on the calendar. In fact, the court averages 100-120 cases *each day* and sometimes handles as many as 150.

Originally the judge assigned to Prop36 court wanted to run it like a pseudo-drug court, in which offenders were closely monitored and held accountable for improving their lives by consistent courtroom staff that were familiar to the offenders<sup>70</sup>. The judge initially assigned to Prop36 court scheduled frequent monitoring reviews and required everyone to get a job (if they did not comply, he ordered them to perform 40 hours of community service per week). “I gave them 30

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<sup>70</sup> A true drug court model in which there is low staff to client ratio, graduated sanctions, and close supervision was never expected due to resource constraints.

days to get a job. If you get a job, something's going right. That would help me monitor where probation couldn't. 'Come back; show me you're still working.' If you're working the same job for 30 days, something's going right in your life. I'll work with you on that" (Confidential Informant EVC, personal communication). Unfortunately this high level of individual attention did not last for long because violation hearings and monitoring reviews quickly consumed the court calendar.

We tried to [take a holistic approach like drug court] with Prop36, but fairly early on, the court was overwhelmed with just problem cases. They couldn't bring people back for 'Okay, you've got jobs, [or] if [they] applied for jobs, show me that, at least the applications. Okay, you've got 30 days to go out and find a job, even if you're working at McDonald's down the street, you need to find some sort of job'. Judge X was doing a lot of that in the beginning, but pretty soon it became clearer the case load was overwhelming, so he wasn't able to do as much of that.... Which is unfortunate because I think the success rate would be higher if we had more resources. (Probation Officer)

The initial report back concept that Judge X had was more like Drug Court, where people were asked about seeking jobs, asked about their treatment, that sort of thing, with regular report backs every couple of weeks or so. The caseload exploded and was so large that within a relatively short period of time C58 became more of a probation violation kind of court. So people who were doing well in treatment, we wouldn't see them in court because we had so many clients, just in general, that a calendar would be full of cases where there was some problem with treatment or some other problem that required court intervention other than simply progress reviews. So that court became more of a problem-solving court rather than a monitoring court.... The people who were doing well soon were no longer coming back to court. The court couldn't afford the time to say 'Okay, come back in two weeks, we'll see how you're doing with your job search'. (Attorney)

The idea behind monitoring reviews is that most Prop36 offenders need encouragement and someone to hold them accountable. The court, though, was overwhelmed by the surprisingly large number of Prop36 offenders and their high

levels of addiction. In the words of one practitioner, “I think it was highly unexpected when they passed it, that the degree of criminality and the degree of addiction would be as great as it was.” So, rather than employ a one-size-fits-all approach, Prop36 court judges tried to adapt and tailor the program (specifically the number of court appearances) to individual offenders. For example, some offenders do not significantly benefit from frequent monitoring reviews – they do fine without them. On the other hand, parolees and other defendants with prior prison experience, as well as other defendants with mental or physical health issues, and those who have violated their probation are seen more frequently than defendants characterized as low-risk or low-need. Judges attempted to monitor offenders as closely as possible in order to improve the likelihood of success for each offender.

If I felt like there was an issue or problem, I’d have them back soon. If I thought they were smooth, moving along, getting good reports, clean testing, I’d say, “You bought extra time for coming back.”... 90 days [between monitoring reviews] was typical. If there was a problem, it could be anywhere from a day to two weeks to 30 days to 60 days. I’d just throw out what seemed appropriate based upon the circumstance. (Judge)

Because the way we’ve had to deal with this is you can’t do all these monitoring reviews because you’ve got that wide net...you’ve got a lot of people that just sort of blew off PC1000 for whatever stupid reason, they figure yeah what’s the big deal, so now they’re in Prop36 and they may not be really drug dependant and they would benefit had they only gone and paid attention to PC1000 so we have to deal with them and its really pointless to keep bringing them back and taking up court time to deal with them. (Judge)

You’re sort of sifting and re-sifting and re-sifting and keeping them all on sort of different appearance tracks. Depending upon how they’re doing. So that’s sort of how we do it and you know I think it would probably be ideal if you just had the time to chat with everybody all day. (Judge)

Of course, “the more often you have them back, the larger your calendars are” (Confidential Informant EBI, personal communication). This was a problem because of the sheer number of people on Prop36 probation and because Orange County only has resources to staff one felony Prop36 court. Individualized scheduling was not only logical, it was necessary to control the court calendar and keep it manageable (albeit very busy). For example, if the calendar was over booked the judge could schedule a monitoring review in 21 or 30 days instead of 14 days. Alternatively, he could eliminate monitoring reviews entirely for offenders progressing well in the program. It is a continuous balancing act – trying to bring offenders back as often as necessary to support program compliance without overburdening the court staff.

The main purpose of the monitoring reviews is to hold offenders accountable and encourage program compliance. Without monitoring reviews, some offenders will not do the things they are required to do by law (e.g. go to treatment). However, from a judges’ standpoint, this is also where they have power over defendants. Although Proposition 36 specifically prohibits incarceration for drug-related violations, it does not preclude a judge from issuing a warrant for a person’s arrest if they fail to appear in court as ordered. If an offender is scheduled for a hearing or review in court and fails to appear, a judge will issue a warrant for the individual’s arrest. Once caught by law enforcement, the person is jailed until their court appearance (one to four days later, depending on the time and the day they are arrested). Issuing such warrants serves the purpose of forcing shock incarceration

on offenders not complying with Prop36 and is one method judges have to get around this restriction in the law.

My pitch to everyone was, if you choose to continue to use, I won't get you on a new charge, I'll get you on the failure to appear. You just won't show up because you know when you're getting high you don't care to show up to your meeting. You don't care to show up to probation. You don't care to do your AA and NA. You don't care to come to court. What I'll do is I'll end up issuing a warrant for you and I'll get you that way. I won't catch you using, I'll catch you for not doing what you're supposed to be doing. (Judge)

The more things you schedule, the quicker you catch them. That's where you really have power with Prop36. When judges say, "We don't have power to incarcerate." Schedule something. Just schedule something and see if they show up. If they're showing up, then more power to them. They're making it. They're making a step and that's a big thing if they can make a step. If you have any suspicion, bring them back. Bring them back the next day. (Judge)

The above quotes articulate how judges, as street-level bureaucrats, circumvent the law. Just like police officers, who began charging the additional, also-present non-drug misdemeanors in order to disqualify offenders from Prop36 sentencing; judges used the tools of their trade to circumvent the portion of the law they disagreed with and had some control over. It is interesting that, practitioners at every stage of the criminal justice system (though not every agency) honed in on the unique methods they had available to them to circumvent the legislation.

Judges seemed to appreciate the intent of Proposition 36 and worked hard to identify the offenders who were trying to get sober (even if they were messing up occasionally) from those who were completely unmotivated and simply working the system to stay out of jail. When asked how to improve the legislation, judges often said they wanted more discretion to keep offenders in the program, beyond the

maximum three violations. They used the tools at their disposal to legally achieve the outcome they desired (in this case shock incarceration). “There [are] so many tools if you want to lock people up, if that’s your desire. What we hopefully have is a balance” (Confidential Informant, personal communication). It is interesting that judges did not circumvent the law in order to undermine it (like law enforcement officers), but rather to introduce a component they believed would improve its success. Ultimately, however, the power judges have in this respect is almost completely conditioned on the offender’s behavior. If the offender appears in court, the judge cannot issue an arrest warrant, even if they did skip treatment, test dirty, and fail to communicate with their probation officer.

### Challenging Population

Practitioners in Prop36 court are challenged by the wide range of offenders they find themselves serving. “We have everybody from the homeless and the poor to some people who are paying for very high end residential treatment facilities” (Confidential Informant EZJ, personal communication). Most, but not all, offenders have serious addictions. Furthermore, many, despite having serious long term addictions are entering the criminal justice system for the first time as a result of Prop36. This supports the net widening theory proposed in chapter four.

One of the things I thought was significant in Orange County is (sic) that...75% of the people that came thru Prop36 were new probationers. I thought after a year we would catch all the drug addicts and be done, and we’d just be recycling the same people. But for 4 years consistently, 75% of the people are (sic) new probationers. That means they haven’t had probation in the past. That means they’re new to the system. We were catching new people all the time. (Judge)

In contrast to these new people were the offenders who had long criminal histories that did not qualify for Prop36, yet were being sentenced to it. One of the common complaints I heard from practitioners at every stage of the criminal justice system was that sophisticated career criminals were being allowed to enroll in Proposition 36, despite being disqualified due to their past criminal history. Unlike the “they’re not deserving” argument articulated by law enforcement officers, judges (as well as treatment professionals and probation officers) familiar with Prop36 and drug treatment stated that these offenders are not suitable for Prop36 and furthermore that their presence negatively impacts the non-criminally sophisticated users enrolled in Prop36. Even though these offenders represent no more than 25% of all Prop36 offenders in Orange County, they have captured the attention of most practitioners. Whether this is because they utilize a disproportionate amount of court services or because they are noticeably more disruptive, negative, or hard to treat, is unknown. For whatever reason, practitioners throughout the system feel that this population causes problems for other offenders as well as some practitioners.

Several hypotheses were offered for why Orange County appears to have this issue. Some practitioners familiar with Prop36 offenders believe that some felony panel court judges have such highly favorable views of drug treatment that they think everyone should be given the opportunity to participate. What the felony panel court judges do not understand, according to other practitioners working with Prop36 clients, is that Prop36 is not a drug court and not everyone is suitable for the

program. Prop36 was intended for non-criminally sophisticated addicts, not career criminals who also suffer from addiction.

I think part of the problem we face in Orange County is sometimes a cavalier attitude by judges in the pleading courts, by just putting everybody in Prop36 because they feel everybody deserves drug treatment... I don't think anybody knows much about Prop36, I don't think they look at it, I don't think they read it. (Courtroom Practitioner)

We've also had the situation where a judge in one of the branch courts may say 'I think this person is eligible, I'll put them in Prop36', case comes to C58 and it's clear they're not eligible. DA objects and [the judge] will eliminate him from the program. (Attorney)

Other theories articulated by practitioners throughout the criminal justice system place the blame on district attorneys, saying that DA's assigned to felony panel courts are (1) overworked and making mistakes, (2) under-educated about Prop36, and/or (3) trying to improve their conviction rate. Given that drug arrests increased significantly in the years after Prop36 was implemented, the most likely explanation is that D.A.'s are feeling significant pressure to resolve cases quickly<sup>71</sup>. The pressure on the D.A.'s from increased arrests provides an incentive to dismiss the adjoining non-drug crimes (charged by law enforcement officers to disqualify the offender) in order to settle the case quickly. The increased caseload pressure also, in all likelihood, leads to some mistakes in which an offender's disqualifying past criminal history is overlooked by DA's and/or judges in the rush to settle the case. While it is true that D.A.'s are more likely to share law enforcement officers' negative opinions of offenders and Proposition 36, their need to efficiently resolve

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<sup>71</sup> I was unable to interview anyone at the DA's office, however, it is logical to assume that the additional arrests had to have had some impact on DA's (unless the increase in drug arrests was equaled by declines in arrests for other types of crimes, which is unlikely).

cases likely takes precedence over any personal desire an attorney may have to severely punish a particular drug offender. Hence, there are more self-promoting incentives for prosecutors to drop the additional charges alleged by law enforcement officers when they are confronted with increasing caseloads.

Therefore, in all probability system capacity constraints are driving the results observed. The criminal justice system is composed of a tightly interwoven set of agencies and actors that are independent, yet tied to each other in mutually-dependent ways. System capacity is an underlying mechanism that allows (or forces) the criminal justice system to intuitively expand or contract as capacity changes. Rogue judges and DA's who are highly favorable toward drug treatment may also contribute to the problem; however the issue is more likely explained by system capacity constraints. Whatever the explanation, the fact is that criminally-sophisticated offenders who do not qualify, are in fact enrolled in Prop36 and causing concern for both treatment and criminal justice practitioners.

Moreover, Prop36 clients have presented challenges for court personnel since the law went into effect in 2001. Right from the start, the court has been burdened with many more offenders than they anticipated. Instead of seeing primarily low-level novice users, the court has been inundated with long-term multiple-issues users who frequently lack basic life skills. By and large, these difficult to treat users fall into three categories, (1) inappropriate offenders (criminally sophisticated), (2) long term users with high levels of addiction (the largest proportion of offenders), and (3) mentally disordered offenders (who are unable to adhere to the requirements of Prop36).

We have a lot of two-talented, one-talented, no-talented people coming through here. They have hard lives, hard issues. They have a lot of issues they're dealing with, low socioeconomic [status], the dual diagnosis issues [mental illness and addiction]. Everyone getting off drugs suffers from depression. They're unemployed. They don't have a driver's license, and we're expecting them to be fruitful and multiply. They're going to struggle with that. We're not seeing the rich people coming thru the court system. They don't patrol rich people. (Judge)

We get a lot of mentally ill people who don't qualify for any of the other mentally ill boutique courts or specialty courts so we have to deal with them [in Prop36 court]. (Judge)

Well when you mix those kind of people [violent offenders] with the PC1000 fallout people, it's not a good match. It's not a good match at all. And the health care people were complaining and still do that those worn prison people come in there and basically swear and cuss and have a bad attitude and it's like a bad apple in the Prop36 barrel that the public had no idea was going to be there. And that's another problem I mean, for starters to clean this thing up they need to get rid of all of those violent people. They don't belong in that program [Prop36]. (Judge)

Prop36, you can have gang members and [people with] gang ties... as long as they qualify and that's a huge difference [from drug court] 'cause [sic] that kind of mentality should not be in your therapy sessions. (Judge)

### New Programs

Understanding the problems of these hard to treat defendants Orange County created two programs, Dual Diagnosis Court (DDC) and Intensive Twelve-Ten (ITT), in an attempt to increase the number of Prop36 offenders who are able to succeed in drug treatment. For example, court personnel noted that offenders with severe mental health issues had trouble complying with Prop36.

When you're mentally ill you can't comply with "go here, go there, do this, do that." I mean cause you're on the bus and you're schizophrenic and you think people are gonna [sic] stab you and kill you and it was really sad to see those people going to state prison

because they were self-medicating with the drugs and then they couldn't follow through with the program to get clean. So I asked health care and probation if they would give me some staff and we could try an experimental court with taking those Prop36 clients and using Prop36 funding to see if we could prevent them from going to state prison and it was very, very effective. (Judge)

These offenders have unique issues that are best addressed in a court specifically designed for them. DDC was designed for mentally ill offenders who failed out of Prop36 and were facing prison time. It started about a year after Proposition 36 was implemented and has a capacity of 50 offenders. It was the first criminal mental health court in the county. It operates as a collaborative drug court with multiple stages and stringent requirements. The goal is to “prevent the client from coming back into the criminal justice system and to help them reach a state where they are achieving their maximum potential” (Confidential Informant EBQ, personal communication).

Intensive Twelve-Ten was created in January 2007 within C58 for Prop36 defendants who require closer supervision to succeed. It is modeled on drug court and includes a client to staff ratio of 50 to 1. There is one health care provider and one probation officer assigned to the program, both of whom only supervise these defendants. The small staff to client ratio allows for much closer supervision and monitoring, which leads to better compliance and higher success rates. There are only 50 participants in the program at any given time. They all appear in court every Friday or every other Friday morning (depending on each individual's stage in the program), so they get to know each other and start to support each other. “They're like a team. In fact a month or two after we started it up one of the gals

came in with an ITT T-shirt. She had a bunch of them printed up for the girls in the sober living home” (Confidential Informant EZJ, personal communication).

According to the judge, approximately 80% of offenders are succeeding in this program. So, what is different about this program and these offenders? “Most all of them are on (their) third violation so I can take them in (sentence them to jail)” (Confidential Informant EZJ). Also, “[t]hey have probation to report to every week, they have health care to report to every week, they’re going to meetings every single day, there’s just an awful lot that’s required of them” (Confidential Informant EZJ). Finally, frequent testing is the key, according to the judge who runs ITT.

Both programs were created to improve the success of drug treatment, keep offenders out of prison (or jail), and help motivated offenders improve their lives. Compassionate judges and practitioners took the initiative and went out of their way to create programs within the criminal justice system with the offenders needs in mind. It was not necessarily easy to get these intensive programs off the ground – it took convincing, cajoling and creativity to find the funding, the resources, as well as the time to devote to these special cases. Yet, in speaking with the judges who initiated these programs, it is obvious that they derive a great deal of satisfaction watching these offenders make progress and they take great pride in watching them succeed.

Some of the people that were in my Prop36 mental health court developed a co-occurring disorders meeting for NA. So they opened their own meeting and they give each other rides and go to that meeting. And it’s a legitimate outside meeting, other people go to it too, but they started it. Which is pretty cool, yeah, very, very cool. (Judge)

And they've all been very successful it's been wonderful to see these clients be able to turn their lives around. In fact yesterday we had a graduation of a gal who'd been in Prop36, she was bipolar diagnosed at 16, been in and out of mental institutions all her life, either lived on the streets or with her mother, lots of suicide attempts, and she had 2 years in my court, she graduated yesterday and her mother came in and said, "you saw things in my daughter that I never saw, you saw she could be successful, she now has her own apartment, she takes her meds, she's been clean and sober, she has a job, she pays all her bills", and her mother never thought that she'd be an independent person who could live independently. (Judge)

### Decreased Drug Court Participation

When Proposition 36 was on the ballot many drug court judges throughout the state came out against it for several reasons, including the fear that it would decrease participation in drug courts. This is exactly what happened in Orange County. Not only did it decrease participation, it also changed the makeup of offenders in drug courts throughout the county. By the end of 2002, only one and a half years after Prop36 inception, more than half of all new drug court admissions had failed out of Prop36 before enrolling in drug court (see Table 5.2). By 2005, fully  $\frac{3}{4}$  of all people admitted to drug court had previously failed out of Prop36. According to practitioners, offenders in drug court are now more serious offenders than was the case before Prop36 went into effect.

Two bad things happened. One is, we lost good clients who are the type of clients who'd do well in drug court. And that was really, really sad for us to lose those clients. The second devastating thing that happened to drug court is that now the clients that are getting in drug court are those clients that had a higher degree of criminality, significantly higher degree of criminality and they are the ones that wanted drug court because they had more to lose. They were looking at more jail time because maybe they had prison priors or they had...other cases they were on probation for. So we started getting a different kind of client when we started building up drug court again. And that client has a higher degree of criminality. There's a direct

correlation between the degree of criminality and the success and recidivism. So now...our statistics in drug court have plummeted in terms of our recidivism, once we started getting this new Prop36 crowd of higher criminality. So it's been devastating on the best program we've ever had in the criminal justice system. As well as not serving the people who are in it [drug court] well. (Judge)

When Prop36 passed, the number of participants in drug court temporarily declined. And the reason was people who may have otherwise gone to drug court were now going into Prop36. But within the first year, it became obvious that in dealing with Prop36 failures, one option we had was to steer them towards a drug court. If they were otherwise eligible for drug court and they still wanted treatment and they simply couldn't make it in Prop36, they were allowed to apply then they were evaluated for admission into drug court. And a significant number of drug court entrants, people who entered drug court after Prop36, more than half were Prop36 failures. So drug court began to be filled with people who were Prop36 failures and many of them succeed to the same degree as if they had come in straight from their offense. (Attorney)

**Table 5.2: Admissions and Capacity of Orange County Drug Courts, 1995-2006**

<b>Year</b>	<b>Drug Court Capacity</b>	<b>Drug Court Total # Participants</b>	<b>Operating at ___% of Capacity</b>	<b>Drug Court Admissions in Calendar Year</b>	<b>+/- Over Previous Year Admis.</b>	<b>Prop36 Fallouts Admiss.</b>
1995	50	13	26%	13		--
1996	50	41	82%	38	+ 25	--
1997	150	153	102%	154	+ 116	--
1998	200	263	132%	251	+ 97	--
1999	250	332	133%	286	+ 35	--
2000	600	495	83%	433	+ 147	--
2001	450	380	83%	228	- 205	--
2002	460	401	87%	346	+ 118	58%
2003	460	487	106%	362	+ 16	66%
2004	500	489	98%	273	- 89	64%
2005	500	504	101%	295	+ 22	76%
2006	500	531	106%	295	+/- 0	69%

Source: Orange County Collaborative Courts Annual Reports 2004-2006 and supplemental data provided by O.C. Collaborative Courts Department

The fact that Prop36 temporarily lowered drug court participation and detoured drug court eligible and suitable clients into a less intensive program without the components necessary for proven success frustrated some court

practitioners. Some practitioners felt the Prop36 detour made offenders more amenable to treatment (because they were tired of the process), but others felt strongly that it made it more difficult for offenders to succeed, since they had two more years of “screwing around.” Court staff have plans to do a study of recidivism between the two groups of drug court participants (Prop36 fallouts and not) to see if there is any difference; unfortunately results will not be ready for at least a year.

### *Public Defender’s Office*

The Public Defender’s Office (PDO) took an active role in shaping Orange County’s response to Proposition 36. Agency representatives spent enormous amounts of time in various meetings with representatives from other agencies within the county prior to and during the inception process. Representatives also attended numerous meetings throughout the state in the early years. Thus, in this respect the workload increase was top heavy (at least for the few representatives who were integral in the early planning stages).

Beyond the initial planning and implementation, the workload for the Public Defender’s office increased moderately as a result of the case processing and sentencing changes that accompanied the passage of Proposition 36. Agency workload increased by seven attorneys and three support staff; but the office was only able to add three and a half attorneys and one support staff. The additional workload was absorbed by everyone doing a little more. Although the new law required many changes that increased the amount of work to be done, the sustained

workload increase was primarily a result of the added advisement time and the new court that needed to be staffed (C58) to handle the report backs.

In addition to staffing Prop36 court, the Public Defender's Office also had to set up procedures for processing the files of felony Prop36 cases that are monitored in C58. Case files need to be stored and filed in a place and manner that allows them to be quickly accessed for three years (or until the client has completed probation). Typically, case files for the cases tried in branch courts are filed in the branch court offices; now those felony Prop36 cases need to be transferred to the central office so they are accessible to C58 public defenders quickly. In addition, the cases that were originally settled in central court also have to be easily accessible for report-backs. Filing staff are much busier pulling cases than they were in the past, a result of the numerous and frequent report backs.

The PDO also had to draft documents to give to defendants explaining Proposition 36, where they need to go, and how to get there. For example, if a defendant agrees to Prop36 diversion, the public defender will give them paperwork and a checklist telling them they need to report to probation within two days and then to Healthcare to enroll in treatment. These documents have to have clear instructions as well as directions, so the defendant will not get lost. The PD also needed to create a document that spells out all the rules of Prop36 and all the things that are required to stay in the program. This is all part of the advisement that occurs between the attorney and the client. The public defender's office worked closely with probation and healthcare in order to streamline the process, but it all required a lot of time and effort in the beginning to get organized.

Furthermore, Prop36 altered the role of public defenders assigned to C58. Attorneys in this court act much more like attorneys in collaborative courts (such as drug court or mental health court) in which the actors from the various agencies work together as a team to try and resolve problems. This is in contrast to the typical adversarial courtroom “because there’s a lot less litigation, there’s a lot less trials, and a lot less motion work, a lot less presenting testimony, cross-examination, that kind of thing” (Confidential Informant, personal communication). Prop36 court is “much more an equity situation, meaning that there’s more talk about what ought to be done [with the offender]” (Confidential Informant AFT, personal communication). This can be difficult and not all attorneys are interested in such an assignment. As one practitioner stated, “nobody became a public defender really, to do Prop36, you want to go in and you want to try cases, that’s what you do. Nobody became a DA to do this semi-touchy feely, they came to try cases.” It is unknown how pervasive this view is and whether line level public defenders see the Prop36 assignment as a punishment, as a reward, or as something in between.

One of the interesting impacts of Prop36 on public defenders is that it changed the makeup of cases that remained on the felony-trial attorneys’ caseloads. Prior to Prop36 felony-trial attorneys handled a variety of felony trial cases, from low-level drug offenses up to murders. Now, because of Prop36, there are fewer low-level drug cases that go to trial. This leaves a higher percentage of serious cases on the felony-trial attorneys’ caseloads. Having a higher severity of cases increases the stress and emotional toll on attorneys, particularly newer attorneys.

What we found was that ... it did increase the level of severity of the cases that remained on the felony-trial calendar for the attorneys that do the felony trials.... [The serious cases that remained are] more stressful...Cases where a defendant is facing a potential life sentence or a multiple-year prison sentence puts more stress on the attorney than the case that, even after a trial, is likely to be a 90 day sentence in county jail. It doesn't really affect the real experienced attorneys because they're handling the heavier, more serious cases anyway. But the younger attorneys who are doing felony trials for the first time, they tend to be doing some of the more serious cases sooner in their career because although most of the drug cases did not come up for trial, enough did so that there were some of those in the caseload of a new felony-panel attorney. Now there are fewer of those kinds of cases and the cases they do have are more serious cases. (Attorney)

The impact of Prop36 on the Public Defender's Office was moderate at the beginning and minor after a couple years of adapting to the new status quo. Proposition 36 was not agency-changing in the way it was for the probation department (to be discussed in the next chapter). However, it did require adaptations and a lot of time creating procedures, training staff, and advising clients.

#### *Anaheim City Attorney's Office*

There are only a few City Attorney's Offices in the state of California that prosecute criminal cases. Anaheim is the only one in Orange County that files criminal charges and this office only handles misdemeanor crimes. Possibly for this reason, the Anaheim City Attorney's Office (ACAO) did not experience the same workload increase that the PDO did. This is probably because misdemeanor Prop36 offenders, who are monitored in several branch courts throughout the county, are not as closely supervised as felony Prop36 probationers. These offenders are on "informal" probation and are not required to report to court as frequently as felony

defendants. They do report back to court, just not as often as felony offenders. This makes the workload more manageable for the lawyers assigned to these cases.

The misdemeanor Prop36 courts also process arraignments, preliminary hearings, and other court matters. For this reason, the attorneys in these courts perform a variety of tasks and are not limited to Prop36 violation cases. This is important in regards to Prop36 adaptation because it allowed the additional workload to be spread over a larger number of attorneys and ensured that no single attorney had their job completely redefined by Proposition 36.

The Anaheim City Attorney's Office took a very strong negative position on Proposition 36 and proactively trained Anaheim police officers on how to circumvent the law by adding non-drug related charges whenever the elements of another crime were present. In fact, "when we review a case, even when there's something not charged, we'll look very carefully to see if there's other criminal conduct that we might also allege" (Confidential Informant MBA, personal communication). Other practitioners believe this is common practice for attorneys from the DA's office also. As one practitioner alleged, "fairly early on the DA was actually looking for disqualifying offenses to keep people out of Prop36. And I think that's happened less in the last few years than it did in the first year or two" (Confidential Informant AFT, personal communication).

### *CONCLUSION*

Each agency ensconced in the court process adapted to the legislation in slightly different ways. The judges' method of adapting to Prop36 was based on a respect for law in general, (even if not this particular law and regardless of whether

one agreed with the version passed by the voters). The PDO's method of adapting to Prop36 was based on a relatively positive view of the law and a desire to help their client benefit from it. Finally, the ACAO's method of adaptation was based on a negative view of the law as well as many of the offenders it applies to. These views shaped the respective agencies responses to the legislation and the steps they took to implement it. For example, court staff was committed to make the program work using the available tools and resources at their disposal. Judges were creative when it came to figuring out how to implement shock incarceration, legally. On the other hand, Anaheim City Attorney's Office fought the legislation to the appeals court and proactively trained police officers how to circumvent the law (based on interviews with law enforcement officers, DA's also trained officers on circumvention methods). The end result is that the way an agency chose to adapt to Prop36 was based strongly on their opinion of the legislation from the start.

## **IMPACT ON OFFENDER SENTENCING AND CORRECTIONS** —

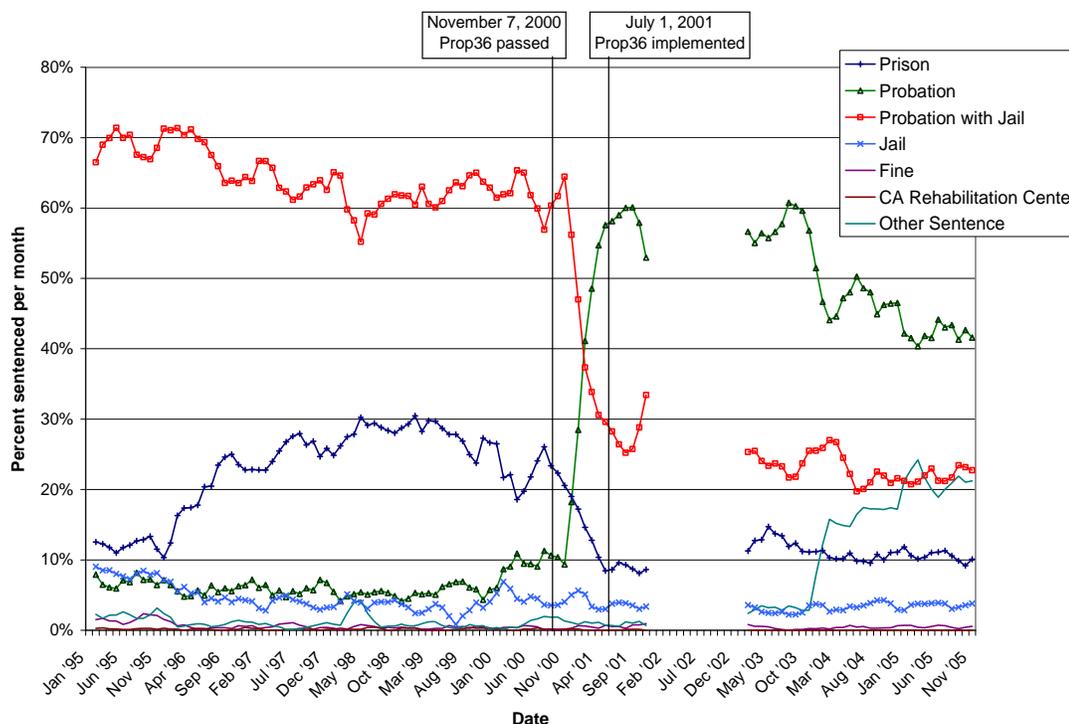
Starting in 2001, Proposition 36 changed the way that more than 36,000 drug offenders are punished annually in the state of California (Longshore et al., 2004). Between 2001 and 2005, more than 193,000 offenders throughout California were sentenced to Prop36 probation (*Longshore, et al., 2007*). In Orange County alone between 2001 and 2007, more than 24,000 offenders were sentenced to probation under Prop36 (Orange County Probation Department PC1210 Monthly Report, December 2007). Staff at the Orange County Jail articulated that the law had no noticeable impact on their agency. Parole agents had to adapt to new policies, but not additional parolees. But for the Orange County Probation Department, which had to supervise all these offenders, the impact was nothing short of “overwhelming.” This chapter explains the sentencing changes that occurred, describes the impact that those sentencing changes had on corrections agencies in Orange County (probation, parole, and jail) and estimates the number of Orange County offenders diverted from state and local incarceration as a result of Proposition 36.

### *SENTENCING CHANGES*

Proposition 36 profoundly changed the sentences drug offenders receive for possession related offenses, from incarceration-based sentences to probation in the community. Prior to Proposition 36, most offenders convicted of a drug possession offense were given a combined jail and probation sentence. This means that most

offenders convicted of a drug possession offense were sentenced to 90 days in jail and three years on probation. After Proposition 36, less than a quarter of all drug possession offenders received a combined jail and probation sentence. Instead, most drug possession offenders were sentenced to three years on probation (with mandatory participation in drug treatment).

**Figure 6.1: Sentences for Orange County Offenders Convicted of a Drug Possession Offense, 1995 – 2005 (3 Month Moving Average)**



Source: California Criminal Justice Statistics Center (CJSC). 2002 data are missing due to a data entry error at CJSC that affected the OBTS database.

Figure 6.1 (above) displays the dramatic change in sentencing practices that occurred as a result of Proposition 36 and Table 6.1 (below) displays the changes in numerical format. Analysis of variance was conducted on each series to determine

if the mean differences were different before and after SACPA implementation. As can be seen, probation and probation with jail flip-flopped as the most often given sentence. The proportion of drug offenders who were sentenced to probation with jail declined from 64.3% before Prop36 to 22% afterwards ( $p < .001$ ) while the percent that was sentenced to straight probation (without jail) increased from 5.7% to 53% ( $p < .001$ ). This is a remarkable change. Additionally, the proportion sentenced to prison decreased by half (from 26.6% to 12.7%;  $p < .001$ ); and although jail (without probation) is not a very popular sentence for drug possession offenders in Orange County, the percent of offenders given this sentence dropped by two-thirds (from 2.4% to .8%;  $p < .05$ ). Furthermore, Prop36 brought the number of Orange County drug offenders sentenced to the California Rehabilitation Center (a California Department of Corrections and Rehabilitation facility for civil narcotics addicts) to near zero.

As indicated by Figure 6.1, sentencing patterns changed prior to July 1, 2001, the official start date of Proposition 36. This happened for two reasons; (1) Orange County implemented a pilot study in March 2001 that mimicked Prop36 (and thus changed sentencing patterns), and (2) some judges began sentencing offenders differently in January 2001 in anticipation of Prop36 (so that Prop36 eligible defendants would not clog the courts until July). For these reasons and based on a review of the data, March 2001 was chosen as the start date for Prop36 in Orange County for the purpose of estimating the effect of Proposition 36 on sentencing practices.

**Table 6.1: Sentences for Orange County Offenders Convicted of Drug Possession Offenses Before and After Proposition 36<sup>1</sup>**

	<b>Pre-Prop36 1/1/95-2/28/01</b>	<b>Post Prop36 3/1/01-12/31/05</b>	<b>F statistic<sup>2</sup></b>
<b>Prison</b>	26.6%	12.7%	137.312**
<b>Probation</b>	5.7%	53.0%	1350.372**
<b>Probation with Jail</b>	64.3%	22.0%	1450.687**
<b>Jail</b>	2.4%	.8%	16.987**
<b>Fine</b>	.1%	.0%	2.334
<b>California Rehabilitation Center (CRC)</b>	.2%	.0%	15.867**
<b>Other<sup>2</sup></b>	.7%	11.6%	86.243**

<sup>1</sup>The “pre-Proposition 36” period is defined as January 1, 1995 – February 28, 2001. The “post Proposition 36” period is defined as March 1, 2001 – December 31, 2005. March 1, 2001 (the beginning of Orange County’s Pilot Study) is used as the start of the “Post Proposition 36” period instead of July 1, 2001 (official implementation date) for data analysis purposes because the data indicate that sentences changed by this point. 2002 data are excluded due to a data entry error that occurred at DOJ-CJSC.

<sup>2</sup> The F statistic should not be interpreted literally.

<sup>3</sup> The “other” category includes cases in which no sentence was imposed, the sentence was suspended, or the sentence was stayed.

As Table 6.1 illustrates, the percentage of offenders sentenced to probation after Prop36 is affected by the “other” sentence category, which includes cases in which no sentence was imposed, the sentence was suspended, or the sentence was stayed. From 1995-2001, the percent of offenders sentenced as “other” was stable at .7% per month. In 2003, it was consistently less than 2% per month. Starting in January 2004, however, the percent sentenced as “other” increased to 16% and stayed at that level or higher in 2004 and 2005. On average 16%-24% of offenders convicted of a drug possession offense in 2004-2005 were sentenced as “other.” Data analysis indicates that the change only affects the “probation” sentence category (and not prison, probation with jail, jail, fine, or CRC). The reason for the change is not completely understood by this researcher, analysts at Orange County Superior Court (OCSC), or data specialists at the Criminal Justice Statistics Center (CJSC); but based on the analysis of the data along with conversations with

knowledgeable persons at both OCSC and CJSC; it most likely reflects a re-categorization of data at the county level. In other words, some offenders who had been classified as “sentenced to probation” prior to January 2004 were classified as sentenced to “other” starting in January 2004 due to an administrative change (not a sentencing change). Therefore, the two categories (probation and other) were combined for the purpose of time series analysis and estimating the number of offenders diverted from incarceration as a result of Prop36.

### *Time Series Analysis*

Although the dramatic change in sentencing is clearly visible to the naked eye, time series analysis is useful because it can provide a statistical likelihood that Prop36 is responsible for the changes observed in the time series’ before and after implementation of the law. Time series analysis was performed on the four main sentences (prison, jail, probation with jail, and probation [plus “other”]). Analyses reveal that not all of the sentences are statistically significantly different before and after Prop36 (see Appendix J for a discussion of time series methods, a description of ARIMA models, and significance levels). Time series analysis reveals that the sentence “jail” is statistically significantly different after Prop36 was implemented; but that the “prison,” “probation with jail,” and “probation and other” sentences are not statistically different after Prop36 implementation. Strictly speaking, this suggests that Prop36 was partially (if not wholly) responsible for the change in the number of offenders sentenced to “jail” before and after Prop36, but that it was not responsible for much (if any) of the change in the number of offenders sentenced to “prison,” “probation” or “probation with jail.”

This finding is peculiar, and contradicts Figure 6.1 and Table 6.1 that illustrate the dramatic changes in sentencing that occurred in the beginning of 2001. There are three reasons why time series analysis does not indicate a Prop36 impact on some of the sentences, despite the impact being visually obvious. First, the series' contain monthly interval data and the interval time periods are not equivalent. Second, some of the series' are subject to large fluctuations in the number of observations from month to month. Third, Prop36 was implemented in phases in Orange County, not as a single point in time. All of these issues affect time series analysis and are discussed in turn below.

The results of the time series analyses are a function of the data used, both in terms of quality and power and reflect the extremely complicated data series'. Because data are in monthly intervals (and not evenly spaced 28 days or weekly intervals), convictions sometimes vary dramatically between months due to the number of working days in each month (for example, there are fewer working days in December than in March. This serves to increase the variance between months, which diminishes the likelihood of finding a statistically significant impact.

Furthermore, some of the series have large fluctuations in the number of observations from month to month – partly a result of unequal intervals and seasonality, but also other unidentified county level trends, and small numbers of observations in individual months. For example, although there are at least 3,000 drug possession offenders convicted and sentenced each year, the data are analyzed by sentence category and month. This affects the number of the observations each month and thus the power to detect differences. This was a particularly significant

issue in the “probation” series because there were few offenders sentenced to this sanction prior to Prop36 and the low cell counts inflated the variance, which disguised the impact of the legislation and caused time series analysis to not identify an impact, when in fact there was one (this is an issue of low power).

Finally, although Prop36 did not “officially” go into effect until July 1, 2001, sentences in Orange County began changing in January 2001. Some judges in Orange County’s felony panel courts started sentencing offenders to probation (instead of probation with jail, jail, or prison) in January 2001 in anticipation of Prop36 and a fear that these cases would remain on the courts’ calendar until July and cause a backlog in cases. Additionally, Orange County implemented a pilot study in March 2001 that mimicked Prop36. Hence, Prop36 did not begin on July 1, 2001; it began in January 2001, gained momentum in March and was fully implemented in the following months. It was implemented in stages, not at a single point in time. Such series’ are not well-suited for time series analysis because time series analysis is designed to assess the impact of an intervention at a single point in time – not an ongoing change that occurs in several stages. Although time series analysis is able to detect incremental changes in most time series, the problem with these data series is that they suffer from multiple issues, each one compounds the others and renders some of the series unsuitable for this statistical technique<sup>72</sup>.

### *Diversion Estimate*

The main goal of Proposition 36 was to divert drug offenders from incarceration. The previous section outlined how sentences changed as a result of

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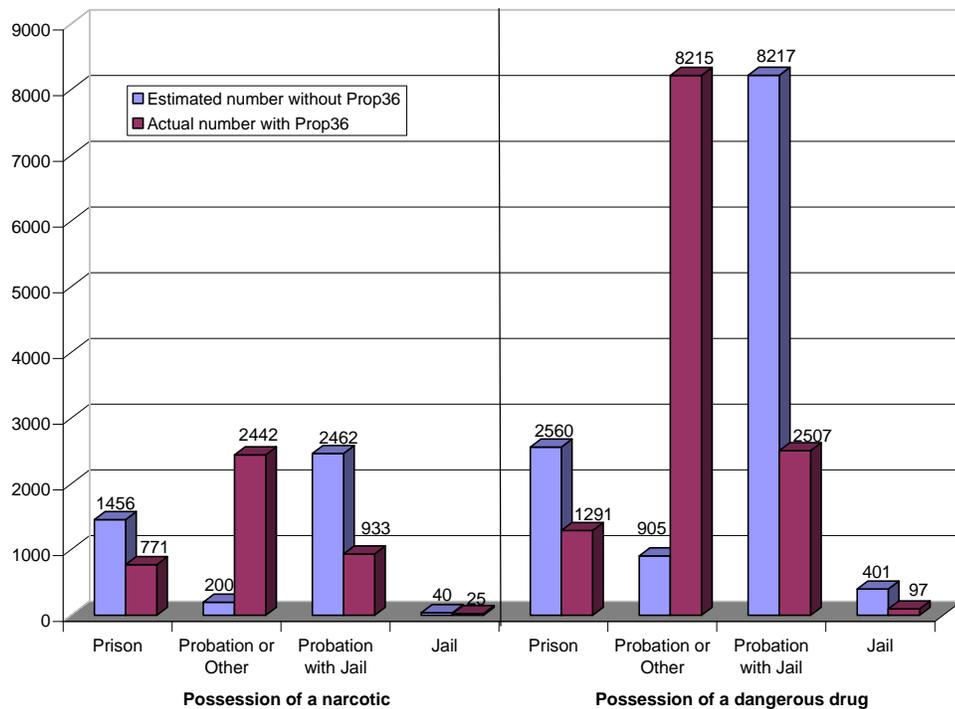
<sup>72</sup> The presence of these data issues clearly demonstrates the inherent benefits of using dual research methodologies to investigate a question and corroborate findings.

the law and revealed that a smaller percentage of drug offenders are sentenced to incarceration (prison, probation with jail, jail, CRC) as a result of Proposition 36. The question is, how many offenders have been diverted as a result of the legislation? The California Legislative Analyst's Office originally estimated that 36,000 offenders throughout the state would be *diverted* from incarceration each year as a result of Proposition 36 (LAO, 2000). UCLA studies confirm that approximately 36,000 drug offenders per year are sentenced under Proposition 36 (Longshore, et al., 2006), but the question remains whether all of these offenders would have been sentenced to incarceration if it was not for Proposition 36.

The current research calculates a diversion estimate using data on "possession of narcotics" and "possession of dangerous drugs" convictions. This method allows for a rough estimate of the number of Orange County drug possession offenders diverted from incarceration as a result of Proposition 36. The caveat being that it cannot estimate the diversion impact for the state of California, only Orange County. Moreover, the data are limited, and the reader should be cautioned that this method will yield a diversion estimate that is much lower than the actual diversion impact because it includes only two Prop36 eligible offenses, possession of narcotics and possession of dangerous drugs. By necessity, it excludes "possession of paraphernalia" as well as "transportation for personal use." Because of data limitations, it is unknown how many of these Prop36-eligible arrests take place each year, but based on probation data approximately 13% of Prop36 probationers are on probation for paraphernalia charges. Furthermore, the estimate excludes convictions for "under the influence of a controlled substance"

arrests because “under the influence” is a misdemeanor and the state does not track conviction information for misdemeanor arrests. This is important because there are approximately 2,500 “under the influence” arrests each year in Orange County (which is higher than the number of narcotics possession arrests) and the standard sentence given to most of these offenders prior to Prop36 was a combined probation with jail sentence. The actual number of Orange County drug offenders diverted, therefore, is likely 30% - 60% higher than the possession-only estimate.

**Figure 6.2: Estimated Number of Orange County Drug Possession Offenders Diverted From Incarceration for the Years 2001 and 2003-2005**



Source: California Criminal Justice Statistics Center (CJSC). 2002 data are missing due to a data entry error at CJSC that affected the OBTS database.

Figure 6.2 visually demonstrates how Orange County offenders convicted of felony drug possession offenses between 2001 and 2005 (excluding 2002) were

actually sentenced and how they would have been sentenced if Prop36 had not become law. It presents each drug possession offense separately. Between 2001 and 2005 (excluding 2002) there were a total of 16,283 offenders convicted of drug possession offenses in Orange County (see Table 6.2). Of these 16,283 offenders, 5,625 were given custodial sentences (prison, jail, probation with jail, or California Rehabilitation Center) and 10,658 were given non-custodial sentences (probation or fine).

**Table 6.2: Estimated Number of Orange County Drug Possession Offenders<sup>1</sup> Sentenced During 2001 and 2003-2005<sup>2</sup>, With and Without Proposition 36 as Law**

<b>Sentences</b>	<b>Estimated number without Prop36</b>	<b>Actual number with Prop36</b>	<b>Difference (Diversion Estimate)</b>
<b>Prison</b>	4016	2062	-1954
<b>Jail</b>	441	122	-319
<b>Probation with Jail</b>	10680	3440	-7240
<b>Probation or Other</b>	1105	10657	9552
<b>Fine</b>	15	1	-14
<b>CRC</b>	27	1	-26
<b>Total Custodial Sentences</b>	15163	5625	-9538
<b>Total Non-custodial Sentences</b>	1120	10658	9538

<sup>1</sup> This diversion estimate only considers the crimes “possession of a dangerous drug” & “possession of a narcotic.” It does NOT include “under the influence”, “possession of paraphernalia”, or “transportation for personal use” offenses. Including these other offenses would increase the estimate by an unknown amount.

<sup>2</sup> It excludes 2002 data due to data entry errors at DOJ. Data source: CJSC, OBTS database.

One key question is how many offenders would have been given a custodial sentence if Prop36 had not become law? Utilizing sentencing information contained in Table 6.1, Table 6.2 displays the estimated number of offenders who would have been sentenced to each of the possible sanctions if Prop36 had not become law by applying pre-Prop36 percentages to the actual number of people convicted of drug possession offenses between 2001 and 2005 (excluding 2002). This provides as

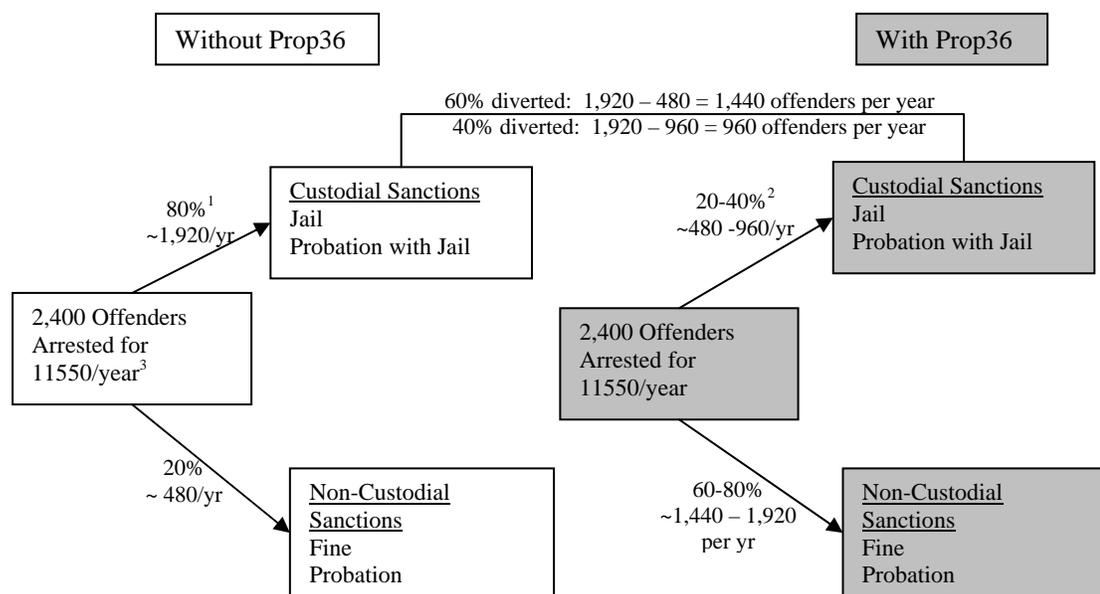
estimate of the number of people who would have been sentenced to each sanction if Prop36 had not become law. As Table 6.2 demonstrates, we would have expected 15,163 offenders to have been given custodial sanctions between 2001 and 2005 (excluding 2002) if Prop36 had not become law.

Hence, an estimated 9,538 Orange County drug possession offenders were diverted from sentences involving local or state incarceration between 2001 and 2005 (excluding 2002) as a result of Proposition 36; approximately 2,400 per year. The vast majority (7,600) of these offenders were diverted from short jail sentences, rather than long prison terms. Nevertheless, approximately 2,000 drug possession offenders convicted in Orange County were diverted from prison as a result of Proposition 36. Consequently there are approximately 500 fewer offenders going to prison and 1,900 fewer offenders going to jail each year as a result of Proposition 36. This is not insignificant; however it still does not take the other Prop36-eligible crimes into account.

While it would be difficult to calculate a diversion estimate for transportation and paraphernalia convictions, we can estimate the number of offenders convicted of “under the influence” and diverted from incarceration. Police and judges concur that the standard sentence for “under the influence” convictions in the years leading up to Prop36 was 90 days in jail and three years on probation. For this reason and because prison and CRC are not sentencing options in misdemeanor cases, it is logical to estimate that more than 80% of offenders would have received a probation with jail or jail sentence prior to implementation of Prop36. Given that the other offenders (not sentenced to jail or probation with jail)

had to be sentenced to either probation or a fine, we would expect that between 40% and 60% of offenders would have been diverted from incarceration as a result of Prop36 (see Figure 6.3). The number of under the influence arrests averaged 2,400 per year in the years since Prop36 was implemented. Using the more conservative 40% diversion estimate presented above suggests that approximately 1,000 offenders convicted of “under the influence” are diverted each year in Orange County. The more liberal 60% estimate would place the number of under the influence offenders diverted at 1,500 per year.

**Figure 6.3: Estimated Number of Orange County Offenders<sup>1</sup> Sentenced to Custodial and Non-Custodial Sanctions Each Year for “Under the Influence of a Controlled Substance” With and Without Proposition 36 as Law**



<sup>1</sup> Estimate based on information provided by judges and law enforcement officers.

<sup>2</sup> Estimate based on 36% of felony possession offenders that received custodial sanctions post Prop36. It is acknowledged that felony possession sentences are not ideal comparisons for misdemeanor under the influence sentences.

<sup>3</sup> Estimate based on under the influence arrest data provided by CJSC.

By combining these two estimates (drug possession and under the influence) we can postulate that approximately 3,400 offenders convicted of Prop36-eligible

drug offenses in Orange County are diverted from incarceration each year as a result of Proposition 36 (2,400 possession offenders and 1,000 under the influence offenders). Note that this last estimate still does not take into account paraphernalia or transportation convictions which could increase the total diversion estimate by about 10%. All together, it is estimated that approximately 20,400 Orange County drug offenders (convicted of possession and under the influence) have been diverted from incarceration in the six years since Proposition 36 was implemented<sup>73</sup>.

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All of these offenders sentenced under Proposition 36 are sentenced to probation. As of December 2007, 6 ½ years after inception of the law, 24,000 individuals had been placed on Prop36 probation by Orange County courts (Orange County Probation Department, PC1210 Monthly Report, December, 2007). During the first three years of the law (2001-2004), the probation department received an average of 325 new Prop36 probationers each month (Hilger, 2007—unpublished PC1210 monthly report). This was a large increase over the number of new offenders they were accustomed to handling. The unanticipated volume of offenders overwhelmed the Orange County Probation Department (OCPD) and challenged the department in unexpected ways. It caused backlogs, strained the staff, and forced innovation.

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<sup>73</sup> Technically, this is an estimate of the number of cases diverted rather than the number of individuals diverted because it would be expected that some individuals would have been convicted multiple times.

The units most affected by Proposition 36 were the assessment unit and the PC1210<sup>74</sup> supervision unit. The four biggest issues that OCPD had to resolve were the result of the unforeseen volume of offenders. First, the assessment unit could not keep up with the large number of offenders that needed to be assessed and classified each month. Second, probation officers were unable to adequately supervise Prop36 probationers because their caseloads were prohibitively large (they averaged 250 cases per probation officer). Third, the number of warrants for probation violations (not showing to meetings, etc.) was very high and added to the already excessive workload. Fourth, drug testing the large volume of Prop36 offenders on a regular basis posed several challenges.

The probation department had to innovate in order to accommodate all of the additional probationers brought in by Proposition 36. The innovations were clearly driven by necessity, as probation officers and other department employees describe the first couple of years of Proposition 36 as extremely stressful and chaotic. Employees developed several inventive solutions to the problems presented by Prop36. The following sections will discuss each of the problems encountered and describe the strategies employed to address each one.

### ***New Probationer Assessments***

During the first few years of the law, new Prop36 probationers accounted for approximately 45% of *all* new probationers each month (Confidential Informant DDA, personal communication). At the time Prop36 was implemented, the Orange County Probation Department had a separate adult assessment unit that assessed the

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<sup>74</sup> Probation staff refer to Prop36 as “PC1210,” after the penal code established by Proposition 36.

risks and needs of all new adult probationers and assigned new probationers to the proper supervision unit and supervision level. There were 18 probation officers assigned to this unit, of which two were fully devoted to Prop36 cases when Proposition 36 first began. The two officers in the assessment unit assigned to Prop36 cases “quickly got overwhelmed” (Confidential Informant DDA).

In order to adapt to the workload pressures, supervisors adjusted staff responsibilities. Within several months, every one of the eighteen officers in the assessment unit was working on Prop36 cases, “because otherwise there was no way we were going to keep up with the flow” (Confidential Informant DDA). Despite the staff increase, the eighteen officers were unable to perform full assessments on every new probationer due to time constraints. During the summer of 2002, one year into the law, the assessment officers began performing mini-assessments instead of full assessments on Prop36 probationers as a way to save time. The problem was confounded because the county C.E.O. refused to allow the probation department to spend county funds on Proposition 36 related expenses.

Eventually, a supervisor made the decision to add more staff to help with Prop36 assessments. “Over the course of probably two years I had to add four more Probation Officers to those eighteen, and these weren’t Prop36 funded, I had to rob from other places just to manage that workload” (Confidential Informant DDA, personal communication). In the fall of 2003, partly due to the impact that Proposition 36 had on the department, OCPD went through a department-wide reorganization and the assessment unit was disbanded. As a result, it became the responsibility of each supervisory unit to conduct risk/needs assessments and assign

new probationers to the appropriate probation officer and level of supervision. This change had the net effect of increasing the workload on the PC1210 unit probation officers (as well as all other field supervision unit officers).

### ***PC1210 Caseload Strain***

In response to Proposition 36, OCPD created two PC1210 supervision units dedicated to supervising Prop36 probationers. At inception, each unit had eleven staff (one Supervising Probation Officer, nine Deputy Probation Officers, and one clerical staff), for a total of 22 staff assigned to Prop36 cases. With few exceptions, almost all Prop36 probationers were (and are) assigned to a probation officer in one of these two units. The exceptions are Prop36 individuals who are required to register as sex offenders, those with a history of domestic violence, hard core gang members and very high risk probationers with extensive histories of violence (such as parolees).

The department chose to separate Prop36 probationers from the general population because “there were so many nuances associated with the law; [such as] when you can violate them that were completely contrary to the way probation officers normally handle their caseload. We felt for quality control purposes, we needed to have specific caseloads where those people [probation officers] could be given intensive training to understand [the law]” (Confidential Informant DDA, personal communication). In addition to the unique legal rules, this assignment is distinctive from others in the department because officers have additional court progress reporting requirements and because officers must work closely with collaborative partners throughout the term of an offender’s probation.

The single most significant impact of Proposition 36 on the probation department was the effect it had on individual probation officers' caseloads. Because the nuances of the law (eg. treatment requirements, reporting requirements, special rules regarding violations) obligated the probation department to have specially trained staff supervise Prop36 clients, "one-quarter of the officers in the department were supervising one-half of all the cases" (Confidential Informant DLJ, personal communication). The officers in the PC1210 units were overburdened with work and emotionally stressed as a result. Officers accustomed to supervising 100 cases prior to the law had caseloads of up to 300 offenders after the law. This unmanageable caseload prohibited officers from going into the field to check on their clients or providing any meaningful services (or supervision).

[T]he department didn't anticipate the amount of cases we were going to get. They were completely overwhelmed when the program first started. ...Each officer had 250-300 cases. As a probation officer, you can't manage that many cases. You can put out fires on each individual case as you find out about it, but there is no active supervision there because you just can't handle 250 people and their cases.

It was overwhelming for them [probation officers]. It was overwhelming for me; just about everybody here because we were turning in 80-100 court reports per month and all of them had to funnel through me.

The other thing was our officers couldn't get out to the field to do field work because they had so much paperwork to do. There was [sic] just so many cases.

As a supervisor, we were just managing numbers. We were trying to deal with the overwhelming amount of numbers we were getting. It's also a new program, so you're dealing all the collaborative [partners], healthcare agency, all the treatment providers. All of that was going on at once.

Probation officers struggled to stay current with the required paperwork and the large caseload sizes affected the quality of work produced by probation officers in the PC1210 units at the beginning as well. This, although minor in the overall discussion of impact, was one aspect of Prop36 that affected other members of the probation department on a somewhat regular basis.

The folks in the department, “Oh God, it’s the 1210 case” or “Oh God, it’s coming from 1210.” Because some of the paperwork [would] leave our unit and it wouldn’t be in perfect order. I was constantly ramming heads with other supervisors because, “Oh this case wasn’t in perfect order when I got it.” “Do you know why it’s not in perfect order? Because the officer has 300 cases and she’s lucky she got out what she got out.” [And they’d say] “Well, I’m not going to accept it.” ... It finally got to the point where I would bang out the “Walk a mile in our moccasins” emails before you bitch and moan about a piece of paper being upside down on the wrong side of the file. Eventually, that kind of died down.

The size of the caseloads also strained officers emotionally. Officers reported being overwhelmed by the amount of work that accompanied the large Prop36 caseloads. The sense of frustration and being overwhelmed was palpable in the interviews. One probation officer said to me, “I should have taken a picture...We were up at 600 cases [on our caseload]. At one point [Probation Officer X] had files piled all over her office. They were up on the filing cabinets, in boxes... Her office was completely full, piles up to the ceiling. I never really thought of it, but I should’ve taken a picture; before and after.” (Confidential Informant DND, personal communication)

They [PC1210 Officers] were very busy. It’s like they didn’t have time to breathe, they were always going.

Probation Officers breaking down in their office and crying; that was just something we had never seen before. They were so

overwhelmed. These are people who are committed to doing the right thing and you couldn't do it. You couldn't keep up. You couldn't see everybody you wanted to see. The field aspect of it was just out the window. They couldn't get out and do the fieldwork because the volume is so amazing.

Some of the unexpected issues: we were burning our staff out. I'm not a "type A", I'm a "type B." I'm one of these, "Hey, if you can't get it done today, it'll be here tomorrow." We had a lot of people around here that are "type A," they cannot leave something undone. It kills them that they can't get it all done. I used to chase people out of the office. You're not going to get it all done today. "Oh, but I have to." "No, you have a wife and kids, a husband, go home, get out of here. This will be here tomorrow." It would absolutely kill them that they would have to leave some of the stuff undone. I'm like, "Hey, it's gonna be here tomorrow." We'd have some of the female staff [who] would come in and they'd just be teary-eyed that they can't get it all done. We would tell them, "Nobody expects you to get it all done. Your evaluation isn't going to say you were a poor staff because you can't get this mound of work done that we're asking you to do."

It was obvious that something needed to be done about the large caseloads or the department was going to lose staff. According to one probation officer, new ideas to relieve caseload pressures "pretty much developed out of frustration from the chaos that was inflicted by the volume of cases that we were getting" (Confidential Informant DND, personal communication). Supervisors felt the strain as well, as one supervisor put it, "To have someone break down in front of me crying [was difficult]. As a manager, I remember feeling so overwhelmed, like, "Why can't I figure this out and make this work?" At the same time, I can look around the state and see that they were doing the same thing." (Confidential Informant DAK, personal communication). Based on conversations with stakeholders involved in implementation, these problems were not unique to Orange County, but they were not universal around the state either.

In Orange County, we made a commitment to supervise these [Prop36] cases, to try to supervise these cases. Some counties didn't, they just banked them and played strictly an administrative role from their Probation standpoint. We made a decision to try and actually provide supervision to them, which exacerbated our problems because the numbers were such that we couldn't effectively supervise them in the same way that we had other cases.

OCPD's original goal was to supervise all Prop36 offenders and provide services to help them get on the path toward success. Based on their prior collaborative experience with drug court, OCPD's directors had idealistic goals for Prop36 and envisioned an opportunity to positively impact probationers' lives and decrease crime in the county simultaneously. They planned to do everything they could to make it work. However, the overwhelming number of offenders on Prop36, combined with an edict from the County Controller that prohibited hiring more staff for Prop36 purposes led the department to re-define their goal to be identifying the offenders in need of supervision and making organizational and supervisory rule changes to relieve the pressure on probation officers.

We wanted to have people do the same thing with Prop36 cases that we do with regular adult cases. And for us that meant, like, have one probation officer responsible for 100 people. But once the Prop36 numbers got rolling, our ratio was one to 250 and so we couldn't supervise in that way. And we just, people got overwhelmed and no, or very minimal, meaningful supervision took place. Very, very limited supervision took place. So that steered us into some changes.

Our goal was to move cases. Move cases. We got 300 more coming in next month; we need to move 300 more this month. Do what you got to do. When I was there, that was our primary focus, move cases.

The probation department had to find ways to adjust to the volume of offenders. Redefining their goal was the first step. From there, other ideas emerged to decrease caseloads to manageable levels. Three key strategies were imperative in

reducing caseloads in the first few years; “banking” offenders (putting them on a “field monitored” caseload), petitioning the court to relieve supervision responsibilities, and assigning misdemeanor cases to HCA for supervision.

#### Established “Field Monitored” Caseload

In spring 2003, the probation department made the decision to begin “banking” some Prop36 probationers. The department established “Field Monitored” (FM) caseloads for low, medium, and some high risk probationers. Offenders placed on a “field monitored” (a.k.a. “banked”) caseload receive no meaningful services. These offenders meet with their Probation Officer (P.O.) once during an initial visit to review the terms and conditions of their probation but do not report in person beyond that. They are on “formal probation” and still have treatment requirements and all of the customary conditions, but they are not required to report to their probation officer on a regular basis. Contact between probation officer and probationer is maintained through the telephone or mail and the probation officer verifies treatment progress through the shared database.

The goal is to have regular field supervision caseloads of 100 probationers each. All misdemeanors and most felony Prop36 offenders are banked. Prior to 2004 the decision whether to bank was based on the circumstances of the case, the offender’s past criminal history, and a subjective assessment of probation risk. Beginning in 2004, risk/need scores began being used to classify probationers. For Prop36 caseloads, all probationers who score less than 26 (on a scale of 0 to 39) are banked (this includes all medium and some high risk offenders). For regular (non-Prop36) caseloads, only offenders who score below 12 are banked. So, offenders

who score from 12 to 25 are not supervised on Prop36 caseloads but are supervised on regular caseloads. This is a direct result of the funding issue and may have implications for probationer success.

Although the department did not want to bank offenders, supervisors felt there was little choice, given the high caseloads, the added workload that resulted from the disbanded assessment unit, and the edict from the county C.E.O. to not spend county dollars on Prop36.

[Caseloads] were at like, one to 250 people. And people [probation officers] weren't doing anything but being buried in paperwork. So that was when we made the decision, 'We're going to bank some of these cases and we're going to try and identify the highest risks and we're going to supervise them'.

We couldn't [put more officers in the PC1210 units] because of an edict from the CEO, so we had to make that work with those people, which was very hard, very taxing on the Supervisor, very taxing on all of the DPOs [Deputy Probation Officers]. So that was why we decided we're going to bank some, we're going to try and identify and supervise the worst of the worst. So we started doing that and by supervising I mean face-to-face contact, going out to their homes, drug testing them at a higher frequency. Because when you're at one to 250, it's just a paperwork flow. All you're doing is writing warrants and writing PV's [Probation Violations].

The county wouldn't fund any more officers to supervise Prop36 clients outside what's provided by the state. We were funded, when I was there, for 18 officers. 18 officers had to deal with whatever amount of cases they had.... It was a complete mess. I sat down with the other supervisor and we tried to brainstorm a way ... to manage this flood of cases that are coming in every month.... We decided we can have ten officers doing actual field supervision with 100 cases each. The rest of them we'll put on a monitored caseload. That's the overflow that we just can't handle.

Although not ideal, banking offenders was a satisfactory solution to the problem given the circumstances. As another supervisor explained, banking

offenders “became a necessary survival tool for all of us. If you’ve got this many probation officers, and all of a sudden you’ve got this many cases, you can either supervise some of them and do an OK job, or you can accomplish nothing and have them all fall apart” (Confidential Informant DDA, personal communication). This solution was successful because it allowed eleven PC1210 officers to have standard size caseloads and to properly supervise their probationers, and it allowed seven officers to adequately manage much larger caseloads without the burden of supervision. Even with the change, however, Field Monitored (banked) caseloads were still very high<sup>75</sup> and difficult to manage for a long time.

#### Petitioned court to “relieve supervision”

In a continued effort to reach manageable caseload sizes, supervisors from the probation department negotiated with the court to relieve the probation department of supervision responsibilities for offenders who successfully completed treatment and met other criteria. In order to qualify for a “relief of supervision modification,” offenders must have completed treatment, are employed or in school full-time, have paid all their fees, and had no violations (no re-arrests, no positive drug tests, etc.) in the previous nine months. If a probationer meets all the forenamed criteria, the officer files a “relief of supervision” modification petition with the court. If the court approves the petition, the officer removes that individual from their caseload and notifies them of the change. The individual is now on “informal” probation until they request dismissal of their case (12 months after their conviction). At year end 2007, slightly fewer than 600 offenders have been

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<sup>75</sup> Estimates of how large the FM caseloads were at this time varied from 400 to 600 cases per officer.

removed from probation using this tool. Compared to banking offenders, this change has had a small impact on overall caseload sizes, yet probation officers continue to view it as an important case management tool.

#### Misdemeanor cases supervised by HCA

Unlike most misdemeanor offenders who have always been sentenced to informal (a.k.a. summary or court) probation, misdemeanor drug offenders sentenced under Proposition 36 were sentenced to formal probation when the law first went into effect. The difference is that adults on informal probation are only on probation to the court and are not typically supervised by probation. The difference reflected the probation department's desire to supervise these cases. As the probation department became overwhelmed and needed to reduce caseload sizes, it was apparent that placing misdemeanor drug offenders on informal probation was a potential solution.

In September 2004, a new policy that misdemeanor cases would be monitored by the Health Care Agency (HCA) took effect. This means that misdemeanants would be sentenced to informal probation and HCA would monitor their treatment progress. Because misdemeanor cases represent approximately 20% - 30% of all new Prop36 cases, this change was expected to slow the growth of caseloads immediately. According to probation officers it had a significant impact on caseloads. In the three years since the policy took effect (September 2004 to December 2007), HCA has monitored 3,567 misdemeanor Prop36 probationers (Orange County Probation Department PC1210 Monthly Report, December 2007). This represents approximately 1,100 fewer offenders per year than the probation

department had to supervise, and equates to a reduction in workload of between three and ten probation officers, depending on whether most of the offenders would have been placed on a field supervised or a field monitored caseload.

### Other Solutions

*Added more staff* Eventually, the department received more money from the state to cover supervision costs and OCPD was able to assign more officers to the PC1210 units. When the law went into effect, there were 18 officers (22 staff total) assigned to the two PC1210 units. Between 2003 and 2005, the department added six officers to the units so that at one point there were 24 officers assigned to Prop36 cases. Although the increase in staff helped further reduce caseloads, the staffing level did not last for long, as workload changes demanded that officers be reassigned to other units. The staffing level has varied between 18 and 24 officers for several years. As of May 2008, there are only 16 officers assigned to work Prop36 cases (down from the original 18) (Confidential Informant DND, personal communication). The workload, however, also seems to have diminished slightly according to probation officers. This may be partially attributable to fewer offenders entering probation, but is probably also because the probation officers are much more efficient at clearing cases now than they were when Prop36 was first implemented. PC1210 officers have become accustomed to the continuously changing nature of the assignment and as one probation officer who views staffing levels with an appropriate amount of humor and irony stated, “just as our caseloads get smaller and we start doing more with them, they go up again” (Confidential Informant DND, personal communication).

*Trained Enforcement Officers* Because case pressures were so enormous, supervisors became very creative in their attempts to decrease caseloads. Some supervisors tried to reduce caseload sizes by invoking the assistance of law enforcement officers. These supervisors recognized that many law enforcement officers did not understand Proposition 36 or the tools it provided, namely that most offenders on Prop36 probation are on formal probation with full search terms. Probation officers empathize with law enforcement officers' frustrations with Prop36, but emphasize that Prop36 provides tools that can help law enforcement officers do their job more efficiently. Most officers, however, are not aware of and do not use these tools as often as they could. Thus, some supervisors took the initiative to train law enforcement officers about Proposition 36 and the tools available to them in hopes of working with law enforcement officers to hold offenders accountable and serve warrants on noncompliant probationers.

I used to go in there [to police briefings] and say, "Here's how you can make the system work for you so these guys aren't out before you get your report turned in to your sergeant." That was my focus.... I used to tell them that we can't put a hold on somebody if it's strictly a drug-related offense. I used to tell them, if they give you false ID, you need to write that in there and let them know because that's not a drug-related offense. ... We can hold him for that ... But if you call me up and say, "We found so-and-so in a motel. He's got a pocket full of dope. I want a hold." I can't do it. You need to find something else. Don't create something, but if you've got the elements of a 148, 140.9...

I would just go into my speech about, "If you find somebody on Prop36 probation, fine, you still got a search order. If you want to toss his car or his stuff or whatever, you can do it, just call his probation officer and verify he's got the search order. You're free to toss his stuff." A lot of times, the [Probation] officers are looking for these guys. Call the probation officer and we'll give you the most current address that we got. It might not be the one that you got.

*Special Caseloads*                      Due to the impacted caseloads, probation officers had difficulty providing the high level of supervision that was necessary for clients with special needs, in particular those offenders with diagnosed mental illness. Just as these offenders were “falling through the cracks” in the courtroom, they were also “falling through the cracks” at the probation department. The Dual Diagnosis Drug Court was funded by a grant that also funded a probation officer to supervise the participants. This program was so successful that another drug court (Intensive Twelve-Ten) was created to work with Prop36 clients that required more intense supervision and accountability. Both programs are capped at 50 participants, which allow the probation officers and court staff to keep close tabs on each offender. The goal of these special caseloads is to increase the success rate of clients in these programs. It is another method used by the probation department to identify and provide supervision for those offenders most in need of it.

### ***Drug Testing Challenges***

The large number of Prop36 offenders not only caused case management problems for the probation department, it also created challenges for drug testing offenders as well. Prior to and at the start of Prop36, the probation department conducted drug testing on Mondays at the department. While this established routine worked well prior to Prop36, it fell apart shortly after the law took effect. The problem was that there were so many people that needed to be tested that there was not enough room for all of them in the building. The fire marshal ordered the department to limit the number of people on testing days because the lobbies of several area offices were over capacity and fire hazards.

It used to be that in every area office, Monday was the primary adult drop-in day because we wanted to catch people the day after the weekend and test them. But the numbers became so overwhelming; we couldn't support that many people coming in on one day. We had to split the drop-in days. ... We were getting 800-1200 people coming in the office on Mondays. It overwhelmed the reception staff. It overwhelmed the physical [building]. You're exceeding obviously the fire code with the number of people. I was out of the west county office and that office is a leased building. We shared the building with the Department of Education, the District Attorney's Office. The other tenants were complaining because people were spilling out of our office and into the hallway and outside. The trash they generated; they're trampling on the flowers, dropping their cigarette butts everywhere. The numbers were overwhelming in every regard.

Additionally, "offenders are about 75-80% male, 25-20% female. Yet the ranks of probation officers are more like 65% female and 35% male" (Confidential Informant DAK, personal communication). This gender imbalance caused problems for the male staff on testing days because drug testing requires same sex observation of specimen collection. The men "would all want to run and hide because they spent the entire day in the bathroom testing" (Confidential Informant DAK, personal communication). In order to accommodate all of the probationers that required testing, the department staggered testing days. On Mondays, individuals on regular caseloads were drug tested and on Tuesdays, Prop36 probationers were tested. Beyond that, the department aggressively experimented with a variety of new testing instruments. "The goal was to get the guys out of the bathroom." (Confidential Informant DAK, personal communication). This was one of the unexpected issues that resulted from Prop36.

### *Large Number of Warrants*

Another issue the probation department had to resolve was the large number of warrants that were generated by Prop36 probationers. During sentencing, offenders would receive paperwork telling them where and when to report to the probation department and Health Care Agency. Many offenders, however, failed to report to either or both agencies and a warrant would be issued for their arrest. This strained the probation officers, who had to write and file the warrants.

When the probation department noted the problem, they tried some innovative solutions to address the issue and decrease the number of warrants: co-location, working with law enforcement, and working with treatment providers. The first solution they implemented was co-locating HCA intake staff in the probation department and setting up a probation office in each of the courthouses throughout the county.

One of the responses, also, to the high warrant rate was to co-locate. We put the Healthcare assessment team in our [Probation] offices because we were finding that we were losing a certain percentage [of offenders] from the courtroom to the probation office, and a certain percentage from the Probation office to the Healthcare office. So we brought Healthcare into our building so that it was kind of like one-stop-shopping for them.

According to probation staff, co-locating agencies within each other worked well and the number of early warrants decreased remarkably. This, in turn, increased the number of offenders who entered treatment and decreased the workload strain on the PC1210 officers caused by early non-compliance. In addition to co-locating agencies within one another, the probation department also tried working with both law enforcement officers and treatment providers to locate

non-compliant offenders and get them back into compliance. Unfortunately, however, these strategies were not as successful as co-location.

What we tried to do [to decrease the number of warrants] was work with law enforcement. We figured this was an opportunity to get them on board and say “We have X number of these offenders who are drug offenders, who are on warrant status, and a good percentage of them are unemployed, so they could be creating new crimes in your community. Work with us and let us help identify them.” So that was an approach that we made to law enforcement and they responded positively to the idea, but didn’t match their response with workforce, if you know what I mean. There was no real meaningful effort ... Now, coincidentally, there’s kind of a different take on it, which probably is a smarter take, where the treatment providers, our Health Care Agency would play a role and just try to identify some of these folks and say “Hey, come on back into treatment. You know, just because you blew it off before, doesn’t mean you got to go to jail”, just kind of a softer, gentler approach to it, which probably will work, rather than going out from a law enforcement standpoint and locking them up. We didn’t make any meaningful headway on that [though].

### *Other Challenges and Frustrations*

In addition to resolving the workload issues discussed above, probation officers and supervisors also had to navigate other challenging situations instigated by Prop36. One of the unexpected issues supervisors dealt with was low morale among some of the staff resulting from the absence of normal operating procedures for Prop36 clients and the perceived negative stigma associated with being assigned to a PC1210 unit. Additionally, the lack of a proverbial “stick” led to a large segment of Prop36 probationers’ not taking probation seriously which in turn frustrated probation officers.

## Changing Procedures and Stigma

Changing rules for how probation officers could and should address Prop36 probationers' drug-related violations generated much frustration among line-level staff during the first year. The law was confusing and ambiguous. The ambiguity left probation officers frustrated because policies and procedures continuously shifted until the California Supreme Court ruled on the various issues. In addition, having more seriously addicted offenders than anticipated caused unanticipated headaches for both Orange County stakeholders who had to modify treatment plans for scores of offenders, and also for the probation officers who had to understand and ensure probationer compliance with the revised treatment protocols.

[PC1210 officers] sounded very frustrated because it was like from day to day the procedures would change. Today, yes they could arrest them; tomorrow, no they couldn't.

I think one of the hard things was staff morale because it was never settled. You could never reach the point of "This is what it is now, and this is what we're going to do." First it was just the newness, and sorting through and training people and trying to get things in place, but things were constantly changing. It was never settled because the numbers [of offenders] were exceeding what we were [expecting]. Who we had wasn't who we planned [for]. We didn't have the [treatment] providers in the way the clients really presented themselves in terms of. We really needed more residential than we had the ability to do. Everything was constantly changing. ... and staff was very frustrated because they could never figure out "What version are we on today?"

In addition to the struggles associated with undefined norms and changing protocols, officers in the PC1210 units in the early days had to contend with peers that did not understand or appreciate Prop36 or the probation officer's role in it. Although many PC1210 officers enjoy their assignment and want to work with this

population, being assigned to the PC1210 unit has a somewhat negative connotation within the department; at least it did during the first few years of the program. This is primarily the result of the purely rehabilitative focus of Prop36 juxtaposed against the law enforcement mentality held by many probation officers.

What I didn't anticipate was a little bit of, what's the word; I don't want to say polarizing, and not ostracizing, but within our agency, the people that work with Prop36 cases kind of took on a different identity from their colleagues. I didn't really anticipate that. It almost became a negative thing if you're working Prop36. It became an unpopular, negative assignment. ... [We tried] sharing more information about what was going on with Prop36, what it was, and what it wasn't. That it really was Probation work in a needed area with a needed population. That's been an uphill battle. I couldn't tell you even today, that we're where we should be with that.

### **Offenders Do Not Take Prop36 Seriously**

In addition to the large number of warrants generated by offenders who failed to report to probation and/or treatment prior to their initial court progress review, probation officers also found they were writing a lot of warrants for offenders who failed to abide by the conditions of their probation. According to probation officers and supervisors, this was the direct result of the inability to sanction offenders for their non-compliance and it frustrated officers.

A lot of these cases went to warrant. They weren't cooperative, and the bad side of not being able to arrest them is they quickly learn that, you know, and so they would blow us off and we still had a workload attached to them. And then they would blow us off and they get rearrested again, so they would pick up another Prop36 case, and they pick up another. It was a mess, it was a real quagmire.

[What was frustrating] was the number to start with, and then it was seeing who the clientele was. We were seeing the same people who had the same kind of background. Before Prop36, these people used to get a 3 year commitment [to probation], felony conviction, 90 days on the first offense. Then they come in, you send him to treatment

and if they didn't do treatment or they were tested dirty, took them back [to court], they got their 180 [days], and if they came back a third time, it was 16 months state prison. All of a sudden, you stop doing that one day [and go] to, "Ok, go to treatment. You don't go to treatment; I'll take you back to court." "What's going to happen in court?" "They're going to tell you to go to treatment more. You weren't going to start with, now you're going twice as much." Ok, that makes a lot of sense. That's the system we have. They don't go back, so we take them back a second time. "Look pal, you need to go to treatment more than you were going before when you weren't going, so I'm going to make you go more. If I bring you back [a third time], then we'll talk about having you kicked off the program." There's [sic] no teeth to it. Everybody knows it. That three days they spend in the jail, they talk to other people in jail. "Oh yeah, Prop36, I know that." Then they tell them all the ways to get around it, or the pluses to it. A lot of them came in [to probation], they knew what was up as much as we did with it.

The main frustration that line level officers have is that they are unable to hold Prop36 offenders accountable for their misbehavior because of the legislative prohibition against sanctions for drug-related violations. According to probation officers, their inability to sanction offenders has led to more offenders not showing up to meetings with their probation officer and/or treatment and not taking probation seriously. Probation officers have the same complaints that law enforcement officers have, namely that there are "no teeth" to this law and that these offenders want to get out of jail, but that many do not really want treatment.

[There were] higher numbers of drug addicts that didn't take probation seriously. That was an absolute effect and I personally believe that that was a function of the fact that we couldn't take them into custody, we couldn't arrest them and things, and they learned that very quickly. They [probation and the court] can't do this, they can't do that. So in that sense, that changed the drug offenders that changed the drug addicts. ... [T]hat was a huge frustration on the part of the DPOs [Deputy Probation Officers], the Line-Level DPOs, dealing with larger numbers of people that just aren't serious about it.

It became apparent we weren't dealing with the college-age kid who had a little bit of meth in his pocket who didn't have a drug-addiction problem. You were talking about the dumpster-diving, motel-hopping, ID-thieving person, that's their whole life. They're not interested, I shouldn't say all but, a vast majority of them aren't interested in rehabilitation or kicking their habit. They're interested in getting out of jail. We had any number [who] would come into the office and tell the officer, "Now I have three chances to blow this program before I go to jail, right?" We used to get that. You were faced with that mentality.

Like law enforcement officers, probation officers voiced frustration about the type of offender benefitting from Prop36. Their complaint was not so much that these offenders are undeserving of Prop36, but rather that Prop36 was wasted on them, because so many are unmotivated to rehabilitate. Probation officers contend that money and resources are wasted on individuals who do not want treatment, and in fact that these individuals are taking services away from the people that want treatment and that these, motivated offenders, are the ones losing out because of what some probation officers term "the fatal flaw in the law." Proposition 36 "assumes that everybody eligible for the program wants to kick their addiction, and that's simply not the case" (Confidential Informant DLJ, personal communication).

What I think happened was when they pushed this Prop36 out there, they sold it as, "Jail is terrible. How would you like it if your college-age son or daughter got pulled over one night and had a little bag of weed in their pocket and they got thrown in jail over it? You want them to get treatment right?" Well, of course, but that's not the population that we're dealing with. We're dealing with your 20-year heroin addict who don't [sic] give a shit whether he's sleeping in the dumpster or the motel. He wants to get high. That's who clogged up the system.

Yeah, you had your college kid, or your mom, or your dad. ...They had something to lose. They were in here and they were in with their suit and tie, and they were, "Yes sir, no sir. Yes ma'am, no ma'am." There was no problem with those folks. Those folks got parked in

the FM [Field Monitored] caseload. They had something to lose, park them over there because you really didn't think they were a big re-offend on our risk-need score. The people we'd really like to help, who I think it was really intended for, got parked off to the FM caseload because they were pretty much responsible enough that they were going to deal with it and get on with their lives.

Because some of them were like, "This is a waste. Why are we giving this parolee a chance at Prop36 who has been in prison all of his life, who has 30 potential felonies?" The prop should've better clearly defined or narrowed, because they did it more towards the offenses and not the population. So that was frustrating, because pretty much everyone who was in prop, at least half of them were veteran [probation] officers. You already get a sense as far as who benefits from certain services and who doesn't. So it was frustrating to see that we're wasting money on this one offender. Nothing is going to change, he's had a juvenile record, he's an adult, he's gone to prison, now he's back. So that was frustrating, in fact it still is, because that hasn't changed at all.

### *Perception and Impact of Prop36 on Offender Seriousness*

The perception among probation officers is that there are more criminally sophisticated and hard core drug addicts on probation as a result of Proposition 36.

But what 36 did do, is it absolutely kept some folks that might otherwise have gotten a lengthy jail sentence or sometimes might have gone to prison, kept them on probation. Absolutely did do that. So there was a higher percentage of more criminally sophisticated drug offenders that we saw, absolutely. And one of the things that I heard reported to me from the Healthcare agency, and I don't know if you'd ever have a chance to kind of verify this, is that some of the treatment providers noticed that too, that they have a group now, somebody who might have two or three prison priors, and so they might bring that level of sophistication with them into a drug treatment group across from somebody who got picked up for selling to an undercover, you know, or buying from an undercover cop, who doesn't have nearly that level of sophistication. That was the experience that Healthcare shared to me that some of their treatment providers were reporting<sup>76</sup>. So it changed the complexion of the treatment groups.

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<sup>76</sup>This was supported through informal conversations with a few treatment providers in Orange County.

The first thing we found is that probation all of a sudden got saddled with new high risk offenders we didn't have to deal with before because where as these people will go back and get a low-term 16 month state prison sentence, they're getting released back to the community on probation and now all of a sudden we've got a third-termer parolee that a probation officer, unarmed, is going to have to go out and supervise.

It is unclear, however, whether this perception is accurate. If the law was effective at diverting offenders from prison (and we know it was to some extent), we would expect to find more serious offenders on probation as a result. The monthly PC1210 report produced by OCPD's research unit, however, consistently shows that more than half of all new Prop36 probationers are on probation for the *first* time (in Orange County) as a result of their Prop36 conviction; which suggests that many Prop36 probationers had no or very minimal criminal history prior to their current conviction. Thus they are most likely not "criminally sophisticated." Of course, some of these offenders may have been on probation in other counties prior to their "first" term of probation in Orange County for Prop36. Nevertheless the law also applies to parolees, most of who have multiple prior convictions and are very likely to be considered "criminally sophisticated."

In order to determine whether probation officers are supervising a more criminally sophisticated and/or hard core drug addict population than prior to the law, data analysis was conducted on the risks/needs profiles of offenders on probation before and after Prop36. Data used for the analysis were taken from the Orange County Probation Department's Risk and Needs Assessments. Initial assessments are conducted on individuals when they begin a new term of probation. Follow-up assessments are conducted every twelve months. Because risk/needs

assessment data after June 30, 2002 are of questionable quality, the analysis was limited to the first year of Prop36 and to a one year time period before the law. The before-Prop36 results are based on initial assessments conducted on probationers on probation for Prop-36 eligible offenses between January 1, 2000 and December 31, 2000. This time period was chosen so that there would be no overlap with the pilot-study which began in March 2001. This was done in order to control for the possibility that the pilot-study population differed from either the before or after Prop36 group. The after-Prop36 results are based on initial assessments conducted on probationers on probation for Prop-36 eligible offenses between July 1, 2001 and June 30, 2002. Table 6.3 displays the results of this comparison.

Data analysis reveals a complex story. On the one hand, some findings suggest a more motivated group of drug offenders on probation after Prop36. The percent of offenders who say they are motivated to change increased from 24.3% to 29.9%, which is statistically significant at the  $p < .001$  level. Also positive, although not statistically significant, the percent of offenders who were employed for more than seven of the prior 12 months increased from 24.2% to 26.4% and the percent of offenders reporting serious disruptions to their life due to their drug usage slightly declined (from 82.4% to 81.0%).

Viewing these same statistics another way, however, illustrates just how difficult to treat the population of drug offenders on probation is. Over 80% of probationers on probation for Prop36-eligible offenses experience serious disruptions to their life as a result of their drug usage (as opposed to no disruption or minimal disruption). Given this, it is no surprise that most of the drug users on

probation are not employed regularly. Fully 57% of probationers on probation for Prop36-eligible offenses were unemployed for more than seven of the prior 12 months. In fact, 15% of male offenders are classified as “unemployable” by their probation officer. This is an important finding; as a recent Occupational Safety and Health Administration (OSHA) study found that most illicit drug users are employed full-time (Larson, et al., 2007). The juxtaposition of the two studies suggest that drug offenders ensconced in the criminal justice system are different than “typical” (read “not involved in the criminal justice system”) illicit drug users. All of the other statistics support the hypothesis that Prop36-eligible drug offenders on probation are slightly more serious after Prop36 than before. Table 6.3 shows that the percent of offenders on probation for Prop36-eligible offenses that have a past criminal history, meaning this is not their first offense, increased after the law. The percent of offenders with two or more previous felony convictions also increased after the law, 16.9% v. 23.9% ( $p < .001$ ). Additionally, the percent of offenders that had a prior term of probation was higher after Prop36 than it was prior to the law change (65.7% v. 70.3%;  $p < .01$ ); as was the percent of offenders who had at least one prior probation violation (59.8% v. 64.2%;  $p < .01$ ). Furthermore, the percent of offenders classified as “high-risk” was higher after the law than before (59.4% v. 63.1%;  $p < .05$ ). All of these point to a more serious offender than was on probation for a drug related offense prior to the law. Still, only 10% of offenders have been convicted of a felony-persons or felony-property offense. The vast majority of offenders have only been convicted of drug-related offenses.

**Table 6.3: Qualities of Orange County Probationers Before and After Prop36**

<b>Probationer Characteristics</b>	<b>Before Prop36<sup>77</sup> 1/1/2000 - 12/31/2000</b>	<b>After Prop36 7/1/2001 - 6/30/2001</b>	<b>Significance Level</b>
<b>Sex*</b>			.043
Male	76.4%	78.6%	
Female	23.6%	21.4%	
<b>Employment (NS)</b>			.197
Employed >7 of last 12 months	24.2%	26.4%	
Employed 5-7 of last 12 months	17.7%	16.6%	
Employed <5 of last 12 months	58.1%	57.1%	
<b>Drug Usage (NS)</b>			.307
No interference	5.3%	5.0%	
Some disruption to life	12.4%	13.9%	
Serious disruption to life	82.4%	81.0%	
<b>Highest Conviction Offense***</b>			.000
Felony - Persons	3.2%	3.7%	
Felony - Property	5.1%	6.5%	
Felony – Drugs	84.6%	74.4%	
Felony – Other	1.9%	2.5%	
Misdemeanor – Drugs	3.3%	10.7%	
Misdemeanor – All non-drug	1.5%	1.4%	
<b>Type of Past Conviction***</b>			.000
None	59.8%	54.4%	
Burglary/Robbery/Theft	29.4%	29.4%	
Forgery/Bad Checks	5.8%	4.1%	
Both types	5.0%	7.6%	
<b>Number of Prior Felonies***</b>			.000
0	62.8%	56.9%	
1	20.3%	19.2%	
2+	16.9%	23.9%	
<b>Number of Prior Terms of Probation**</b>			.001
0	34.3%	29.7%	
1+	65.7%	70.3%	
<b>Number of Prior Probation Violations**</b>			.002
0	40.2%	35.8%	
1+	59.8%	64.2%	
<b>Initial Risk Category*</b>			.029
High Risk	59.4%	63.1%	
Medium Risk	37.5%	33.8%	
Low Risk	3.1%	3.2%	
<b>Attitude to change***</b>			.000
Motivated	24.3%	29.9%	
Reluctant	66.2%	59.1%	
Negative	9.5%	11.0%	

\*\*\* p<.001, \*\* p<.01, \* p<.05

<sup>77</sup> 1/1/2000 – 12/31/2000 was selected as the one year pre-Prop36 period so that there was no overlap with the pilot study population that began probation in approximately March 2001.

If offenders are being diverted from prison as a result of Prop36, we would expect to see more serious offenders on probation after the law. The data are consistent with this finding, and suggest that offenders on probation for Prop36-eligible offenses after the law are different than the same population before the law, but not profoundly so. Overall, the risk and needs data suggest that probationers after the law are better adjusted with fewer needs than before the law, but that they have higher risk scores and are more criminally involved and likely more sophisticated than offenders prior to the law. Beyond quantifying the change before and after Prop36, it is important to recognize that the population of offenders on probation is not representative of “typical illicit drug users” that are not involved in the criminal justice system (as was the contention of law enforcement officers); and furthermore, that probation officers are dealing with a very difficult and highly drug addicted population, as evidenced by the finding that 80% of these probationers have severe enough drug addiction problems that they report that their drug addiction is a serious disruption to their life.

The county has not been able to devote as many resources to the program as it had wanted to. Probation supervisors had grand plans for Proposition 36 offenders – plans to provide services that would help them to “get clean” and succeed. Unfortunately, that vision did not materialize, because there were too many offenders to handle with the staffing available and because the offenders had much higher levels of addiction than was expected or that could be accommodated with the money provided by the state.

### *IMPACT ON THE ORANGE COUNTY JAIL*

If the diversion estimates calculated in this study are correct, approximately 7,600 Orange County drug possession offenders over the course of four years (11,600 if “under the influence” offenders are included) were spared a semi-lengthy stay in jail as a result of Proposition 36. Jail staff, however, contend that there was no observable impact on the jail population as a result of Proposition 36. Is this possible? If so, what might account for a situation in which there are significantly fewer drug offenders sentenced to jail for drug possession offenses but for that impact to be negligible on the physical jail and the staff who operate it? This section will investigate several hypotheses.

Unfortunately, there are no data on exactly how many fewer drug offenders are in jail as a result of Proposition 36; the best available estimate is the one presented in the first section of this chapter. There was, however, an evaluation of the potential impact of the legislation conducted by analysts at the Orange County Jail prior to implementation. The analysts estimated that between 7% and 25% of the average daily population (ADP) of the jail would be booked on a Prop36 qualifying offense and would be eligible for diversion through Proposition 36 (Davis, Cockrum-Kirkey, and Rowlett, 2001). If this estimate is correct, the overall impact of Proposition 36 would be to reduce the total jail population by between 850 and 3,700 offenders per year (based on an average daily population of the jail of 14,512).

The estimate calculated in this paper suggests that approximately 7,600 drug possession offenders over the course of four years were diverted from jail as a result

of Proposition 36. This is approximately 1,900 offenders per year. Most of these drug possession offenders would have been sentenced to 60 or 90 days in jail and would have served between 45 and 70 days (based on earning good time credits). Based on offenders serving approximately 2 months (60 days), a reasonable estimate would be that there are approximately 315 fewer inmates in the jail on any given day as a result of Proposition 36. This equals a net reduction in the average daily population of only 2.2%, which is arguably not very noticeable. This estimate, however, is limited in that it does not include “under the influence,” “possession of paraphernalia,” and some other Prop36 eligible offenses. Including these other offenses would likely increase the expected reduction by at least half<sup>78</sup>. Thus, based on rough estimates, jail staff should have seen a reduction in the ADP of approximately 4%; which is arguably not dramatic.

Another possibility is that the jail has not observed a reduction in the number of inmates because there have been significantly more arrests for drug crimes since the implementation of Proposition 36 (refer to Figures 4.1, 4.2, and 4.3 in chapter 4) and more arrests leads to more inmates. Although there may have been a dramatic reduction in the number of inmates sentenced for drug possession crimes immediately upon inception of Prop36, it is possible that the memory of that impact has been replaced with the more recent experience of more inmates. Table 6.4 supports this hypothesis by illustrating that the number of inmates has risen dramatically since 2003. Furthermore, interviews with jail personnel took place

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<sup>78</sup> This estimate is based on 170-300 ‘under the influence’ arrests per month (2,500 per year) in Orange County. The customary sentence for these offenders prior to Prop36 was 90 days in jail with probation.

during 2007 (six years after the law was implemented), and locating personnel who had knowledge of the law and its possible impact years earlier proved difficult because most deputies (including supervisors) spend only a few years working in the jail and then promote to patrol or other assignments. Only two people interviewed had experience with jail operations that spanned the entire six year period of Prop36. So it is likely that jail deputies do not have any idea how many offenders are in the jail at any given time and that is why there was no observable impact.

**Table 6.4: Number of Drug Possession Offenders Sentenced to Jail Annually, 1995-2006**

<b>Year</b>	<b>Probation with Jail</b>	<b>Jail</b>	<b>Total</b>	<b>Change from previous year</b>
1995	2408	290	2698	
1996	2026	145	2171	-527
1997	2068	120	2188	17
1998	1710	111	1821	-367
1999	1725	75	1800	-21
2000	1525	111	1636	-164
2001	903	110	1013	-623
2002 <sup>a</sup>				
2003	791	97	888	
2004	1182	181	1363	475
2005	1468	237	1705	342
2006	1319	216	1535	-170

<sup>a</sup> Due to data entry errors at the California Department of Justice, 2002 data are not available.

Besides arrests for new offenses, an increase in the number of arrest warrants could explain why jail staff did not notice any change in the inmate population due to Proposition 36. Although I was not able to verify that the number of warrants for probation violations and failure to appear in court issued for drug possession offenders increased after Prop36, practitioners at every agency that participated in the current research project believed that the number of warrants

increased as a result of Prop36. Probation officers state they are writing more warrants, judges state that they are issuing more warrants for failure to appear in court, law enforcement officers contend they are arresting more drug offenders for warrants and jailers think they are booking more people for warrants. This observation would coincide with probation officers' contentions that the offenders on Prop36 are not taking probation seriously and re-offend and/or violate probation regularly, and with judges' observations that most offenders have two or more violations before they complete Prop36 (or are removed from the program). More warrants would indicate a more transitory population of drug offenders than prior to the law, as these offenders spend only a few days in jail in comparison to sentenced offenders before the law who would spend a month or more behind bars. Thus it is quite possible that there are more offenders being booked on a regular basis as a result of Prop36, but that these offenders are spending fewer days in jail than they would have prior to the law.

If this is the case, the result is more work for jailers, not less. When an offender is booked into jail, an intake interview is conducted to ascertain whether the offender has any gang ties, whether the offender is criminally sophisticated or not, and whether there is any other information that is important to consider when placing the offender in a housing unit. Beyond the intake interview and the classification process, there is a tremendous amount of coordination that must occur to move offenders from the jail to court, from intake to the general population and from institution to institution (be it another Orange County jail facility, an out-of-county jail, or one of the prisons in Chino) . There are also time constraints that jail

personnel must abide by. For example, an inmate may not stay in a detention cell for more than 24 hours – they must be moved to a regular housing area prior to that time – or the county risks violating the inmate’s rights and the possibility of a lawsuit. In this respect, the number of jail beds saved by fewer people serving lengthy sentences is reduced by the number of people booked multiple times, which incidentally increased the workload as well.

Additionally, but unrelated to Proposition 36, the Orange County Jail has also been affected by prison overcrowding in recent years. As the California Department of Corrections and Rehabilitation is under pressure to not exceed a certain capacity, county jails are forced to hold onto inmates awaiting a prison transfer. As one jail supervisor stated, “Sometimes they’ll [California Institute for Men Reception Center in Chino] be crowded to the point they can’t take anybody and they’ll have to either cancel the bus or push them back a couple days. Well, that means we have to hang on to those people, which means we can’t free up that bed space...” (Confidential Informant FJA, personal communication). This is one more reason why jail personnel may not have noticed any impact from Proposition 36; the beds were simply taken up by other offenders, such as those awaiting transfer to state prison.

Although it would seem implausible that the jail was unaffected by Proposition 36, research reveals that to be the consensus among deputies and supervisors in the jail. In reality, the net effect of Proposition 36 was likely trumped by the additional bookings that resulted from new arrests and warrants, as well as the impact from prison overcrowding.

*IMPACT ON DIVISION OF ADULT PAROLE OPERATIONS  
IN ORANGE COUNTY*

Proposition 36 not only applies to offenders convicted of new drug possession crimes, it also applies to parolees. In contrast to the Orange County Probation Department which was flooded with new offenders, state parole offices in Orange County experienced very little change as a result of Prop36. Parole agents adapted to the new policies rather easily and the workload impact was relatively minor. The level of frustration experienced by parole agents, however, was fairly significant. Like law enforcement officers, the frustration led some parole agents to attempt to circumvent the system in order to achieve their desired outcome.

Parolees are allowed two attempts at Prop36 for each prison term they serve as well as two attempts for any new drug related crimes they are convicted of. Thus, unlike probationers who are theoretically limited to three Prop36 failures before they are removed from the program, parolees have many more opportunities to take advantage of Prop36. For example, if a parolee tests positive for drug use in the parole agent's office, which is a parole violation, the parolee is offered Prop36 probation in lieu of being returned to custody for the violation. The parolee can violate parole twice on narcotics related charges and be allowed to take part in Prop36 treatment. If a parolee serves a new prison term as a result of a new charge (non-drug related), he or she has two more opportunities to participate in Prop36 treatment upon his or her release from prison. In other words, every time a parolee finishes a new prison term, they are eligible for an additional two chances at Prop36 (assuming they did not commit a serious or violent felony). In addition to the

opportunities parolees have to take advantage of Prop36 for parole violations, they are also able to be sentenced to Prop36 for new drug-related crimes prosecuted at the local level, provided they are eligible. For example, if a parolee was arrested by law enforcement for possession of narcotics and the case was prosecuted by the Orange County District Attorney's Office, the parolee could be sentenced to Prop36 probation by the court even after they have used up both of their chances through parole. Thus parolees have at least four chances at Prop36 and often many more.

They get two opportunities at Prop36, through us, each prison term. We have guys who are 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, termers; they get two opportunities at Prop36 each time they get a new prison term. Plus if they're arrested on the streets, and they go to court, the courts give them Prop36, that doesn't count towards our two chances so the courts can give them two to three chances, we still have to give them two chances.

### ***Workload Impact***

Parolees on Prop36 are supervised by regular field agents, unlike probationers who are supervised by officers in a designated PC1210 unit. For this reason, the California Department of Corrections and Rehabilitation, Division of Adult Parole Operations did not need to hire any new personnel as a result of Proposition 36. All parole agents were given training on Proposition 36 eligibility criteria, policies, and procedures. Most agents, however, do not need to determine offender eligibility, as that is typically determined by a case classifier shortly before the offender is released from prison. When a parole agent gets a new case (a parolee newly discharged from prison) the file will be labeled with a "P" if the offender is eligible for Prop36. Parolees with two or three strikes are not eligible for

Prop36, as they do not meet the five-year washout period that is required for offenders who have been convicted of serious or violent felonies.

Agents state there is some extra paperwork involved with referring parolees to Prop36 services, but that it is not substantial. They also acknowledge there are more things to verify and keep track of with parolees on Prop36 (such as compliance with treatment, etc) but that it is not particularly burdensome. Parole agents, though frustrated by the legislation, view the extra work as “part of the job.”

### ***Impact on Parolee Treatment Opportunities***

There is some consensus among parole agents that one of the benefits of Proposition 36 is that it opened up more services for parolees. According to these agents, there are more options for treatment and more funding for treatment as a result of Proposition 36. This opinion, while wide-spread, was not universally held by all of the agents interviewed. In fact several agents felt strongly that Prop36 limited the options they had in securing the best treatment option for their parolees because of the complexities of the various funding streams available for parolees

### **Funding Complicates Treatment Options**

Several agents felt that Prop36 took away their ability to place their clients in the best treatment option for their situation. One of the main issues is that there are various funding sources for treatment and according to parole agents; Prop36 is not always the best option. For example, there are a limited number of residential treatment beds in Orange County and there is often a waiting list for these beds under Prop36. Meanwhile, parole agents have access to the Parolee Services Network (PSN) which also provides for substance abuse treatment through a variety

of treatment providers, including residential treatment facilities. This funding option, however, is only available for parolees who are not eligible for Prop36 or have waived their right to Prop36. Thus there could be a residential treatment bed available immediately for a parolee through PSN, but not for that same parolee if they choose to accept Prop36. According to parole agents, the reverse (waiting list for PSN while Prop36 available) does not occur. One treatment provider stated that it could occur, but was less likely because PSN is “less hassle” for the provider and usually pays more<sup>79</sup> (Confidential Informant TAL, personal communication). In order to access PSN services, the parolee must waive their right to, or not be eligible for, Prop36. Therefore the situation described above forces parolees to choose between waiting for a bed through Prop36 or getting into treatment immediately through PSN and waiving their right to one of their Prop36 chances.

There’s only a certain amount of SACPA-funded beds for these people in the county. So I can have somebody sitting in the office here saying, “Ok, I really want to do Prop36. I’m going to do it this time” and they’re acknowledging to me, “Oh, I know I’ve got a problem. I’ve got to go to an inpatient treatment program.” ... Now they’re going through Prop36, so it’s got to be a SACPA-funded bed. Well they could be out of SACPA-funded beds right now. So they’re going to put that person on a level one [outpatient]. ... So [HCA intake staff] totally changed everything that I’ve worked with [the parolee] here (to start acknowledging they have a problem that they need to go into a treatment bed). Because they don’t have [residential beds] available at that time, they’ll convince [the parolee] to be a level one. I’m thinking, you know, you need to be in a drug treatment program. You can’t stay sober for a day at a time, and

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<sup>79</sup> This occurs because there are a limited number of treatment providers in Orange County (some of whom are not approved to treat Proposition 36 clients). Each treatment provider has a set number of beds and multiple contracts. So you have, for example, 30 treatment providers with 10 beds each (300 beds total). Each treatment provider has multiple contracts (eg. Prop 36, Parolee Services Network, private medical insurance ...). Regardless of who is paying for the person occupying the bed, there are still only 300 beds. As new contracts emerge with better reimbursement or fewer requirements, Prop36 becomes less attractive and fewer beds are available for Prop36 clients.

they're going to send you to an out-patient bed because that's what they have available. Whereas non-Prop 36, I may have a bed available through the Parolee Services Network. So it really ties our hands in a lot of cases for doing the best thing possible for this person because of the different funding streams that we have available to us. And it's a shame because Prop36, rather than being a safety net to get people into treatment, provides an obstacle to give them the best sort of treatment we have to offer and that's unfortunate.

### *Agents' Attitudes and Adaptation Strategies*

According to the parole agents interviewed, they and most of their colleagues do not like Proposition 36. Not only did it impact how agents go about securing treatment for their clients, it created frustration among agents and caused some agents to get creative in order to get their way. In the words of one agent, "Personally, a lot of us, we try to get them excluded from Prop36 as quick as possible. We get them to waive so we don't have to [deal with it]." (Confidential Informant CDX, personal communication).

Some agents believe that Proposition 36 "took away our power" because parolees know that they will have multiple attempts at Prop36 before being returned to prison. They argue that parolees behave differently knowing that agents cannot arrest them for using or testing dirty. This same argument was made by probation officers as well. In the case of parole, however, the effect of Prop36 is complicated by prison overcrowding, which has affected agents' ability to return parolees to custody for minor violations.

I think they know that we're not gonna arrest them and send them back to prison over a one time, two time, maybe three time, four time drug use. They know that they have opportunities at drug treatment. So I think a lot of them are probably using drugs more knowing that we're not gonna arrest them for a first time drug use, or second time drug use.

I don't think they respect us as much as they used to because they get away with so much now and it seems that they get away with a lot more. They know that we can't just arrest them for [drugs]. I mean, it's all over the paper; we're not supposed to be arresting people and that sort of thing. So you know what, I can't lock up someone because they don't follow my instructions. They aren't gonna do that. They're not gonna allow us to put them in prison for not following my instructions. So that's where it gets very frustrating for us because it's kind of like, 'look this guy doesn't want treatment, he doesn't want help, I'm telling him, he's refusing', well you still gotta give them more chances.

Proposition 36 frustrates parole agents for several reasons. First, agents are frustrated that parolees get "so many bites at the apple." Agents find it disconcerting that one person can be given so many opportunities to avoid punishment for their actions. Furthermore, agents argue that parolees are not suitable for Prop36. They contend that parolees have had ample opportunities to get drug treatment and that most of them are too hardened from prison life to benefit from drug treatment. Agents further argue that Prop36 is a waste of money, because the success rate is extremely low for parolees.

I think it's the public saying jail's not the answer, well yeah maybe it's not the answer but at the same time, you can't force somebody into treatment, you can't force them to stop using drugs if they don't want to. So with Prop36, we have to offer it. But most of the people who go through it don't complete it and I'd say absolutely the majority of my caseload does not complete Prop36 drug treatment program and the ones that do, it's usually because they're ready, they want it. They want to change and they would have come to me anyway. They would have gotten into some sort of program anyway whether or not Prop36 was intact or not.

I think it's inappropriate for the parolees, and I think it's inappropriate because I think it gives a false sense of security to the population. I think it's too expensive to waste this type of money. I think it is duplication of services because a lot of times if the courts give him prop, we give him prop, so we're using up our bites, we call

it “bites of apple.” We’re using up their bites. I don’t know what the studies are showing, but most of my people eventually get a term and go back to prison.

Why is this not working? I know that my friend that did probation said that in the beginning “It took a year and a half for me to get one person to successfully complete Prop36.” That’s probation. She even had problems with probationers getting through it. She goes, “I remember I just wanted to hug the guy that finally made it through. I was so excited. I had one finally go through it and succeed.” I go, “Yeah, I don’t think I’ve had any. I might have had some that completed but they’re still using.”

The reason I dislike it is because it’s an expensive way to do it because you’re giving people the same old chances over and over. On the other hand, I like it because it gives more opportunities, but I don’t know if it’s cost-effective because I’ve had so many people fail at it that I wonder if we’re just not spinning our wheels with these people.

Parole agents reacted to the frustration brought on by Prop36 in a similar manner as some law enforcement officers; they circumvented the system in order to achieve their desired outcome. Adaptation strategies similar to law enforcement officers were observed amongst parole agents who stated that they employ several strategies to circumvent the law. First, agents may encourage parolees to waive their rights to Prop36. Additionally, agents choose whether or not to violate a parolee based on a complex decision tree centered around what they *expect* the parole board to do and what they *want* the parole board to do.

Agents view Prop36 as a hassle and a hindrance to proper supervision and try to get parolees to use up or waive their two chances at Prop36 as quickly as possible. How does a parole agent encourage a parolee to waive their right to Prop36? Parole agents convince parolees that it is in their best interest to waive using three main selling points. First, agents point out that they are able to “COP”

(Continue On Parole) the parolee's drug charge (e.g. a dirty test) if they waive their Prop36. The parolee is "continued on parole" on the drug charge, meaning the agent puts a note in the parolee's file that they were admonished for the violation and that appropriate action was taken (for example the parolee went to treatment through PSN); but, the violation is not reported to the parole board and thus does not become part of the parolee's permanent record. Since the violation does not go to the board the parolee remains eligible for early release (at 13 months). If the drug violation was reported to the board then the drug charge would be recorded as a violation and the parolee would no longer be eligible for early discharge from parole. It is similar for parolees who are arrested by law enforcement for drug possession, but in this case, they must successfully complete Prop36 on the new charge in order for there to be no permanent record of the conviction.

It's to your benefit if you waive. ... If [he] waives ...we're going to allow for a local adjudication [of the drug offense]. Then he's got the opportunity to complete the Prop36 program and have that case dismissed; which means there's no more record of that being against him. But if I send him to Prop36, then I've got to send that action on to the board [of prison terms]. ... So if [the parolee] is successful with Prop36 and dismissed that local case, we allow for local adjudication so it doesn't go to the board and then we have the option to discharge them at the unit level in 13 months. So the board never sees the case.

The way they do the thing local, they give Prop 36 for a possession. If they deny doing it with me, they have the opportunity then to finish treatment, have that case dismissed, I COP [continue on parole] them, they're still eligible for early discharge on parole because they got COP'd on that case so they can go to the board and so that maybe, they have a chance to hit a homer. Ok the bad part of that then is when they violate probation. They get a new case, that's going to be saddled on forever, now they're PBWT, they're going back to prison.

The second selling point is dual-supervision. Parolees that participate in Prop36 are dually supervised by probation and parole, which means they have a probation officer, in addition to a parole officer, to report to. Agents recognize that dual reporting is a hassle and use it as a selling point to encourage parolees to waive their right to Prop36. Finally, though possibly less motivating than the previous selling points, is the availability of services issue. If a parolee enrolls in Prop36, he/she needs to use Prop36 services which are sometimes limited, and cannot utilize PSN for treatment.

Not all agents encourage their parolees to waive their rights to Prop36. Some agents have had experiences in which the board gave a parolee Prop36 even after the parolee twice waived his rights to it. They would rather not “mess around with it” and just have their parolees go through their two chances at Prop36 as quickly as possible. As one agent said, “If I’m on my game, which I’m supposed to be, I’m done within two months” (Confidential Informant CQA), meaning most of her parolees have already used up both of their chances at Prop36 within two months of being released from prison. Parole agents do not like Prop36; the agents’ goal, regardless of whether they encourage waivers, is to get rid of Prop36 quickly so they can supervise their parolees as was customary before the law.

Besides circumventing the system through waivers, parole agents described methods they use to return a parolee to custody when the parole board is unlikely to approve the return. Specifically, if a parolee has a drug-related violation and a non-drug-related violation, some parole agents will write the parolee up on the non-drug violation and not on the drug violation, so that the board does not have the option of

Prop36 and instead will be more likely to return the parolee to prison on the non-drug related violation.

[In order to have them returned to custody] we have to continue them on parole for the drug offense and send them back to the board for the non-drug violation, but truly I try to get them to waive twice as soon as possible. Then basically I don't have to worry about it any longer and I can really supervise the case how it needs to be supervised.

For failure to follow instructions we can return to the board. You get time for that versus if we put both charges on and he hasn't exhausted his Prop 36 they're going to turn around and cut him loose and give him Prop36.

Some parole agents attest that the parole board caught on to parole agents trying to manipulate the system in the manner described above and adapted accordingly, and say that those methods are no longer successful. Some parole agents interviewed, however, were obviously still having success and were still working the system using the methods described above. Note the striking similarities in adopted response styles between parole agents and law enforcement officers. Whereas law enforcement officers are charging offenders with more crimes in order to disqualify them from Prop36, parole agents are charging them with fewer violations so they can be returned to custody. In both cases, it appears that practitioners at the next stage of the process (prosecutors and the parole board) reacted in ways that nullified officers' and agents' attempts to manipulate the system.

In a similar manner, if a parole agent wants their parolee to serve some time behind bars, for detoxification or other behavior modification purposes, they will arrest them on a violation and delay the violation report for several days. According

to parole agents, they have up to six days to file a violation report after taking someone into custody and may choose to not file a report at the end of the time period and instead release the parolee. This “shock incarceration” allows the agent to “get the guy’s attention” without formal proceedings or permanent reports.

In summary, parole agents were not burdened with a lot more parolees like probation officers were. The impact on the agency and the staff was minimal to moderate, with the biggest issue being the frustration associated with the new policies and procedures. Overall, parole agents had the same complaints as law enforcement officers and probation officers – that offenders are not taking Prop36 seriously and that the legislation does not adequately take into account the level of criminal sophistication and drug addiction present in the parolee population.

### *CONCLUSION*

It is apparent that, of all the agencies studied, Prop36 had the most profound impact on the probation department. Diversion estimates generated as a result of this research suggest that approximately 3,400 offenders convicted of eligible drug crimes in Orange County are diverted from custodial sentences each year as a result of Prop36. These offenders, all of whom are sentenced to probation, overwhelmed the department and forced numerous innovations. The same level of innovation was not necessary at the jail or parole offices. Interestingly, practitioners at all the agencies expressed frustration at various failings in the law, including the inclusion of parolees and the inability to hold offenders accountable for their behavior. That frustration resulted, often, in efforts to circumvent the law’s intent.

## Summary and Conclusions

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The impact that Proposition 36 has had on offenders has been influenced by the adaptation methods chosen and employed by practitioners in criminal justice agencies throughout California. This research illustrates, in a very dynamic way, how “law on the books” plays out as “law in action” every day. Similar to previous research (Engen and Steen, 2000; Savelsberg, 1992), findings from the current study reveal that street level bureaucrats at every stage of the criminal justice system found (or invented) ways to circumvent and/or diminish the effect of this law. Law enforcement officers attempted to disqualify offenders by adding non-drug related charges when arresting individuals for Prop36-eligible crimes. City attorneys proactively trained officers in one police department how to get around the law<sup>80</sup>. Judges scheduled frequent monitoring reviews in court and immediately issued arrest warrants for offenders who failed to appear; thereby creatively using the tools at their disposal to order a punishment (shock incarceration) prohibited by Prop36 but deemed necessary by the practitioners involved. Parole agents intentionally violated parolees on non-drug related charges (instead of the also-present drug-related violations) so that the parole board would allow a parolee to be returned to custody (and not given more opportunities at Prop36).

These coping strategies were widespread, but not universal. They were deliberate reactions to a law that many disliked and most felt was being taken

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<sup>80</sup> Word on the street is that District Attorneys trained officers in the other departments.

advantage of by drug offenders. In order to understand why some professionals adapted in this way it is necessary to understand the history and intent of the legislation. Proposition 36 was written by drug reformers from the Drug Policy Alliance. It was written with an appreciation for the addiction process and the knowledge that failure is part of recovery. This is why multiple failures (dirty tests, probation violations, etc.) are allowed but punishment for the first few failures is not (Dave Fratello, personal communication, April 20, 2005). It was backed by voters, hopeful but possibly misinformed, who wanted to help the drug-addicted population of California. The premise is good: cure the addiction and good things will follow (less crime, more employment, better parenting, less welfare...). The problem is that many addicted individuals who are arrested by law enforcement have lengthy drug histories that are not easily treated or cured through outpatient treatment. It is true that there are residential programs for Proposition 36 offenders; but unfortunately not enough. This is the backdrop against which criminal justice practitioners operate; intimately familiar with drug addicts, the crimes many commit, the ugliness of addiction, and frustrated that they can't seem to make a positive impact.

Front line officers tasked with public safety are among the first to see the positive and negative repercussions of Proposition 36. Their frustrations are based on their daily reality of arresting drug addicted persons for burglaries, identity theft, and other crimes; processing their cases in court, or supervising them on probation or parole. They see offenders with a high level of addiction, in need of residential treatment, who are being sent to outpatient treatment while continuing to live in

their same neighborhood with their same friends that are (often times) poor influences and who may also be using narcotics. Though law enforcement officers do not articulate the issue in these terms, they see the results of the mismatch between offender need and treatment provided on a regular basis, as do judges, lawyers, probation officers, and parole agents. Practitioners understand the hope that voters had when enacting Proposition 36; but based on their experiences, they do not believe that Proposition 36 works for most offenders. In the words of one law enforcement officer, “It was a good idea on paper but you know it’s like the person that makes blueprints to build a house who’s never swung a hammer and the guy that builds the house says what the heck, how’s he going to do that?.”

This view is not entirely unwarranted. Foremost, when one compares Proposition 36 to the four characteristics of successful treatment programs identified by Marlowe (2003) it falls short in two key areas: close supervision and monitoring of offenders; and swift and certain punishment for non-compliance that do not require formal hearings. Moreover, the law has had a profound impact on several Orange County criminal justice agencies. The number of offenders completely overwhelmed the probation department as well as the superior court, not to mention the network of treatment providers in Orange County. Finally, the funding provided by Proposition 36 has been insufficient to provide adequate treatment or supervision to offenders enrolled in the program. Even though healthcare, probation, and the court wanted to provide the best treatment and supervision possible, they were unable to; in large part due to inadequate funding. An Orange County Grand Jury Report (2003) found that insufficient funding was a large problem in the Orange

County and that agencies tasked with implementing Prop36 had to absorb additional costs associated with the program. The financial situation absolutely exacerbated the problems encountered in Orange County, especially for the probation department and the Health Care Agency.

The authors of the legislation asked for \$120 million for implementation of Proposition 36 throughout the state. This amount was not based on an estimate of the projected costs to provide treatment and supervision to the 36,000 offenders expected to be diverted each year; but rather represented the amount that, based on public opinion polls, the sponsors of the bill believed voters would be willing to support (Bill Zimmerman, 2005 International Drug Policy Reform Conference, November 10, 2005). The overarching problem is that these offenders are much more severely addicted than was expected and they need more intensive – and thus more expensive – treatment. Hence, inadequate funding adversely affected both supervision and treatment and with that, the overall success of Prop36. Sponsors of the legislation contend that they were surprised by the level of addiction severity displayed by Prop36 clients and underestimated the funding required to treat and supervise these offenders (Bill Zimmerman, 2005 International Drug Policy Reform Conference, November 10, 2005); however it is a conundrum to this researcher why the high level of addiction exhibited by these offenders took so many people (including Orange County’s implementation team) by surprise. Only the police officers consistently said “this is exactly the population we expected.”

### *IMPACTS ON THE CRIMINAL JUSTICE SYSTEM AND OFFENDERS*

Beyond the complaints, frustration, and fiscal constraints that inhibited proper treatment and supervision, Proposition 36 has had several positive benefits for the criminal justice system as well as offenders. To begin with, the legislation has improved collaboration between criminal justice agencies and treatment providers and in fact has initiated it on a large scale. Furthermore, Prop36 has provided substance abuse treatment for more than 24,000 offenders in Orange County (140,000 statewide), many of whom would not have sought treatment on their own, either for financial or other personal reasons (including denial). Moreover, it diverts an estimated 3,400 offenders per year in Orange County from incarceration and the associated negative repercussions. Of course, only about 500 Orange County offenders per year are diverted from the most deleterious prison terms, the rest are diverted from short jail sentences, which arguably have fewer long-term harmful effects.

It appears likely that Prop36 has had a net widening effect on drug arrests. Despite some law enforcement officers' contentions that arresting some drug offenders is a waste of time, it is clear that arrests for several Prop36-eligible crimes increased after Prop36 (possession of dangerous drugs, possession of narcotics, and under the influence). Time series analyses indicate that Proposition 36 was a contributing factor to the increase in arrests; though it was most certainly not the only important factor. Unfortunately, this research was not designed to address this finding and thus cannot rule out rival explanations for why these drug arrests

increased (ex. more drug users, more officers on the street, changes in offender behavior).

Moreover, offenders are also more likely to be charged with the additional, non-drug crimes present at the time of arrest than they were before the law. What impact these additional charges have on offenders during plea bargaining or sentencing is unclear. The object of adding these also-present, non-drug misdemeanors is to disqualify offenders from participating in Prop36. Research suggests however, that attorneys are dismissing the charges in order to allow offenders to plea bargain to Prop36. Some practitioners stated that some offenders who failed Prop36 and were removed from the program due to numerous violations may have spent more time in jail as a result of trying (and failing) Prop36 than if they had not attempted treatment at all. Current research could not validate this contention, but it is possible that future research could reveal if this is (or was) the case.

On the flip side, data indicate that more offenders are convicted of misdemeanor drug offenses, despite being arrested for felony crimes. It appears that negotiating the level of crime down to a misdemeanor may have replaced negotiating the length of jail time in the plea bargaining process. This is an important finding and a significant effect because individuals with a felony conviction must report the conviction on all employment applications for a stipulated time period, whereas it is unnecessary to disclose misdemeanor convictions. This particular change could have profound impacts for some

offenders as they search for future employment. In all, Prop36 has had both positive and negative effects on offenders in Orange County.

### *SUGGESTIONS FOR IMPROVEMENT*

Proposition 36 is one of the most, if not *the* most, wide-reaching pieces of criminal justices legislation passed in the United States in recent years. As such, there are aspects of Prop36 that worked well and there are aspects that could be enhanced. In the words of one probation officer, “I think that it has not reached the potential that it still can. Prop36 still has a significant, significant potential to positively serve the criminal justice system, to reduce crime rates, and to help get people sober. It hasn’t reached that yet.” (Confidential Informant DDA, personal communication). Practitioners offered several ideas to improve Proposition 36. First, practitioners are united in their belief that further restrictions should be placed on *who* is able to take advantage of Proposition 36. Next, they believe that judges should have the ability to order shock incarceration for offenders not complying with the rules of treatment and/or probation. Additionally, practitioners feel strongly that treatment needs to be more intensive. Furthermore, in order to make any significant improvements to this law, additional resources will be required to allow for appropriate treatment and adequate supervision. Finally but less importantly, law enforcement officers articulated that periodic updates during patrol briefings by criminal justice practitioners involved in Prop36 (such as the court or probation) may improve their buy-in to the program and help them to feel more like

they are part of the solution (rather than the clean-up crew). I will consider each of these suggestions in turn.

### *Additional Discretion Regarding Participation*

Judges and other practitioners want more discretion as to who is allowed to participate. Not only do judges want criminally sophisticated offenders with long rap sheets who are unsuitable for treatment out of the program, they also want the ability to keep offenders *in* the program beyond the third violation if they are making progress. All parolees and almost all offenders with strikes are already ineligible for Prop36; however practitioners also want the ability to exclude offenders who have several past convictions, especially those who have served time in prison. They want to place additional restrictions on the criminal history component and only offer Prop36 in special cases to offenders with more than one prison term. These offenders would need to articulate to the court a strong desire to participate in treatment and a willingness to work the program.

You should have the discretion to keep people who are progressing in treatment and not be saddled with the 3<sup>rd</sup> violation. I think you still need to have the discretion to exclude people for a non-drug related offense because again, you are going to have people when you look at the totality of their background, you see how well they were doing or how badly, their record, then [be able to say] ‘no’, because again you’re going to want to be able to keep people in who can use treatment and you can only do that by excluding the others who aren’t using treatment. [Judge]

And the health care people were complaining and still do that those worn prison people come in there and basically swear and cuss and have a bad attitude and it’s like a bad apple in the Prop36 barrel that the public had no idea was going to be there. And that’s another problem I mean, for starters to clean this thing up they need to get rid of all of those violent people. They don’t belong in that program. If

they want to do something special for them, fine do it. But don't put them in there and mix them with this other proposition. [Judge]

That's another thing that's difficult. Sometimes the folks who have a large history are the people who finally wake up and go, "I just wasted the last four years of my life and I need help." I don't want to disqualify that person that has that attitude. But it's really difficult to get into the mind of that person that's taking the deal that wants Prop36, because we don't really know exactly what's in their minds. How do you benefit as many people that actually want the help and disqualify the folks that don't want the help? [Probation Officer]

### *Graduated Sanctions*

As might be expected, several court practitioners believe graduated sanctions for probation violations would improve program compliance amongst Prop36 defendants. Their position is based on experience with this population and the belief that graduated sanctions (including but not limited to the use of shock incarceration) are necessary to encourage sobriety and persuade offenders to comply with program rules<sup>81</sup>. Practitioners complain that Prop36 offenders do not take the program seriously because there are almost no sanctions for noncompliance. Treatment providers interviewed agreed and said that just as failure is a part of recovery, so too are sanctions for misbehavior.

[P]eople were going into Prop36 thinking it was a joke, they would say, "oh, well" to the officers on the street, ...so they went in with this mindset, knowing they couldn't go into custody, knowing there were no repercussions for their conduct so naturally when you go in with a mindset like that and you're already an addict, you're not gonna (sic) do well and they didn't. [Parole Agent?]

If you're going to force somebody to do something against their will, there's got to be a consequence for not doing it. If the judge and court is the ultimate authority, but you don't give them any authority to do anything, then what's the point? [Probation Officer]

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<sup>81</sup> Best practices research on substance abuse treatment with criminal justice involved individuals supports this contention (Marlowe, 2003).

That's probably the single most important thing that they should be doing is sanctioning.... I think short-term custody. We call it "dunking," dunking them back in to give them a taste of the loss of freedom again. They have to lose something. That's what I mean when I say investing in their recovery financially. They have to lose something in order to get the message they can't continue to do what they've been doing. [Treatment Provider]

Based on the interviews conducted, it is clear that the judges involved in Prop36 in the county are well respected amongst their peers and among other courtroom workgroup actors and that these judges are level-headed and thoughtful about how to improve the lives of addicted persons in the criminal justice system. In fact, it was mostly other practitioners, not judges that recommended this change to improve the success of Prop36.

### ***Strengthen Treatment Component***

"I would increase the resources available to give people the treatment that they actually *need* and not what we can *afford*." (Confidential Informant AFT, personal communication). Practitioners at all stages want to see the treatment component strengthened. Several practitioners mentioned that the treatment provided needs to more closely match the offender's addiction severity. They complain that offenders are frequently provided outpatient treatment when residential treatment would be more suitable. Most recognize that it is a matter of funding and beyond the control of the Health Care Agency, but argue that the success of Prop36 is dependent on increasing funding for treatment. According to an Orange County Grand Jury Report (2003), there were only 106 funded residential treatment beds in the entire county in 2003. More than 3,000 offenders are

sentenced to Prop36 in Orange County each year, and according to this report, only 412 can get into residential treatment in a given year!

Poor treatment or insufficient treatment makes an addict worse, not better. It makes them worse because it feeds their denial: It's not their problem, it's somebody else's problem. .... I just think the best chance to get well is a very intensive treatment the first shot out. I think the lower level programs like PC1000 and even Prop36, they're not sufficient to get their attention. They're not intensive enough. [Treatment Provider]

To make it more appropriate we need to have a lot more intensive drug rehabilitation programs available which include live-in, custodial facilities; because if you don't have that, you certainly don't have the ability to affect rehabilitation in a meaningful way. But then, you know, how do they pay for it? [City Attorney]

I think the intention was very good, but I think it is a dismal failure because it hasn't been sufficient. The levels or the intensity hasn't been sufficient enough to get these people well, and the duration as well.... Treatment should be more intensive and should definitely be using their health insurance coverage. [Treatment Provider]

In addition to increasing the number of residential treatment beds, the state should consider sentencing some offenders with serious addiction problems to a secure confinement treatment facility for the first 30 days. Primarily, this would serve a detoxification function for offenders accustomed to using drugs frequently (several times per week to daily). One of the negative repercussions of eliminating jail sentences all together for drug addicted offenders on Prop36 is that some offenders actually benefit from the 30-60-90 days they spend incarcerated. Law enforcement officers and jail deputies describe the physical transformation that many drug offenders make in jail. Officers and deputies contend that many offenders gain weight, look much better, and are significantly more coherent after some time in jail (not using drugs and getting three regular meals a day).

They [Drug offenders] don't look the same today as when we put them in jail. There is absolutely no doubt that helps the vast majority of them. That is definitely a dry out, by putting them in custody. We don't see people coming out of jail after an extended period of time looking like they are strung out. [Police Officer]

It seems like a few days after they're here they really start to make the biggest change and then it seems like the longer they're here, the better they get.... more polite, I want to say more coherent, more respectful of the rules, more understanding of the ramifications if they violate the jail rules. And they, once they're settled in, they turn out to be good workers, you know, because it's something to occupy their time and mind, rather than just, you know, the drugs or something. I personally, I think I see a big difference. [Jail Deputy]

I've had one [offender] where she spent 60 days in jail. She was strung out on heroin. She spent 60 days in jail; and came out clean. That would have never happened under Prop 36. And the only reason she was in there was because of her traffic violation. [Narcotics Officer]

Recent research supports deputies' contentions. According to brain researchers studying addiction, it takes the brain 90 days to reset after consuming illicit substances and in some cases of heavy, long term usage, it can take years before the brain functions normally (if ever) (Lemonick, 2007). That is why the standard jail sentence helps to break some of the unhealthy habits and patterns formed over months or years of drug use and allows addicts to gain some clarity on their situation after being drug-free for a period of time. The forced detoxification time prescribed by this option would allow addicts to enter treatment clean and with a higher chance of success. Offenders would be housed in rooms, not cells, and would be expected to participate in meetings and other activities throughout the day. Facilities would not mimic jails; rather they would be modeled on similar existing facilities that successfully cater to juvenile delinquents with addiction problems in

Orange County and elsewhere (such as the Youth Guidance Center) and that subscribe to evidence-based practices shown to work with drug using offenders. Facilities would be administered by probation departments throughout the state and each would include treatment professionals to coordinate and run the treatment programs.

As part of the intake process, probation officers and treatment professionals would assess each offender's treatment needs along with their various skills. From there, a successful recovery plan would be developed with the offender's input, and would include the level and expected duration of treatment required, as well as the inclusion of other services that would improve the offender's chance of success (high school equivalency program, like skills program, employment services, personal/family counseling, etc.). The goal is to get each offender ready to fully participate in their recovery; which requires (1) getting the offender's attention so that they recognize that they need to take Prop36 seriously and (2) detoxifying the offender so that they can be coherent and can make good decisions about their recovery plan.

Offenders sentenced to this type of facility would start treatment meetings immediately. This is a significant improvement over the current method which can take days or weeks to get enrolled and get the paperwork processed. This is very important as motivation decreases over time, particularly for individuals coerced into taking action. Such a facility would likely decrease the early warrant rate for no-shows, as offenders would be in a secure confinement facility with all the

resources they need (probation officer and treatment professional) on-site<sup>82</sup>. Although these facilities would require additional funding, they could potentially pay for themselves in improved success rates.

Deciding upon the proper confinement time should be open for discussion between addiction treatment professionals, probation officers, parole agents, judges, attorneys, jail deputies and possibly law enforcement officers. Defining who gets this intensive treatment will be tough<sup>83</sup>. It will be a balancing act between helping those in need of detoxification or intense treatment versus causing additional harm to others who are productive citizens, with stable, pro-social support systems, and not in need of this level of treatment. Fairness to all will be an important issue that will need to take center stage, so as to not further privilege high-income offenders or punish low-income offenders.

### *Additional Resources Required*

Finally, more resources are required to provide the more intensive supervision and monitoring that county practitioners want to provide. Almost every court practitioner interviewed expressed the belief that offenders would do better if the resources were available to provide more intense monitoring and more meaningful contacts with the judge, ala a drug court model. Unfortunately there are simply too many Prop36 defendants to implement a drug court model successfully. Adding a second felony Prop36 court, however, would relieve some of the burden

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<sup>82</sup> One other benefit this has is that it would likely increase the perceived severity of the sanction in law enforcement officer's eyes. This, however, is not a legitimate reason to remove an individual's freedom. Denying an individual's freedom for the purpose of someone else's satisfaction, while currently popular (e.g. retribution), is not a legitimate reason to impose a custodial sanction on low-level drug offenders.

<sup>83</sup> It might be based on a short risk/needs assessment conducted at or prior to sentencing with severity of addiction taking precedence.

and allow the court to more closely monitor some offenders. There are some drawbacks to adding a second court, specifically consistency and the issue of judge shopping, however C58 is clearly overburdened at this point and cannot adequately monitor all the felony offenders on Prop36 probation in the county. The situation is not going to get better, and may in fact get worse with the increase in arrests.

As mentioned, additional resources are also necessary to increase the number of residential treatment beds and to improve the treatment provided. According to the treatment providers interviewed, the funding provided by Prop36 funds is insufficient to provide quality treatment and many high quality treatment facilities are not willing to take Prop36 clients because the compensation is insufficient. One treatment provider argued that Prop36 clients are “never going to get what they need there because there’s not enough money to pay for the right treatment” (Confidential Informant TAL, personal communication). The need for proper resources goes beyond the fiscal issue and impacts the success of the program as well as the perception of rehabilitation in general and Prop36 specifically.

One of the changes I would fund, treatment that is more closely linked to the level of addiction. One of the first things we noticed in implementation in Orange County is that there were far fewer residential treatment beds available than there were people who needed them and the number of beds have gone down, not up since the initial start of the program. So extending the resources necessary to provide a level of treatment that matches the level of addiction would make it much more successful. The other thing, I think that if there was more accountability, more resources available, mostly for treatment, but also for monitoring, so that probation could actually monitor a greater percentage of cases and bank fewer cases would help hold people accountable and help them succeed as well. [Public Defender]

Do we need to look at implementing some of that [residential treatment, better supervision, life skills training, employment...] so we don't have the cycle continuing? That's what it seems like from where I'm at. I have people coming back not even a year after they've been successfully terminated from Prop. They come back with another case. They'll find any excuse to go back to using, and they get re-arrested, and here we are again. Its job security to me, but what benefit is it doing to the offender, to the community, to the criminal justice system? [Probation Officer]

I think the other reason that Prop 36 is so negative is that people read what a failure it is and they think that rehab is a failure. Rehab isn't a failure. It's this program that is a failure.... But the sad thing is that all these other poor innocent people that simply have a drug addiction that they need help with are not getting the help that they need. [Judge]

### *Improve Communication*

Law enforcement officers know very little about Proposition 36, the requirements for offenders, or the success rate, but they are frustrated because they see the negative effects of drug addiction on a daily basis. They see offenders continue to use drugs and get arrested while on Prop36 probation and they hear offenders joke about Prop36 regularly. From where they stand, Prop36 is not effective. A couple of officers suggested that it would be useful if they had periodic updates at briefing and that it would be affirming to hear success stories from offenders in their community that Prop36 actually helped. It is unknown whether or not other law enforcement officers would also find such information encouraging.

I thoroughly believe that if the cops started to see it work, that they'd be more for it. And again, you know, they might even want to consider getting some of the people who were successful more involved. [Jail Deputy]

A renewed effort to build coalitions between probation officers and law enforcement officers should be revisited, this time with supervisors from the probation department and interested law enforcement agencies coming together to brain storm ways to support one another. Providing each law enforcement agency with monthly or quarterly lists of Prop36 probationers living in their jurisdiction (along with the name of their assigned probation officer and probation terms) is relatively easy and not very time consuming, yet it would provide a tool to law enforcement that they did not have before and could improve accountability of offenders living in communities in which law enforcement officers take a proactive role in monitoring these offenders. Assigning one law enforcement officer or a team of law enforcement officers to Prop36 probationers in each jurisdiction would provide a centralized contact for information within the department and between departments.

I think if they (police officers) worked hand-in-hand with the court, had a closer relationship with the court. Do we need to have probation officers meet with every single person? No, but what if you had a list of people who were on Prop36 probation that went out to every officer during briefing? “You know Sally lives here. She’s been living here for 20 yrs, and she’s always using. Now she’s on Prop36 and she’s on search and seizure.” [Judge]

Of course, this could lead to additional arrests, which would exacerbate the problems and end up harming offenders. However, having treatment providers attend briefings periodically to appraise officers of treatment issues, while radical, could negate part of that and also be beneficial by teaching officers about addiction and the process of recovery, thereby encouraging officers to have a more holistic understanding of the issues with Prop36.

### *STUDY LIMITATIONS AND FUTURE RESEARCH*

As with any study, there are limitations. One limitation of this study is that it is based on the experiences of 62 practitioners in one county in Southern California. Other counties may have different experiences implementing and adjusting to the law. Similarly, interviewing additional practitioners could very well bring to light different issues. Furthermore, at this point, the findings have not been analyzed at the agency level – it is possible that future research could reveal that department size or philosophy may be a driving factor in how law enforcement officers perceive and react to the law. Despite these limitations, important lessons have been learned from this study, including, practitioners’ frustration and intentional circumvention of the law and changes in ground level response that may not have been anticipated.

Future studies should focus on expanding the scope of this study to additional officers and counties throughout this or other states that implemented similar legislation; or using a similar approach to study other legislation and policies (such as medicinal marijuana laws or the impact of jail overcrowding on law enforcement, courts, and prisons). Future research should also expand the scope of study to include addicts, Prop36 offenders, and treatment providers. Law enforcement officers contend that more addicts do not care if they get caught. The question is, is this true? Informal conversations with a few addicts suggest that it might be. Furthermore, what do Prop36 offenders think about Prop36? Do they really think it is a joke (as practitioners contend)? Finally, what are treatment providers’ experiences with Proposition 36? How would they change it?

Also, it is probable that had other practitioners been interviewed responses would be different. For example, it is possible that the law enforcement officers interviewed were the ones in their respective departments who were best acquainted with Proposition 36 and that other officers not interviewed had less knowledge of the law and/or had not changed their behavior in the ways indicated by interviewed officers. Thus a future study should use survey methods to reach a larger number of law enforcement officers to ascertain the actual scale of frustration and behavioral change that occurred, particularly at the patrol officer level.

Additionally, Worrell, et al. (2004) found that crime in California increased as the size of probation caseloads in California increased. Proposition 36 dramatically increased the size of probation officer caseloads in Orange County. Hence, future research should attempt to ascertain what impact “banking” offenders has on probationer success, recidivism and crime in the community. Furthermore, some practitioners suggested that Prop36 equalized justice for rich and poor offenders by mandating a sentence (probation) that once was reserved primarily for privately-represented offenders. The current study was not designed to investigate nor validate this hypothesis; however this would be an important issue for future research to address. Similarly, the same study could explore whether offenders arrested for felony drug crimes but convicted of misdemeanor drug crimes have any specific characteristics in common (such as financial resources). Finally, this study estimated the number of offenders diverted from incarceration in Orange County as a result of Prop36. Future studies should use these estimates to estimate the costs

and benefits that may have resulted from diversion from incarceration and treatment for these offenders (and society in general).

### *CONCLUSION*

“Time and again, street-level workers express their deep sense of personal accomplishment in helping individuals. They do not tell stories about efficiently implementing public policy; they tell stories about using policy and the system to serve individuals” (Maynard-Moody and Musheno, 2003:49). “Only when the focus of policy making includes the ‘living law’ that is practiced on the streets can the public policy goals underlying the ‘law on the books’ be realized”(Aaronson Et al., 1981: 101). If the policy goal of Prop36 is really to get offenders to stop taking drugs and to be productive members of society (rather than just eliminating the use of incarceration), then we need to (1) allow practitioners input into how to best achieve that goal (including the use of shock incarceration if necessary), (2) commit to using evidence-based practices at the program-level and the treatment-level, and (3) make enough money available so that practitioners can do their jobs effectively and effect positive change. It is not sufficient to put inadequate funds toward a program of this magnitude while tying the hands of professionals entrusted to monitor, supervise, and treat these individuals, all the while expecting good things to come. It is not going to happen. It just discourages practitioners and limits the success of the policy. The number of residential treatment beds must increase in order to truly give Proposition 36 a chance of success – otherwise it may continue to

be seen by criminal justice practitioners as only a get out of jail free card with no real benefit to anyone, police, courts, corrections, offenders or their loved ones.

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## APPENDIX B

### Research Questions and Data Used to Answer Research Questions

Research Questions	Qualitative Data	Quantitative Data <sup>84</sup>
<i>Law Enforcement Specific</i>		
Did arrests for SACPA-eligible crimes increase, decrease or stay the same?	Interviews	CJSC Arrest data (MACR#2, OBTS#1)
Did officers change their arresting behavior?	Interviews	CJSC Arrest data (MACR#1, MACR#2, OBTS#1)
Was there any change to the number of offenders released by law enforcement?	Interviews	CJSC Arrest data (OBTS#1, OBTS#2)
Did Prop36 impact the number of Confidential Informants?	Interviews	N/A <sup>85</sup>
Did it impact how patrol officers spend their time?	Interviews	N/A
Did it impact how narcotics officers spend their time?	Interviews	N/A
<i>Court</i>		
Has the number of complaints filed by the district attorney for drug offenses increased, decreased, or stayed the same?	N/A	CJSC Arrest & Conviction data (OBTS#1, OBTS#2, OBTS#3) District Attorney data
Has the number of drug cases dismissed by the courts increased, decreased, or stayed the same?	N/A	CJSC Arrest & Conviction data (OBTS#1, OBTS#2, OBTS#3)
Were there any impacts on drug court?	Interviews	Drug Court data
Were there any impacts on the plea bargaining process?	Interviews	N/A
Did the number of trials increase, decrease, or stay the same?	Interviews	N/A
What were the impacts on judges, defense attorneys, prosecutors and their respective agencies?	Interviews	N/A

<sup>84</sup> MACR stands for Monthly Arrest and Citation Register. OBTS stands for Offender Bases Transaction System.

<sup>85</sup> N/A = Not Available

Research Questions	Qualitative Data	Quantitative Data <sup>84</sup>
<p><i>Sentencing</i></p> <p>Has the number of drug offenders sentenced to prison increased, decreased, or stayed the same?</p> <p>Has the number of drug offenders sentenced to jail increased, decreased, or stayed the same?</p> <p>Has the number of drug offenders sentenced to probation with jail increased, decreased, or stayed the same?</p> <p>Has the number of drug offenders sentenced to probation increased, decreased, or stayed the same?</p> <p>How many offenders have most likely been diverted from incarceration (prison, jail, probation with jail)?</p>	<p>Interviews</p> <p>Interviews</p> <p>Interviews</p> <p>Interviews</p> <p>N/A</p>	<p>CJSC Conviction data (OBTS#3)</p> <p>CJSC Conviction data (OBTS#3)</p> <p>CJSC Conviction data (OBTS#3)</p> <p>CJSC Conviction data (OBTS#3)</p> <p>Estimate based on arrest and conviction data (OBTS#3)</p>
<p><i>Corrections</i></p> <p>Are drug offenders sentenced to probation after SACPA implementation more serious offenders than before SACPA implementation?</p> <p>Are drug offenders sentenced under SACPA spending fewer days in jail than drug offenders convicted of SACPA-eligible offenses prior to SACPA?</p> <p>Did the average daily population of drug offenders in the O. C. Jail increase, decrease, or remain the same?</p> <p>Do other offenders serve more of their sentence as a result of SACPA?</p> <p>What were the impacts on the inmate population at O.C. Jail?</p> <p>What were the impacts on operations and deputies at the O.C. Jail?</p> <p>What were the impacts on parole agents and the agency?</p>	<p>Interviews</p> <p>Interviews</p> <p>Interviews</p> <p>Interviews</p> <p>Interviews</p> <p>Interviews</p> <p>Interviews</p>	<p>Probation Risk/Needs Data (OCPD#3)</p> <p>N/A</p> <p>N/A</p> <p>N/A</p> <p>N/A</p> <p>CJSC Arrest and Convictions data (OBTS#3)</p> <p>N/A</p>

## APPENDIX C

### Interview Instrument: Law Enforcement

*Describe respondent's background, job title, experience...*

1. How many offenders do you arrest, or assist in the arrest of, per month for the following offenses?

Under the influence (11550, 11550(a)): Poss. of Paraphernalia (11364):

Poss. of non-narcotic (11377, 11377(a)): Fel. Poss. of narcotic (11350):

Poss of syringe (4140):

1a. Have these numbers changed much since July 2001 (when PC1210 became law)? If so, how and why?

1b. Arrests for felony dangerous drugs (11377(a), 11378, 11379(a), 11375(b)) skyrocketed from 2000-2002, and 2003-2004. Any ideas what might account for this dramatic increase? (have chart available)

2. Please tell me what you know about Proposition 36. What it is, who it applies to, etc... How do you learn this?

3. Did the department provide any training on the law (ie a training video during briefing)? If so, when did this training occur? (before implementation, 2001/2002, just recently) Can you tell me about the topics which were covered or what you learned?

4. How often do officers (or other agency personnel) discuss the law? When it is discussed, what do officers typically talk about? What types of comments are usually made? (i.e. regarding the offenders, the law itself, effects of the law...)

5. Before Proposition 36 became effective, did you give much thought as to how it might affect your job? If so, what kinds of expectations did you have?

6. What has the actual impact of the law been on your job? How is this different from your expectations?

7. Has Proposition 36 changed the availability of CI's (Confidential Informants) or your relationship with CI's?

8. Has Proposition 36 changed how law enforcement officers handle parolees arrested for possession of a controlled substance, such as methamphetamine? (Parole hold =

can't bail out, is this still typical?) What about parolees arrested for being under the influence?

9. How often do you come across an individual with a warrant for violation of PC1210 probation? Do you think the number of probation violation warrants has changed as a result of Proposition 36?

10. Has Proposition 36 changed the way you do your job in other ways? If so, how? (i.e. has it changed the tactics or strategies you employ to arrest various suspects?)

11. What factors do you consider when you decide whether to arrest an individual for an offense such as under the influence of a controlled substance or possession of a controlled substance (or paraphernalia)?

12. How does Proposition 36 impact your decision to arrest an individual or what crime you charge an individual with?

13. Do you think Proposition 36 could have had an impact on the number of arrests for drug crimes in your *city*? How? Why?

14. Is there a department/agency policy written about the law? If yes, can you tell me what the policy states? May I have a copy?

15. Unlike drug courts and other diversion programs, Proposition 36 applies universally to all non-violent drug offenders who aren't disqualified by a current contemporaneous offense or past criminal history. Do you think this impacts what other law enforcement officers feel about the law? Do you think it impacts the actions of other law enforcement officers?

16. What if you saw that treatment was working would l.e. be more favorable to it?

17. Do you recall how you felt about Proposition 36 when it was on the ballot?

17a. Did you vote for it, or against it?

18. What do you think of Proposition 36 as a policy now?

19. Do you think Proposition 36 is working? Why or why not?

20. If you could make changes to Proposition 36 to make it more effective, what changes would you make?

21. Do you know which offenses qualify for Proposition 36 sentencing in Orange County?

21a. Do you know if a drug offender's past criminal history can disqualify him/her for Proposition 36 sentencing in Orange County? If yes, any idea what would disqualify a person?

21b. Can a drug offender in Orange County be sentenced under Proposition 36 if s/he has had past drug program failures (PC1000, P36, DTC)? If yes, how many past failures are tolerated?

Vignettes:

I'm going to read you four vignettes, please tell me what action you would most likely take with the offender today, with Proposition 36 in effect.

1. You respond to a shoplifter in custody at a small retail store. The person stole a DVD. During a pat down, you legally find the individual is in possession of a moderate amount (one ounce) of marijuana. This is not found in the presence of the store owner. The person is cooperative and apologetic to both you and the store owner. The store owner is unsure whether she wants to press charges against the individual for shoplifting, she is looking to you for guidance. The individual has one prior arrest for 11550, 11377 and one prior arrest for 490.5. *What could you arrest this individual for? Do you choose to arrest him/her? What do you charge him with? Why do you take the action you take?*

2. One evening on foot patrol you encounter a local unemployed homeless man who is sitting in a park high on a commonly used drug other than alcohol. No one has complained. He is by himself in the park and is not bothering anyone, but he is talking to himself. The park does not contain playground equipment and is not near a school or other business frequented by children. You are familiar with this man because he has lived in your town for several years, sometimes in low-cost apartments, sometimes on the street, depending on his finances. He sometimes works as a day laborer or does odd jobs for local businesses. He is not a menace and is rarely complained about, but he does have a drug addiction problem. He has priors for 11550 and 647f only. You've talked to him quite a bit and get the sense he might be able to "get his life back together" if he was able to "get clean." *What could you arrest this individual for? Do you choose to arrest him? What do you charge him with? What is your thought-process? Or why do you take the action you take?*

3. You are alone and conduct a self-initiated car stop on a driver you believe to be driving under the influence. The driver stops immediately after you turn on your overhead lights and continues to be cooperative throughout the entire car stop. You don't smell alcohol, but the driver's eyes are dilated. After a field sobriety test, you determine the driver is under the influence of a drug. With the driver's consent, you search the vehicle; you find a small amount (approximately 1/2 ounce) of marijuana for personal (but not medicinal) use. The driver has no prior contacts. *What could you arrest this individual for? Do you choose to arrest*

*him/her? What do you charge the person with? What is your thought-process? Or why do you take the action you take?*

4. While on patrol late one evening alone, you notice a local man hanging out in front of a middle school. You are familiar with this individual, as you have arrested him several times in the past for drug crimes (possession and under the influence, but not sales) and property crimes (including residential burglary and vehicle burglary). You've noticed that he always seems to "get off with a hand slap." He is not currently on probation (although he has been in the past). There have been some vehicle burglaries in the neighborhood recently which you think he might be responsible for. You stop your patrol car and approach the subject, who greets you cordially by name. You ask him what he is up to and why he is hanging out at the middle school at night. He gives you a reason that does not seem truthful. After chatting for a short time, you ask his permission to search his person for weapons/stolen property. He agrees and you feel an object you believe could be a pocket knife; upon removing it from his pocket, you discover it is a medicine vial containing 15 ecstasy pills. *What could you arrest this individual for? Do you choose to arrest him? If so, what do you charge him with? What is your thought-process? Or why do you take the action you take?*

## APPENDIX D

### Interview Instrument: Judges

*Describe respondent's background, job title, experience... Other notes or comments*

1. What are the Proposition 36 eligibility criteria in Orange County?  
Qualifying offenses:  
Past criminal history:  
Past drug program failures (PC1000, P36, DTC) – how many are tolerated?
2. Are these eligibility criteria consistent throughout the county with all DA's, Judges, PD's?
3. Can you give me an example of a typical P36 case? What makes it typical?  
3a. Can you give me an example of an atypical P36 case? What makes it atypical?
4. In the case of a disagreement, who ultimately determines if an offender qualifies for P36 – DDA or Judge?  
4a. How often are there disagreements? Can you give me an example of a disagreement?
5. Can exceptions be made for specific/special cases? If so, how often are they made?  
5a. Can you give me an example of a case when an exception might be made?
6. Can you tell me more about the court process for Proposition 36 cases in Orange County? For example, I understand there is only one courtroom that hears felony Proposition 36 cases, but that additional courts hear misdemeanor cases. How many times will an offender (with no violations) appear before the court?
7. Can you take me through the process that a defendant would go through if charged with a qualifying drug possession offense?  
7a. Has Proposition 36 impacted the plea-bargaining process for drug offenders? How?
8. Approximately how many offenders per month qualify for Proposition 36 sentencing?  
8a. Has this number changed since inception? What makes you think so?

9. What percentage of offenders offered Proposition 36 accept it?
- 9a. Why do some offenders who qualify for Proposition 36 decline it?
- 9b. What is most appealing about Proposition 36, for the offenders who accept it?
10. What are your sentencing options if an offender qualifies for but does NOT accept Proposition 36?
11. What are your sentencing options if an offender qualifies for and accepts Proposition 36?
- 11a. If an offender spends time in jail between arrest and arraignment, can you sentence that offender to probation with credit for time served? (probation + jail)
- 11b. If yes, when do you typically order credit for time served be added to a sentence?
- 11c. Does receiving “credit for time served” benefit a defendant who is sentenced to probation only and who is not looking at any jail time? If yes, how?
12. What is the typical sentence for the average drug offender in Proposition 36 court?
- 12a. Is this any different than the typical sentence before Prop.36? How? (ie Prob w/credit for time served)
- 12b. Are most offenders receiving the same sentence or a different sentence than they likely would have received before Proposition 36? If different, how is it different?
- 12c. If only some offenders are receiving different sentences, what do those offenders have in common, or how are they different than the offenders who are getting the same sentence as before Proposition 36?
13. What is the hardest part of Prop. 36 for the offenders who have trouble completing it?
- 13a. How many times does the average Prop. 36 offender appear before the court for probation violations? What is the most common violation? (ie not showing up to treatment; failing test...)
- 13b. What is the typical punishment?
- 13c. How many violations are typically allowed before an offender is removed from Proposition 36 probation? Who makes this decision?

- 13d. What happens to an offender once they are removed from P36 probation?
- 13e. If an offender is removed from P36 probation, is that considered a “failure”?
- 13f. If so, what percentage of offenders “fail” Proposition 36?
- 13g. How many months/years are most Prop 36 offenders followed for?
14. Is the average drug offender in Proposition 36 court typical of most drug offenders in Orange County? If not, how are Prop. 36 defendants dissimilar from other drug offenders?
15. Has Proposition 36 impacted the other drug offender sentencing/diversion programs in use in the county? How?
- 15a. For example, is Drug Treatment Court at full-capacity?
- 15b. Are there different types of offenders in the other drug programs since Proposition 36 went into effect?
16. How is it decided whether an offender will be offered Drug Treatment Court, PC1000, or Proposition 36? Is there a standard set of criteria that the decision is based on?
- 16a. Who makes the ultimate decision in cases of disagreement?
17. What aspects of Proposition 36 affect your workload the most?
- 17a. What proportion of your time is devoted to adjudicating probation violation cases? In a typical week, how many hours do you spend adjudicating probation violation cases?
- 17b. Has Proposition 36 changed the number of court *cases* for drug crimes? How?
- 17c. Has Proposition 36 changed the number of *trials* for drug crimes? In/De-crease?
18. Please describe your role as a Proposition 36 Court Judge.
- 18a. How is your role as a Prop. 36 Court Judge unique from other bench assignments?
19. Do you think your approach; your ways of processing cases is similar to other Judges? Or different? How?
20. If you could make changes to Proposition 36 to make it more effective, what changes would you make?

## APPENDIX E

### Interview Instrument: Attorneys

*Describe respondent's background, job title, experience... Other notes or comments*

1. Can you please describe your current job?
  - 1a. In your current capacity, do you deal ONLY with PC1210/Prop36 defendants or a mix of defendants?
2. Are you familiar with PC1210 when it was initially started? If so, would you please describe the initial impact of Proposition 36 on the public defenders office? What were the expected major issues you found yourself having to deal with?
  - 2a. What were the unexpected major issues you found yourself having to deal with?
  - 2b. What were the unexpected minor issues you found yourself having to deal with?
  - 2c. What were the expected minor issues you found yourself having to deal with?
3. How did the public defenders office adjust to the changes (ex. mtgs, new policies)?
  - 3a. Were new operating procedures adopted? If so, what were they and what issue was each intended to address?
4. Describe how the public defenders office currently handles PC1210 defendants and how this has changed since inception.
  - 4a. How many Public Defenders are assigned to, or work on, Proposition 36 cases in the county?
5. Can you tell me more about the court process for Proposition 36 cases in Orange County? For example, I understand there is only one courtroom that hears felony Proposition 36 cases, but that additional courts hear misdemeanor cases. Also, how many times will an offender (with no violations) appear before the court?
6. What are the Proposition 36 eligibility criteria in Orange County?
  - Qualifying offenses:
  - Past criminal history:
  - Past drug program failures (PC1000, P36, DTC) – how many are tolerated?
7. Are these eligibility criteria consistent throughout the county with all DA's, Judges & PD's or is there some disagreement and discretion used?

8. It seems that the law is a bit unclear about qualifying offenses, how was it decided which offenses would qualify? Has this changed over time?
9. In the case of a disagreement, who ultimately determines if an offender qualifies for P36?
  - 9a. How often are there disagreements? Can you give me an example of a disagreement?
10. Can exceptions be made for specific/special cases? If yes, how often are they made?
  - 10a. Can you give me an example of a case when an exception might be made?
11. Can you give me an example of a typical P36 case? What makes it typical?
  - 11a. Can you give me an example of an atypical P36 case? What makes it atypical?
12. Can you take me through the process that a defendant would go through if arrested for a qualifying drug possession offense?
  - 12a. Has Proposition 36 impacted the plea-bargaining process for drug offenders? How? For example: how often are misdemeanor charges (148pc, 14601vc...) dropped so an offender can plea to p36 and avoid trial?
13. Approximately how many offenders per month qualify for Proposition 36 sentencing?
  - 13a. Has this number changed since inception? What makes you think so?
14. What percentage of offenders offered Proposition 36 accept it?
  - 14a. Can P36 eligible offenders, decline it? If so, why do some offenders decline it?
  - 14b. What is typically the sentence for offenders who decline P36?
  - 14c. What is most appealing about Proposition 36, for the offenders who accept it?
15. What are the judge's sentencing options if an offender qualifies for and accepts P36?

- 15a. If an offender spends time in jail between arrest and arraignment, can the judge sentence that offender to probation with credit for time served? (probation + jail)
- 15b. If yes, when does s/he typically order credit for time served be added to a sentence?
- 15c. Does receiving “credit for time served” benefit a defendant who is sentenced to probation only and who is not looking at any jail time? If yes, how?
16. What is the typical sentence for the average drug offender in Proposition 36 court?
- 16a. Is this any different than the typical sentence before Prop.36? How? (ie Prob w/credit for time served)
- 16b. Are most offenders receiving the same sentence or a different sentence than they likely would have received before Proposition 36? If different, how is it different?
- 16c. If only some offenders are receiving different sentences, what do those offenders have in common, or how are they different than the offenders who are getting the same sentence as before Proposition 36?
17. What is the hardest part of Prop. 36 for the offenders who have trouble completing it?
- 17a. How many times does the average Prop. 36 offender appear before the court for probation violations? What is the most common violation? (ie not showp to tx; dirty test...)
- 17b. What is the typical punishment?
- 17c. How many violations are typically allowed before an offender is removed from Proposition 36 probation? Who makes this decision?
- 17d. What typically happens to an offender once they are removed from P36 probation?
- 17e. If an offender is removed from P36 probation, is that considered a “failure”?
- 17f. If so, what percentage of offenders “fail” Proposition 36?
- 17g. How many months/years are most Prop 36 offenders followed for?

18. Is the average drug offender in Proposition 36 court typical of most drug offenders in Orange County? If not, how are Prop. 36 defendants dissimilar from other drug offenders?
19. Has Proposition 36 impacted the other drug offender sentencing/diversion programs in use in the county? How?
  - 19a. For example, is Drug Treatment Court at full-capacity?
  - 19b. Are there different types of offenders in the other drug programs since Proposition 36 went into effect?
20. How is it decided whether an offender will be offered Drug Treatment Court, PC1000, or Proposition 36? Is there a standard set of criteria that the decision based on?
  - 20a. Who makes the ultimate decision in cases of disagreement?
21. Has Proposition 36 affected your caseload or workload? How? Which aspects affect your workload the most?
  - 21a. What proportion of your time is devoted to working on probation violation cases? In a typical week, how many hours do you spend working on probation violation cases?
  - 21b. Has Proposition 36 changed the number of court *cases* for drug crimes? How?
  - 21c. Has Proposition 36 changed the number of *trials* for drug crimes? In/Decrease?
22. Do you think your approach; your ways of processing cases is similar to other Public Defenders? Or different? How?
23. How did most PD's feel about the law when it was on the ballot?
24. Do most PD's think the law is working?
25. If you could make changes to Proposition 36 to make it more effective, what changes would you make?

## APPENDIX F

### Interview Instrument: Probation Officer

*Describe respondent's background, job title, experience... Other notes or comments*

1. Can you please describe your current job?
  - 1a. In your current capacity, do you deal ONLY with PC1210 probationers or a mix of probationers?
2. Are you familiar with the PC1210 when it was initially started? If so, please describe the initial impact of Proposition 36 on the probation department. What were the expected major issues you found yourself having to deal with?
  - 2a. What were the unexpected major issues you found yourself having to deal with?
  - 2b. What were the unexpected minor issues you found yourself having to deal with?
  - 2c. What were the expected minor issues you found yourself having to deal with?
3. How did the probation department adjust to the changes?
  - 3a. Were new operating procedures adopted? If so, what were they and what issue was each intended to address?
4. Describe how the probation department currently handles PC1210 probationers and how this has changed since inception.
5. Are PC1210 offenders generally banked or on regular probation? What are the guidelines for whether an offender is banked or on regular probation?
  - 5a. Can you please describe how a "banked" offender would experience probation?
  - 5b. Can you please describe how a typical PC1210 drug offender would experience probation? Ie how often does this offender see their probation officer? Are they generally drug tested?
  - 5c. Can you please describe how a typical drug offender (not on PC1210 probation) would experience probation? Ie how often does this offender see their probation officer? Are they generally drug tested?

6. How often do you have a probationer who was granted PC1210 probation but did not technically qualify? Can you give me an example?
7. Can you give me an example of the typical drug offender on probation before PC1210 went into effect? What makes this person typical?
  - 7a. Can you give me an example of an atypical drug offender, placed on probation before PC1210 went into effect? What makes this person atypical?
  - 7b. Can you give me an example of the typical drug offender on probation now (after PC1210 went into effect)? What makes this person typical?
8. Has PC1210 changed the type of offender on probation? If so, how do PC1210 offenders differ from other offenders?
9. How did you feel about Proposition 36/PC1210 when it was on the ballot?
  - 9a. Did you vote for it, or against it?
10. What is your personal opinion on Proposition 36/PC1210 as a policy now?
11. Do you think PC1210 is working? Why or why not?
12. If you could make changes to PC1210 to make it more effective, what changes would you make?
13. Do you think your approach, your views and the way you do your job is similar to other probation officers? Or different? How?

## APPENDIX G

### Interview Instrument: Parole Agent

*Can you please tell me about your background, job title, experience? Other notes or comments*

1. Has PC1210 affected your caseload or workload? How?
2. Has PC1210 changed the type of offender on parole? If so, how do PC1210 offenders differ from other offenders?
3. How does Proposition 36/PC1210 apply to parolees?
4. Can you describe how a parolee on PC1210 probation would experience parole? How often does this offender see their parole officer? Are they generally drug tested?
  - 4b. Can you please describe how a typical drug offender (not on PC1210 probation) would experience parole?
5. Can you take me through the process that a parolee would go through now if they had a dirty urine test? How is this different than before PC1210?
  - 5a. Would the process be different if the parolee was charged with “under the influence,” “possession” or another drug offense by law enforcement? If yes, how?
6. Who determines whether a parole violation will result in PC1210 probation?
  - 6a. What criteria is the decision based on?
7. How often do you have a parolee who was granted PC1210 probation but did not technically qualify? Can you give me an example?
8. Can you give me an example of the typical drug offender on parole before PC1210 went into effect? What makes this person typical?
  - 8a. Can you give me an example of an atypical drug offender, placed on parole before PC1210 went into effect? What makes this person atypical?
9. Can you give me an example of the typical drug offender on parole now (after PC1210 went into effect)? What makes this person typical?

- 9a. Can you give me an example of an atypical drug offender on parole now (after PC1210 went into effect)? What makes this person atypical?
10. For parolees who are granted PC1210 probation, who is the primary supervising/ corrections agent – the probation officer or the parole officer? Or is responsibility shared?
11. How did you feel about Proposition 36 when it was on the ballot?
- 11a. Did you vote for it, or against it?
12. What is your personal opinion on Proposition 36/PC1210 as a policy now?
13. Do you think PC1210 is working? Why or why not?
14. If you could make changes to PC1210 to make it more effective, what changes would you make?
15. Do you think your approach, your views and the way you do your job is similar to other probation officers? Or different? How?

## APPENDIX H

### Interview Instrument: Jail Staff

*Describe respondent's background, job title, experience... Other notes or comments*

1. Tell me a little about the intake and classification process at OC Jail. What are OCJ's rules as to the offenders it will accept (ie misdemeanants, warrants...)? Are drug offenders separated from violent or property offenders?
  - 1a. Has there been any change in how drug offenders are processed in the jail as a result of Proposition 36?
2. How much of a problem is overcrowding in OCJ? Has OCJ had to take special measures to reduce overcrowding (ie early release, not accepting some warrants...)?
3. Drug offenders represent what percentage of the pre-conviction jail population? What about post-adjudication? Has this changed since Proposition 36?
4. What was the typical sentence for offenders convicted of following offenses prior to P36?

*Felony "under the influence" (11550), Felony possession (11377)*  
*Felony Possession (11350) Other typical offenses (11364 para; 4140 syr.?*
5. Please tell me what you know about Proposition 36. What it is, who it applies to, etc... How do you learn this?
6. Did the department provide any training on the law (ie a training video during briefing)? If so, when did this training occur? (before implementation, 2001/2002, just recently) Can you tell me about the topics which were covered or what you learned?
7. How often do deputies (or other agency personnel) discuss the law? When it is discussed, what do deputies typically talk about? What types of comments are usually made? (i.e. regarding the offenders, the law itself, effects of the law...)
8. Before Proposition 36 became effective, did you give much thought as to how it might affect your job? If so, what kinds of expectations did you have?
9. What has the actual impact of the law been on your job? How is this different from your expectations?
10. One of the things P36 was supposed to do was decrease the # of drug offenders in jail. Do you think it achieved this goal? Why or why not? How do you know whether it did?

- 10a. Other than Prop36, what other influences have affected jail operations in the past 6 yrs? CDCR overcrowding-what policies have had the largest impact on OCJ operations?
- 10b. How many more/fewer occupied beds do you have on a typical night now, as compared to before Prop 36? Has this fluctuated much in the past 6 years? Or has it been a steady decrease or increase?
- 10c. If there are more beds available, how is OCJ using these beds? (a) Filling them with more arrestees (ie accepting misdemeanants, low bail warrants now)? (b) Keeping sentenced offenders for a larger proportion of their sentence? (c) Keeping offenders sentenced to CDCR for longer periods to help relieve pressure on CDCR (does OCJ get paid for this)? Other – such as reducing overcrowding in OCJ (decreasing # of offenders per cell)?
11. What has been the effect on the inmate population? Is the jail accommodating more serious/violent offenders now? Or is the mix of inmates the same as before?
- 11a. Are some offenders serving a larger portion of their sentence now? Which?
- 11b. Has it changed how offenders interact with deputies? For example, is there less tension now (b/c more space, fewer inmates)? Or more tension (b/c more serious, serving longer sentences...)?
- 11c. Has it changed how offenders interact with one another? For example, tension; inmate hierarchy, special housing, economy, privileges...
- 11d. Has it changed the supply of drugs in jail? Are drugs in jail a huge problem or a minor problem? Can you tell me a bit about who has access to drugs? What proportion of the pop.?
12. Has Proposition 36 changed the way you do your job? If so, how?
13. Have you noticed any changes in the charges that drug offenders are booked on (ie seriousness), or # of offenses drug offenders are booked on? Fewer arrests for certain crimes?
14. Have you noticed any changes on the back end in sentencing? For example, fewer or more sentenced to jail – changes in sentences?
15. How has the law impacted jail operations? For example, has there been an impact on the arraignment time (shorter/longer) that has affected how long offenders are spending in jail?

- 15a. Fewer drug offenders are exercising their right to trial. How has this impacted jail operations? Moving inmates around on court days? Frees up beds sooner?
16. Please describe how most drug offenders look when booked into jail. Do they look the same at the end of their 30/60/90+ sentence? If no, how do they look different? How long does it usually take for an offender's appearance to change? Do you think serving time in jail has an impact on addiction?
17. Is there a department/agency policy written about the law? If yes, can you tell me what the policy states? May I have a copy?
18. Unlike drug courts and other diversion programs, Proposition 36 applies universally to all non-violent drug offenders who aren't disqualified by a current contemporaneous offense or past criminal history. Do you think this impacts what other law enforcement officers feel about the law? Do you think it impacts the actions of other law enforcement officers?
- 15a. Do you think law enforcement officers would be more favorable to P36 if they saw that treatment was working?
19. Do you recall how you felt about Proposition 36 when it was on the ballot? Did you vote for it, or against it?
20. What do you think of Proposition 36 as a policy now?
21. Do you think Proposition 36 is working? Why or why not?
22. If you could make changes to Proposition 36 to make it more effective, what changes would you make?
23. Do you know which offenses qualify for Proposition 36 sentencing in Orange County?
- 23a. Do you know if a drug offender's past criminal history can disqualify him/her for Prop36 sentencing in Orange County? If yes, any idea what would disqualify a person?
- 23b. Can a drug offender in Orange County be sentenced under Proposition 36 if s/he has had past drug program failures (PC1000, P36, DTC)? If yes, how many past failures are tolerated?
24. Arrests for felony dangerous drugs (11377(a), 11378, 11379(a), 11375(b)) skyrocketed from 2000-2002, and 2003-2004. Has this affected the jail? How? Staffing, available beds, proportion of sentence served...

## APPENDIX I

### Interview Instrument: Implementation Team

*Describe respondent's background, job title, experience... Other notes or comments*

1. Regarding the strategic planning that took place before/immediately after Proposition 36 was passed into law. How did OC criminal justice agencies come together to strategize the implementation of Proposition 36? How was the first meeting established?
2. Which agencies were involved in the planning stages in Orange County?
  - 2a. Was every criminal justice agency in Orange County involved in these planning meetings? If not, which agencies did not participate? Why? (ie. choice)
  - 2b. What roles did each agency in Orange County take on? How were responsibilities delegated? Did one agency assume the leadership role? If so, how was it decided which agency would be the lead agency?
3. Can you please tell me about these Orange County strategy meetings that took place? When did the meetings start? What were the major issues that the planning team was concerned about?
  - 3a. How often did the meetings occur? Was there one main meeting or multiple "committee-type" meetings?
  - 3b. What was the spirit of the meetings? Cooperative? Territorial? Collaborative?
  - 3c. What types of disagreements/questions came up during the planning stages? How were these resolved?
  - 3d. How well did OC criminal justice agencies come together to create an implementation plan? Did involved agencies feel it was important to have a unified strategic plan – or was it more each agency for itself?
4. Regarding the strategic planning that took place before/immediately after Proposition 36 was passed into law. Can you please tell me about the conversations that took place between OCPD and other probation departments & criminal justice agencies in the state?
  - 4a. What was the primary purpose of these meetings (information or fact-finding sessions, collaborative planning meetings or something else)?

- 4b. How often did such meetings take place?
- 4c. Who attended the meetings (agencies and rank of individuals within agencies)?
- 4d. Were the meetings beneficial to you or the OCPD in planning or implementing Proposition 36? If so, how?
5. Proposition 36 represented a huge philosophical shift, what types of comments were most often heard/expressed by individuals in these various meetings? (excitement, disdain...)
6. How was OCPD's initial approach to implementation and supervision similar or dissimilar to other counties?
7. What was Orange County's original implementation plan?
  - 7a. Was there a preliminary estimate of how many additional probationers there would be as a result of PC1210? If so, what was it and how was it determined? How accurate was this estimate?
8. Describe the initial impact of Proposition 36 on your department. What were the expected major issues you found yourself having to deal with?
  - 8a. What were the unexpected major issues you found yourself having to deal with?
  - 8b. What were the unexpected minor issues you found yourself having to deal with?
  - 8c. What were the expected minor issues you found yourself having to deal with?
9. How did your department adjust to the changes?
  - 9a. Were new operating procedures adopted? If so, what were they and what issue was each intended to address?
10. Describe how your department currently handles PC1210 clients and how this has changed since inception.
11. Has PC1210 changed the type of offender on probation? If so, how do PC1210 offenders differ from other offenders
12. How did you feel about Proposition 36/PC1210 when it was on the ballot?
  - 12a. Did you vote for it, or against it?

13. What is your personal opinion on Proposition 36/PC1210 as a policy now?
14. Do you think PC1210 is working? Why or why not?
15. If you could make changes to PC1210 to make it more effective, what changes would you make?
16. Do you think your approach, your views and the way you do your job is similar to other in your department? Or different? How?

## APPENDIX J

### List of Data Sources and Variables in Each Dataset

Dataset	Description of dataset and list of variables	Research Questions
<b>California Criminal Justice Statistics Center (CJSC)</b>		
MACR <sup>86</sup> #1	The number of arrests for drug crimes by category (felony narcotics, felony dangerous drugs, felony marijuana, felony other drugs, misdemeanor dangerous drugs, misdemeanor marijuana, and misdemeanor other drugs), on a monthly basis for the period January 1, 1995 – December 31, 2004)	Police Response
MACR #2	The number of arrests for misdemeanor H&S11550 and H&S11550(a) on a monthly basis for the calendar years 1995-2006.	Police Response
OBTS <sup>87</sup> dataset #1	<p>Aggregate-level case processing and sentencing information for adults arrested for felony drug offenses H&amp;S11350 or H&amp;S11377 in Orange County, by month for the calendar years, 1995- 2005.</p> <p><u>Variables:</u>  <i>Felony Arrests</i> (# persons arrested for crime per month)  <i>Law Enforcement Releases</i> (# persons released by law enforcement without further action)  <i>Complaints Denied</i> (# persons not filed on by District Attorney)  <i>Complaints Filed</i> (total equals felony arrests minus law enforcement releases and complaints denied)  <i>Dismissed</i> (# persons dismissed by the courts post-filing)  <i>Diversions Dismissed</i> (# persons dismissed through diversion)  <i>Acquitted</i> (# persons found not guilty)  <i>Convicted</i> (total equals complaints filed minus dismissed, diversions dismissed, and acquitted counts)  <i>Prison</i> (# persons convicted and sentenced to prison)  <i>Probation</i> (# persons convicted and sentenced to probation)  <i>Probation with Jail</i> (# persons convicted &amp; sentenced to probation with jail)  <i>Jail</i> (# persons convicted and sentenced to jail)</p>	<p>Police Response</p> <p>Court Processing</p> <p>Sentencing</p>

<sup>86</sup> MACR stands for Monthly Arrest and Citation Register

<sup>87</sup> OBTS stands for Offender Based Transaction System

<b>Dataset</b>	<b>Description of dataset and list of variables</b>	<b>Research Questions</b>
	<i>Fine</i> (# persons convicted and sentenced to a fine) <i>CRC</i> (# persons convicted and sentenced to CRC) <i>Other</i> (# persons convicted and given a different sentence; includes suspended sentences, stayed sentences, and cases in which no sentence was given)	
OBTS dataset #2	Aggregate-level sentencing information for adults arrested for a felony offense and convicted of any drug offense in Orange County, by offense category (felony narcotics, felony dangerous drugs, felony marijuana, felony other drugs, misdemeanor dangerous drugs, misdemeanor marijuana, and misdemeanor other drugs) and by month for the calendar years, 1995- 2005.  <u>Variables:</u> <i>Convicted</i> (# adults convicted of a crime in the specified category) <i>Prison</i> (# persons convicted and sentenced to prison) <i>Probation</i> (# persons convicted and sentenced to probation) <i>Probation with Jail</i> (# persons convicted and sentenced to probation with jail) <i>Jail</i> (# persons convicted and sentenced to jail) <i>Fine</i> (# persons convicted and sentenced to a fine) <i>CRC</i> (# persons convicted and sentenced to CRC) <i>Other</i> (# persons convicted and given a different sentence)	Court Processing  Sentencing
OBTS dataset #3	Aggregate-level sentencing information for adults arrested for a felony offense and convicted of a SACPA-eligible drug offense in Orange County, by offense (felony H&S11350, felony H&S11377, misdemeanor H&S11550, misdemeanor H&S11364, and misdemeanor B&P4140) and by month for the calendar years, 1995-2005.  <u>Variables:</u> See OBTS dataset #2 for list of variables	Court Processing  Sentencing
<b>Orange County District Attorney's Office</b>		
OCDA #1	List of all offenders charged with SACPA-eligible drug offenses <sup>88</sup> between July 1, 1998 and June 30, 2004 (individual-level data)	Court Processing

<sup>88</sup> Based on discussions with Orange County District Attorney's Office Research Unit and Orange County Probation Department Research Unit, SACPA-eligible drug offenses include the following California Violations: HS11350(a); HS11364; HS11377(a), HS11550, HS11550(a); BP4140



## **APPENDIX K**

### **Time Series Methodology**

I identified, estimated, and diagnosed ARIMA models for each of the eight time series in the study according to the methods described by Box and Jenkins (1976). Each of the series was plotted over the time period to visualize the data, evaluate the series for trending, and identify any possible data issues likely to arise. Because ARIMA time series analysis requires the estimated disturbance term (shocks) to be normally distributed (not subject to skewness or kurtosis), a one-sample Kolmogorov-Smirnov test (KS test) was performed on each series to determine whether the series met the assumption of Normality. Series that did not meet this assumption were transformed using the natural logarithm (under the influence arrests, jail, and probation with jail). In some of the cases, none of the standard transformation techniques (natural log, square root) were successful. In each of these cases (cases filed, prison, possession arrests, and probation and other) the intervention changed the nature of the series so dramatically that it skewed the entire series. The KS test was re-run using only the pre-intervention data and confirmed that all but one of these pre-intervention series met the assumption of Normality. One series, “probation and other” could not be transformed into a normally distributed series because the impact of the legislation was so significant it defined the series. I was unable to transform the pre-intervention series because there were so few offenders sentenced to “probation and other” prior to Prop36 that the variance was large, due to

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<sup>90</sup> Only 1/1/2000-12/31/2000 and 7/1/2001-6/30/2002 are used in analysis for reasons explained in chapter 2.

low power and large month to month fluctuations in the number of observations per month.

Next, appropriate ARIMA models for each series were identified using the ACF and PACF. Series that were non-stationary were made stationary using first-order differencing (and in some cases, seasonal differencing). Some series also required autoregressive and/or moving average components. Each model was then estimated using the model's parameter estimates. If the parameter estimate/s was/were within the bounds of stationarity and/or invertability, the model was accepted. The residuals of each acceptable model were then diagnosed using the Q statistic. If the Q statistic was less than the degrees of freedom and the probability of Q was  $<.05$ , the model was accepted. This process was repeated numerous times for each series in order to identify the best fit, most parsimonious model for each individual series.

Finally, an intervention impact analysis was conducted on each series. For arrest series (under the influence arrests, possession arrests), July 2001 was used as the intervention date because that is when the law officially went into effect and there was no indication that officers began changing their arrest practices in anticipation of the law (as judges did). For the case processing series (cases filed, cases dismissed, prison, jail, probation with jail, probation and other), March 2001 was used as the intervention date. March 2001 was chosen as the most appropriate intervention date because this is when the pilot study began in Orange County and because data analysis revealed that practitioner behavior in the courthouse changed starting in January (as was described in interviews).

Table K.1 shows the results of the impact analyses. Unfortunately, several of the series were complicated by multiple data issues, including moderate to severe fluctuations in the number of observations from month to month, monthly intervals that were not equivalent, and in some cases a small number of observations in the pre-intervention period. Only two of the series showed a statistically significant impact. In several cases, time series analysis was unable to detect the effect of the legislation because the change instigated by Proposition 36 was so significant it appeared as noise in the models.

**Table K.1: ARIMA Models and Level of Significance for Each Variable**

<b>Variable</b>	<b>Noise Model</b>	<b>Intervention Coefficient</b>	<b>SE</b>	<b>z value</b>	<b>Probability</b>
<b>Law Enforcement Variables</b>					
Possession Arrests	MA (1 12)	4.277	5.97	.73	.463
Under the Influence Arrests	AR(1) MA(1 3)	.126	.054	2.34**	.019
<b>Court System Variables</b>					
Cases Filed	MA (1 12)	6.051	5.79	1.04	.296
Cases Dismissed	AR(1 6) MA(1)	3.038	4.10	.74	.459
<b>Sentencing Variables</b>					
Prison	MA(1 6)	.48	.99	.48	.629
Probation <sup>a</sup>	AR(1 2)	48.428	64.43	.78	.438
Probation with Jail	AR (1 12)	2.326	5.12	.45	.650
Jail	MA 1	.437	.21	2.05*	.040

<sup>a</sup> Includes “Other” sentence category

\*\* p<.001      \* p< .05