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Memorandum

To: Judge Robert Ronquillo, Chief Justice, Boston Municipal Courts
From: Caroline S. Cooper, Director, BJA Drug Court Technical Assistance Project
Subject: Summary Observations in Follow Up to Site Visits to the Drug Courts Operating in Charlestown, Dorchester and East Boston, Massachusetts (pursuant to BJA FY 2012 Statewide Category B Grant)
Date: March 8, 2014

Caroline S. Cooper

Thank you, Lisa Yee, and others involved with the Boston Municipal Court Drug Courts in planning the site visits we conducted in November and December. This memo summarizes our observations and recommendations regarding the Drug Court Programs currently operating in Charlestown, Dorchester, and East Boston as part of the Boston Municipal Court, based on a one day site visit to each of these programs by the following consultants:

Charlestown: Judge Dennis Fuchs (Ret.) – Salt Lake City, Utah: site visit: December 11, 2013
Dorchester: Judge Kevin Burke -- Minneapolis, Minnesota: site visit: November 21, 2013;
and
East Boston: Judge Richard Gebelein (Ret.), Wilmington, Delaware: site visit: December 3, 2013

All three consultants have served as the founding drug courts judges in their respective jurisdictions.

As we had agreed, our planned visit to the South Boston court was cancelled because we learned that the Drug Court in that locale was not currently operating.

As we had discussed, the three site visits referenced above followed an abbreviated format from our normal two day site visit protocol and entailed only one consultant rather than the two-person multi-disciplinary team which we feel is important to addressing the multiple components of a drug court program. The background information provided for each program was also much more limited than what we usually obtain in preparation for these visits. Nevertheless, I believe we are able to make a number of sound observations and recommendations regarding these three programs and can follow up with a more in-depth return visit if that is useful.

The focus of this memo is on providing our general observations and recommendations with the understanding that, if follow up assistance is useful to address the services and operations of the Boston Municipal Court Drug Court programs, we will be happy to provide it.

Although each of the programs visited presented special strengths and issues, the limited time for each site visit and the absence of readily available information on each program precludes us from presenting detailed commentary for each program. I am therefore providing a general summary of our

DRUG COURT TECHNICAL ASSISTANCE PROJECT

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observations and recommendations which we believe are relevant to all three of the programs, with the anticipation that these summary comments will then be reviewed within the context of each program. Where we can make specific comments they are offered.

All of the consultants commented on the exemplary judicial leadership, the wide array of treatment services, and the dedicated and experienced staff working with each program and the unique opportunity the current state court support now provides for enhancing these programs to serve the large populations in each of the locales who urgently need their services

Each of these programs also reflects special strengths, a few of which include:

- Charlestown: The Meridian Treatment Center has a full spectrum of services including mental health and sober living and has associated with Massachusetts General Hospital which allows Meridian Treatment Center to tap into a number of community services. Mass General has also assigned a community outreach person who helps facilitate the use of community services and who, herself, is in recovery, grew up in Charlestown and knows almost all of the families involved in addiction;
- Dorchester: The program in Dorchester reflects a long history and stability of core staff members who bring both critical experience and expertise;
- East Boston: The program in East Boston has access to numerous treatment providers and a community-focused team.

Despite their strengths, however, the general consensus is that, while each of these programs displays attributes of effective drug court programs, these attributes are not integrated into a comprehensive structure that would constitute a "drug court" within the framework of the Key Components, and further discussed below. In addition, none of the programs are consistently and systematically ensuring that evidence based practices that draw on current research and practice are being applied to their services and operations, and none of them are reaching the populations who need to be served.

The following are the most critical issues that warrant attention so that these programs can more fully reflect the elements entailed in the *Key Components*:

First: STAFFINGS

The most pressing issue appears to be the lack of the judge's involvement in staffings in each of the locales as well as that of the prosecutor and defense in most instances. It is our understanding that an order was issued by your predecessor and which has continued in force to preclude judges from participating in staffings because of concerns that such participation would be an ethical violation entailing ex parte communications. We understand your concern if the staffing excluded the prosecutor and the defense. However it is critical that they be involved as well.

A number of states have addressed this issue of staffing discussions and developed Rules that taken into account the special nature of problem solving courts and the critical importance of the staffing component so that judges have the opportunity to obtain the necessary information from treatment

and other entities involved in the collaborative support services drug courts provide to participants and which are critical to their judicial decisions regarding participants. Enclosed is a "Frequently Asked Questions" Memorandum we prepared several years ago that includes a synopsis of the approaches various state supreme courts have taken on this issue.

Second: INCREASING THE NUMBER OF PROGRAM PARTICIPANTS

Although data on participants was not readily available, all of the programs appear to be significantly under capacity, particularly in light of the local populations needing drug court services. The following recommendations address immediate tasks relating to addressing this problem

- (a) *Articulate clear eligibility criteria for the program that are consistently and transparently applied*

There appear to be no clear eligibility criteria published for the programs that can be systematically applied, with the result that referrals are ad hoc and clearly not targeting all of the defendants who should be screened for the program to determine eligibility. Once the eligibility criteria are articulated they should be consistently and transparently applied so that all defendants who meet these criteria enter the drug court promptly.

Once these practices are put into effect, regular review of the demographics of the drug court population should be made to ensure they comport with those of the arrestee population – a situation that does not appear to currently be the case. Any deviations noted should be investigated. We have found, for example, that program requirements can preclude participation of certain groups, such as women who need childcare, or persons who lack transportation to get to the treatment provider, or non-English speaking defendants for whom no treatment centers operate with multi-lingual capacity. These issues can point up gaps in services that should be filled.

- (b) *Develop a Systematic process for Prompt Screening of all eligible arrestees and probation violators and prompt entry into the drug court program of all who are eligible*

There is also no systematic process in place for promptly screening all arrestees for program eligibility. Such a system should be put in place as soon as the criteria for program eligibility are identified. For those arrestees identified as eligible for the program, an expedited procedure should be developed for the adjudication of their cases that provides adequate time to ensure the just disposition of the case but avoids unnecessary delays and continuances so that the defendants can enter the drug court and begin receiving services as quickly as possible. The same approach should be instituted for defendants who are probation violators.

Third: SCREENING AND ASSESSMENT OF PARTICIPANT RISKS AND NEEDS AND ENSURING PROVISION OF APPROPRIATE TREATMENT SERVICES NEEDED

All eligible defendants should be screened and assessed using validated instruments that can determine the nature of treatment services and level of care needed, identify risks and needs, and screen for mental health issues and trauma history. Mechanisms should be in place to ensure that participants assessed as "high risk/high need" are not mixed with participants of lower risk and need.

The programs should also develop options other than residential treatment for those entering the program based on the level of care indicated by their assessment. Presently the majority of participants appear to be referred routinely for residential treatment

Fourth: TREATMENT SERVICES

(a) Review treatment services to ensure evidence based practices are being used

Treatment services should be reviewed to ensure that evidence based practices are being used (see enclosed Summary of Effective Substance Abuse Treatment Strategies), including fidelity to whatever curriculum or manuals are being utilized.

(b) Developing phases for the treatment program

In addition, phases should be developed for the treatment programs that are geared to the progressive recovery of the individual participants and include articulated milestones to be achieved in order to progress through the program. Currently no phases appear to be used.

(c) Developing an aftercare/recovery support component

As early as possible, an aftercare/recovery support component should be included in the treatment program that will enable participants to begin to develop the foundation for their aftercare support once they leave the program. Enclosed is a "Fact Sheet" describing both the process for developing Drug Court Aftercare services and the nature of recovery support that should be available. Currently, no aftercare/recovery support services appear to be in place.

(d) Availability of Medication Assisted Treatment (MAT)

Medicated Assisted Treatment (MAT) should be available to all participants who need it, based on a medical determination. The use of MAT, as prescribed and overseen by a physician in conjunction with treatment and related services overseen by the drug court judge, is considered to be an evidence based practice that should be utilized by all drug courts, as appropriate. See enclosed *TIP 43 on MAT* published by the U.S. Department of Substance Abuse and Mental Health Services.

Fifth: DEVELOPING A SYSTEMATIC AND CONSISTENT FRAMEWORK FOR PROGRAM RESPONSES TO PARTICIPANT CONDUCT, INCLUDING SANCTIONS AND INCENTIVES

The programs should develop a grid for the application of Incentives and Sanctions that can then be utilized for responses to participant progress or lack of progress. In developing the grid, focus should be on therapeutic responses – e.g., responses that reinforce the recovery process -- rather than punitive, such as jail, which currently appears to be commonly used but which research has shown to be ineffective in itself in reducing recidivism for drug offenders.

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Enclosed is a PowerPoint presentation on the philosophical framework for effective drug court sanctions and incentives prepared by Helen Harberts, retired probation officer and prosecutor for the Butte County, California Drug Court and several 'Fact Sheets' by Dr. Douglas Marlowe which discuss the concept of "proximal" and "distal" behaviors – e.g., behavior that can be reasonably expected during the early period of program participation vs. behavior that cannot be reasonably expected until the participant has been involved with the program for a longer time and is further into their recovery..

Sixth: (Related): INCREASING THE THERAPEUTIC ORIENTATION FOR THE PROGRAM AND REDUCING THE USE OF JAIL AS A SANCTION

Developing a grid that provides a range of incentives and sanctions to be applied to various common situations relating to participant compliance (or lack of compliance) as recommended above, which focuses on therapeutic responses to support participant's recovery process, will be important to promoting participant retention in the program and long term recovery. The program's therapeutic focus will also be enhanced through judge and team training (see Recommendation Nine below) and the discussions at staffings where treatment can provide guidance on ways the program can support treatment services which can also be reinforced by the judge at the court review hearing.

Seventh: ENSURING A SYSTEM FOR OBSERVED AND RANDOM DRUG TESTING

Consistent protocols should be developed for drug testing which ensure that it is random, observed and sufficiently frequent. These essential elements of a drug testing program are not present in all of the BMC programs. Enclosed for review is a document we prepared a number of years ago which may be useful: *Drug Testing in a Drug Court Environment*.

Eighth: DEVELOPING POLICY AND PROCEDURES MANUALS, PARTICIPANT AGREEMENTS, POSITION DESCRIPTIONS FOR DRUG COURT TEAM MEMBERS AND RELATED DOCUMENTS THAT SYNTHESIZE THE PROGRAMS' OPERATIONAL POLICIES AND PRACTICES

Presently there are no written documents describing the policies, procedures or protocols for the programs. These are essential, both to provide consistency for program operations and services as well as to orient new team members who may become involved as staff turns over. Examples of these documents developed by other drug courts are posted on our website: www.american.edu/justice

Ninth: DEVELOPING A MANAGEMENT INFORMATION SYSTEM THAT CAN BE READILY USED FOR DAY TO DAY PROGRAM MANAGEMENT AND MONITORING

Although some summary data is reportedly collected and submitted to the state, presently none of the programs have the capability to access the operational information needed for day to day program management – demographics of participants being served, nature of risks and needs presented, relationship of drug court participant demographics with that of the arrestee and probation violator populations, characteristics of participants who are not progressing, etc. The program should enlist help, perhaps from a local university, to develop an evaluation plan, as well as to identify the data elements needed to be collected on an ongoing basis for program management and monitoring. If

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useful, we can make immediately available, free of charge, a copy of the Drug Court Management Information System (MIS) developed by the Buffalo City Drug Court which many drug courts have adapted for use. (See enclosed description)

Tenth: COMPREHENSIVE TEAM TRAINING ON THE DRUG COURT CONCEPT AS WELL AS RELEVANT EVIDENCE BASED PRACTICES THAT NEED TO BE APPLIED

None of the drug court teams involved with the program has had comprehensive training on the drug court model, including the *Key Components*, or gone through any training program as a team. As a start, training should be obtained on the drug court model as well as the nature of addiction, medically assisted treatments, sanctions and incentives, and team roles. The teams in each of these locales can draw on the wide array of archived webinars available through the National Drug Court Institute (ndcrc.org), American University (www.american.edu/justice), the Center for Court Innovation, (www.courtinnovation.org) and other organizations and develop a schedule for accessing and discussing them through, for example, a brown bag lunch series. Team members can provide cross-training to one another, explaining the focus of their respective disciplines and applicable national standards. Relevant local speakers can also be invited to make relevant presentations. The Fall meeting of the New England Association of Drug Court Professionals (NEADCP) provides an excellent educational opportunity on a wide array of topics relevant to drug court program operations as well as relevant national research findings.

Eleventh: PROVIDING REGULAR INFORMATION TO THE COMMUNITY REGARDING PROGRAM SERVICES AND IMPACTS

The programs need to provide regular information on their activities to the community – others involved in the court system and justice agencies as well as the broader community – the numbers and demographics of those whom they are serving, nature of services being provided, outcomes being achieved, etc. With the new leadership within the Boston Municipal Court as well as state court system and the new leadership in the Boston Mayor's Office, this is an opportune time to describe the import of drug courts for the community and the role they can play in reducing crime, promoting recovery and, most immediately, constructively addressing what has become an epidemic of heroin use and overdose deaths.

In closing I want to stress the outstanding judicial leadership the consultants noted in each of the programs visited, as reflected in their assessment regarding Key Component Seven, as well as dedicated and expert staff working in many of these programs. If there is interest, we would be happy to provide follow up technical assistance to work with the Boston Municipal Court to implement the recommendations submitted in this report.

Although we will be following up with you within approximately three months regarding the recommendations in this report and their implementation status, please let us know at any time if we can be of further assistance in working with the Boston Municipal Court Drug Court programs.

Cc: First Justice Lawrence McCormick First Justice John E. McDonald, Jr.
First Justice Rosalind H. Miller Judge Mary Hogan Sullivan
Lisa A. Yee

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Enclosures:

Frequently Asked Questions Memo: Staffings and Ex Parte Communication in Drug Courts.

Helen Harberts – PowerPoints: Sanctions/Incentives

Doug Marlowe –Behavior Modification for Drug Courts 101

Technical Assistance Guide for Judges on Drug Court Treatment Services (Final Draft)

Aftercare/Recovery Support Resource Fact Sheet

Checklist to Guide Drug Court Visits to Treatment Providers

Summary Of Effective Substance Abuse Treatment Strategies (Dr. Roger Peters).

SAMHSA TIP 43: MAT (Executive Summary)

Drug Testing in a Drug Court Environment

Buffalo MIS: Description

Frequently Asked Question Memo: Therapeutic Responses to Positive Drug Tests of Drug Court Participants