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COURTS TECHNICAL ASSISTANCE PROJECT

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Technical Assistance Assignment No. 3-025

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Director

**Recommendations Regarding the Development of a
Drug Case Management Program in
Escambia and Okaloosa Counties, Florida**

September 1992

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**U.S. Department of Justice
National Institute of Justice**

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COURTS TECHNICAL ASSISTANCE PROJECT

ASSIGNMENT DATA SHEET

Technical Assistance No.: 3-025

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Requesting Agency: Circuit Court

Requesting Official: Hon. John Parnham, Chief Judge

Dates of On-Site Study: April 9-11, 1992

Consultants Assigned: Hon. Legrome Davis and Timothy Murray

Local Coordinator: Hon. John Parnham

CTAP Staff Coordinator: Caroline Cooper

Central Focus of Study: Drug Case Management

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FOREWORD

In December 1991, Hon. John T. Parnham, Chief Judge of the First Judicial Circuit of Florida, requested SJI's Courts Technical Assistance Project (CTAP) to assist two of the Circuit's Counties (Escambia and Okaloosa) in developing a special program to provide treatment and other services to appropriate defendants charged with drug offenses. The proposed program was modelled after the drug court programs in Miami and Fort Lauderdale which several county and judicial system officials from the First Circuit had visited earlier in the year.

During January - March, CTAP staff worked with Judge Parnham by phone and through correspondence to gather background information on general case processing practices in the First Judicial Circuit and the drug caseload in particular. During this period, Judge Parnham also conducted a series of meetings with local officials in the various agencies involved in the drug case adjudication process in the two counties to discuss current procedures for handling drug cases in each county and potential changes that might be considered to assure earlier and continuous treatment and other supervision.

Based on the goals of the special drug case program proposed by Judge Parnham and the issues needing to be addressed, two consultants were selected to work with CTAP staff in providing the assistance requested by Judge Parnham: Hon. Legrome Davis of the Court of Common Pleas in Philadelphia, and Timothy Murray, Director of the Office of Substance Abuse Control in Dade County (Miami). Judge Davis had designed an Expedited Drug Case Management Program in 1989 in Philadelphia and has overseen the program's implementation since that time. He has also worked with other

jurisdictions in developing drug case management programs. Mr. Murray has worked closely with the design and implementation of the Miami Drug Court as well as with other defendant supervision and treatment programs.

A site visit was conducted in Escambia and Okaloosa Counties April 9 - 11 by the consultants and CTAP staff Joseph Trotter and Caroline Cooper, both of whom have had extensive experience in assisting local jurisdictions in developing drug case management programs. During the visit, members of the study team met with Judge Parnham and other court and local justice system officials in each county, both in plenary meetings and individually to discuss the nature of the drug caseload and the potential utility of the type of drug court program proposed by Judge Parnham. Those interviewed included:

Peggy Aiken, Deputy Clerk of Court, Escambia County
Dr. John Bingham, Cordova Counselling Center
Hon. Keith Brace, Okaloosa County Judge
Vicky Bragg, Community Drug and Alcohol Commission
Joyce Cowan, Deputy Clerk of Court for Escambia County
William Cross, Pretrial Release Program
Dr. Hunt Cudahy, Bridgeway Drug Program
Jim Curry, Okaloosa County Dept. of Corrections
Ronald Davis, Public Defender (Escambia County)
Jerry Defresna, Dept. of Vocational Rehabilitation
Brunie Emmanuel, The Friary
Hon. Nicholas P. Geeker, Circuit Judge
Curtis Golden, State Attorney
Hon. Ben Gordon, Circuit Judge
Hon. William J. Green, County Judge
Kathy Henly, Deputy Clerk of Court
Don Howard, Deputy Clerk of Court
Staats Howell, Department of Corrections
Barbara Jones, Okaloosa-Walton Community College
W.A. "Buck" Lee, Chairman, Escambia County Board of
Commissioners
Hon. Ernie Lee Magaha, Clerk of Court, Escambia County
Barry McKay, Private Industry Council
Jose Nanjo, Department of Corrections

Liz Nitzel, Private Industry Council
Hon. John T. Parnham, Chief Judge
Wayne Peacock, Court Administrator
Gordon Pike, Treatment Alternatives to Street Crime (TASC)
Major Gerald Russo, Escambia County Corrections Department
Joe Schiller, Assistant State Attorney
Jim Sewell, Public Defender (Okaloosa)
Melissa Silhan, Lakeview Center
Bonny Vardeman, Bridgeway Center
Ellen Vickery, Deputy Court Administrator
Chuck Williams, Chief Assistant State Attorney
Robin Wright, Deputy Court Administrator
Representatives of Twelve Oaks

The report which follows documents the CTAP study team's findings and recommendations regarding the current handling of drug cases in Escambia and Okaloosa Counties, the utility of the drug court program as proposed by Judge Parnham, and the planning issues and tasks to be addressed to implement such a program. An earlier draft of this report was submitted to Judge Parnham in late May and is now presented in final form.

I. OVERVIEW

Unlike many of the larger, urban criminal justice court systems, Escambia and Okaloosa Counties do not confront extensive time delay problems in processing their criminal caseloads. By state rule, criminal cases should be disposed within 180 days of arrest, and each jurisdiction easily satisfies this mandate. The report of the State Court Administrator's Office reflects that no cases in either county reach the age of 365 days. Our interviews with criminal justice officials in both jurisdictions reveal that a small number of cases are disposed at the first trial listing, and almost all cases are resolved at the second or third trial listings. Trial listings occur promptly, and those cases not disposed of at the first listing are continued for approximately 45 days.

Moreover, in each jurisdiction more than 99% of all cases are disposed by plea, an unusually high rate compared with other courts. The statistics of the Clerk of Courts of Escambia County reveal that in 1991, of the 5,895 cases adjudicated in the Criminal Circuit Court, 5,614 (99.10%) were disposed of by plea, 15 (.0025%) by non-jury trial, and 201 (.034%) by jury trial. Additionally, the Escambia Clerk of Courts statistics indicate at the conclusion of each of the four quarterly 1991 reporting periods, an average of 1946 cases were pending, 1807 (92.9%) of which were less than 180 days of age, and the remaining 139 (7.1%) were between 180 and 365 days of age. None of the pending cases were more than 365 days of age. These statistics are noteworthy, and reveal the present ability of the court system to remain current in its inventory.¹

¹This is not to say that greater efficiencies in the adjudication process might not still be possible and, if the inventory of cases awaiting trial increases, the courts of both jurisdictions might consider instituting a number of procedures to expedite the disposition of cases, including: (1) requiring some activity on the part of lawyers between first appearance and arraignment; at the very least, discovery and depositions should be completed prior to arraignment; (2) creating a mechanism for pleas in non-

In its request for technical assistance, the Court, which has created and maintained the ability to remain current in its inventory, seeks assistance with a concern far more complex than quickly disposing of cases: court management, and participating criminal justice agencies, seek to break the cycle of defendants appearing and reappearing in the criminal justice system as a result of an inability to affect meaningful changes in either the quality of the defendant's lives or in the addictions which strongly contribute to their presence in the court system. The recognition that continued and repeated incarceration of drug offenders fails to address the causes of addiction, and also fails to attempt to cure the personal and social issues which result in drug dependency pervaded our discussions with criminal justice and county government officials.

This enlightened and aware perspective on the part of local officials is a tremendous community resource, and the appropriate time to restructure and redirect the efforts of the court's drug strategy is now. In actuality, the development of an immediate and effective drug treatment strategy should have the effect of reducing the number of cases entering the criminal justice system, thereby enabling the court to remain current in its ability to process cases.

drug cases at arraignment, or shortly thereafter; (3) developing a method for Circuit Court criminal judges to manage their individual caseloads prior to the pre-trial conference in Okaloosa County, and "Pocket Day" in Escambia County. All of these strategies would accelerate the timing of the entry of pleas.

II. PRESENT DRUG CASE PROCESSING MECHANISMS

Presently, neither Escambia or Okaloosa Counties process drug cases, or drug related cases, in a manner different from the remainder of their caseloads. Slight differences exist in the two counties in the timing and the location of the initial appearance, and in the timing of the transfer of felony cases to the dockets of the Circuit Court.

A. Escambia County

In Escambia County, immediately after arrest law enforcement officials review a bond schedule, set bond, and give a returnable date for filing information. First Appearance occurs within 24 hours, five days a week in the Escambia County Courthouse. On weekends, First Appearances occurs in the jail, and all the judges rotate weekend duty to cover First Appearance hearings. Only defendants presently detained appear at first appearance. The judge reviews probable cause, bond, and inquires as to the defendant's ability to retain an attorney. The Office of the Public Defender is most often appointed to represent incarcerated defendants. An investigator employed by the Office of the Public Defender interviews detained defendants within ten days of first appearance; letters are sent to already released defendants requesting they schedule an interview. Most do not, however, and the first contact defendants not in custody at first appearance have with their counsel is typically at arraignment.

Arraignment occurs when the case is approximately three weeks of age. At this time, the State Attorney's Office files bills of information, and the defense counsel enters a plea of "not guilty" on behalf of the client, and requests a jury trial. Incarcerated defendants are not transported to the Escambia County Courthouse for

arraignment. Most felony cases are scheduled for trial four to six weeks after arraignment.

Approximately one to two weeks before trial, each Circuit Court trial judge conducts a docket day at which pretrial conferences occur. Approximately ten percent of those defendants appearing at their first docket day enter a plea, with the remainder continued until a second docket day four to six weeks later. Less than five percent of the inventory remains undisposed after the second docket day, and these cases are called for trial the following week.

B. Okaloosa County

In Okaloosa County, defendants arrested on felonies and serious misdemeanors are taken to the county jail in Crestview. First appearance occurs approximately twenty-four hours after arrest and is conducted by the Honorable Keith Brace seven days a week. Judge Brace conducts these hearings in the jail, thereby saving the county the expense of transporting detainees to the Courthouse Annex in Shalimar, approximately 30 miles away. Judge Brace, a county judge who sits by special designation on the Circuit Court, sets bond and appoints counsel at first appearance. No cases are disposed at this juncture as the defendant is without counsel.

Approximately three to five weeks later, the defendant is arraigned at the Crestview County Courthouse. By this time, the Office of the State's Attorney has reviewed, supplemented and clarified initial police documents, and is prepared to file bills of information in approximately 85% of all felony arrests. The defendant, or defense counsel, enters a written plea of not guilty and a trial date is set approximately two to four months later. Presently, no felony cases are disposed at arraignment. If a

defendant charged with a felony wishes to plead, the case is referred to the trial docket of a Circuit Court judge. Judge Brace does, however, dispose of misdemeanor cases at arraignment and first appearance. Judge Brace's involvement with felony cases concludes at arraignment. Two separate judges are assigned to the Criminal Division of the Circuit Court, and both preside in the County Courthouse Annex in Shalimar. Their involvement with the criminal caseload begins at the pre-trial conference, approximately one week prior to the first trial listing.

III. AVAILABILITY AND SELECTION OF APPROPRIATE CASES FOR THE SPECIAL DRUG CASE PROGRAM

A difference of opinion existed among interviewees as to the types of cases which should be eligible for inclusion in the special drug case program. A few law enforcement officials, and most defense counsel, suggest the immediate inclusion of small quantity drug sale cases where the apparent cause is the need to generate income to satisfy the seller's addiction. No consensus exists on whether this category of cases should be included, and we do not recommend immediate inclusion of these cases. Moreover, as the objective is to institute changes in the nature and quality of life of the affected population, care must be taken to select a population in which the likelihood of success is greatest. That population is obviously the casual user or the drug dependant individual who has not yet made the quantum leap of becoming a merchant of narcotics; in our experiences, the addictive tendencies of a seller are likely to be more ingrained and more difficult to meaningfully address.

All parties interviewed agreed that the initial target population of any comprehensive initiatives must include those persons arrested for drug possession, and those charged with non-violent, less serious offenses who are addicted to controlled substances. The inquiry evolved into whether either or both counties had a sufficiently large quantity of eligible cases.

According to the 1991 Florida statewide report, in Escambia County 564 defendants were charged with drug possession. In Okaloosa County in 1991, 291 defendants were charged with drug possession. It was not possible to determine which drug possession cases were felonies, and which were misdemeanors. The Assistant

Public Defender we interviewed in Okaloosa County, Jim Sewell, reviewed the 20 arraignment files he coincidentally had in his possession at the time of the interview and told us, based upon the charges or interviews with his clients, nine of twenty files in his possession that day involved drugs or were drug related. Mr. Sewell also felt his docket for this day was unusual in that drug or drug related cases often rise to as much as 70% of the arraignment list. Clearly, even if drug delivery cases are excluded from the scope of the initial program, it appears that a sufficiently large sample of eligible cases will exist. Moreover, given the amount and intensity of action required of involved officials, it is inadvisable to be too ambitious in the scope of the initial undertaking. Once basic operational questions and practices are resolved, the program can easily be expanded. We therefore recommend against the immediate inclusion of cases alleging drug delivery or manufacture or possession with intent to deliver.

IV. THE APPROPRIATE STAGE FOR COURT INTERVENTION AND RECOMMENDED STRUCTURE OF INTERVENTION

As indicated earlier, our recommendation is for the program to include appropriate felony and misdemeanor cases as discussed in Section III above. Given existing case processing mechanisms in Escambia and Okaloosa Counties, the structure of the programs and planning tasks must proceed along different paths.

A. Escambia County

1. Operational Issues

a. Appropriate Stage for Court Intervention

In our view, the most appropriate time for the Court to intervene with the special drug case program is immediately after arrest, while the defendant is in custody and when he/she is mildly disoriented and psychologically most ready to take the steps necessary to regain his freedom. Moreover, if the defendant is released on bond prior to a determination of eligibility for inclusion in the program, he/she may resume drug usage and lose the desire to participate in a comprehensive program which addresses his/her long-term needs. Equally important, with first offenders, at first appearances most likely the defendant will not yet have been educated by the "jailhouse lawyers" as to the nuances of the criminal justice system.

As discussed earlier, by virtue of local practice, the county judge who presides over first appearances and arraignments takes no adjudicatory action on incoming felony cases. Initially, a determination must be made as to whether to develop the case management program for a single courtroom, or for multiple courtrooms. If the scope of the program is confined to a single courtroom, which is probably most feasible, first

appearance or arraignment would appear to be the best opportunities for court intervention.

If the decision is made to operate the program in two Circuit Court courtrooms, consideration should be given to creating an expedited listing shortly after arraignment, but well before the trial listing, which traditionally occurs fifty-five to seventy-five days after arrest. The longer the lapse of time from arrest to consideration of involvement in the program, the less likely the defendant will be willing to participate in the total effort this program obviously requires. As pre-trial supervision is not intensive in Escambia County, the defendant may resume his/her consumption of drugs and may not have appropriate recognition of his predicament, or its causes unless entry into the program occurs very shortly after arrest.

b. Criteria for Program Eligibility

The Court, in conjunction with representatives from the prosecution and defense bar should develop criteria for program eligibility. As indicated earlier, it would appear that defendants charged with drug possession and non-violent drug related offenses should be eligible for participation in the program. Defendants with violent crimes against the person in their backgrounds should generally be excluded as the risks in treating this population are great. With any new program one seeks to alter public attitudes and, as the public tends to place extreme significance on the failures rather than the successes of a program the court should avoid jeopardizing an incipient program by including high risk defendants. For these reasons, defendants with significant prior criminal histories should also be excluded.

c. Role of Prosecution and Defense Counsel

Prior to first appearance all parties should review relevant information on the defendants, examine their files, and determine which defendants are eligible for participation in the program, based on the eligibility criteria developed by the Court et al. The prosecutor and defense counsel can recommend participants, and the court should also scrutinize defendants as to their amenability for treatment. Defense counsel should also explain program objectives and procedures to defendants, including participation requirements and implications if they terminate their participation prematurely.

d. Need for Prompt Evaluation of Defendants and Immediate Entry into the Program

Upon determination at first appearance that a defendant might be eligible, and prior to any determination of the right to or the amount of bond, the defendant should be evaluated by a trained professional as to his amenability to treatment and willingness to engage in the total personal effort to successfully address his drug dependency. Immediate urine screening tests may be conducted at this time. The initial appearance, the evaluation, and the explanation of the program to the defendant should be conducted on the same day. Preferably at the same court listing, the defendant should be placed in the program, or advised as to his/her ineligibility. This determination must occur promptly, as the court has an interest in placing approved defendants into immediate treatment, and also in not delaying the processing of cases of unacceptable defendants. If the defendant is accepted into the program, he/she should immediately be transported to a drug treatment facility to commence his outpatient treatment, and must also participate in an intake interview with the designated supervisory agency; at

this time, his/her obligations under the program should be more fully explained.

2. Development of Community Resources

a. Commitment of the County Commissioners

Most significant to the development of a potentially successful treatment program in Escambia County is the positive and committed attitude of the Chairman of the County Commissioners. It is apparent from conversations with concerned and knowledgeable individuals that Chairman Lee is aware of the potential magnitude of the impact the increasing drug population and alcohol abuse poses to the quality of life in his community, and also recognizes that the court system does not exist in a vacuum, but rather as a component in the interrelated fabric of community life. His commitment is obvious to all concerned, and his assistance must be sought and obtained if court initiated anti-substance abuse endeavors are to have a meaningful impact. Chairman Lee and other responsible business, civic, religious and political leaders, must understand the overall strategy of the program, and must assist in making its purposes and vision a reality. The development of the community service components and providing employment opportunities once requisite skills are acquired, are two immediately obvious potential areas of involvement.

b. Role of Private Drug Treatment Providers

Many of the private drug treatment providers interviewed by the study team expressed a willingness to supply manhours in support of this program. These in-kind contributions may take the form of evaluation of the defendant while he or she is incarcerated to determine eligibility for the program. Private providers may also provide training for court employees.

c. *Need for Educational Programs for Elementary and Secondary Schools*

Moreover, a recurrent theme in our discussions with Escambia County officials was the growing awareness that the battle against substance abuse must be waged earlier than adult court. An educational program for elementary and secondary schools should be developed and included in Escambia's program. The education of youths is also an appropriate area for assistance to the court by private providers. Federal funds are available to support programs of this nature, and applications should be immediately submitted.

d. *In-Patient Drug Treatment Capabilities of New County Jail*

Finally, the new county jail, which is scheduled for completions in the near future, has a large number of beds dedicated for in-patient drug treatment. A certain number of beds should be made available for use by this program, as many defendants will need in-patient treatment before they can successfully address their drug usage problems.

B. **Okaloosa County**

1. Operational Issues

a. *Appropriate Stage for Court Intervention*

As discussed earlier, defendants will be most likely to enter the program if they are in custody; following bond review, most eligible defendants will be released on bail.

In Okaloosa County, the Honorable Keith Brace of the County Court, who sits by special designation as a Circuit Court judge, conducts all first appearances and bail reviews. Moreover, by local practice, Judge Brace retains jurisdiction over felony cases

until arraignment when trial dates on the dockets of the two criminal Circuit Court judges are set. In our view, the most appropriate time for the Court to intervene with the special drug program would be at the first appearance before Judge Brace. This appearance occurs at a time when defendants would be most likely to consider program participation for the reasons discussed earlier. Moreover, both the prosecution and the defense expressed extreme confidence in Judge Brace's judgment and fairness, and suggested his courtroom as the most appropriate and amenable forum for a drug treatment project.

b. Role of Assigned Judge

New court projects are more likely to be successful if all sides agree upon and are willing to work with the assigned judge. Moreover, as this program is a court initiative, the court must exercise care in selecting a judge to administer and lead the program who has credibility with both prosecution and defense and is committed to the goals of the special drug program. Judge Brace clearly exhibits these qualities and his credibility, leadership, and work ethic will be important assets which must be utilized in order to increase the potential effectiveness of the proposed special drug case program in Okaloosa County.

c. Other Issues

Observations included in our earlier discussion of Escambia County regarding criteria for program eligibility, the role of prosecution and defense counsel, and defendant evaluation for program eligibility are equally applicable to Okaloosa County. As noted, the initial appearance, evaluation of the defendant, and explanation of the program should be conducted on the same day. The defendant should be either placed

in the program or advised of his/her ineligibility preferably at the same court listing, or, perhaps, at Judge Brace's next appearance at the jail.

2. Need for Broad Range of Support Resources

In order to have any possibility of success with a drug dependent population, the court must comprehensively address the problems which are the genesis of the defendant's involvement with the court system. If the defendant does not have a high school degree, his employability is limited; thus, the program must require participation in GED courses. The local Community College appears more than willing to accept this responsibility. Employment needs must also be addressed, or else return visits to the court system are guaranteed. The defendant should be required to acquire job skills through participation in a job training program. The Private Industry Council (PIC) of Okaloosa County has expressed a willingness to assist in this area, and indeed in its evaluations for eligibility, PIC gives extra consideration to persons with criminal histories. The defendant must receive regular and structured drug treatment, and given the paucity of long-term residential beds, large scale in-patient treatment is not a realistic possibility. Bridgeway, and other private providers, have indicated their desire to provide out-patient treatment. The court's allocation of residential beds could be reserved for those defendants who are unsuccessful in out-patient treatment and whose dependency requires more intensive efforts.

C. Issues Relevant to Both Counties

1. Planning and Coordination Needs

The basic structure of the drug case management program recommended is equally appropriate for Escambia County and Okaloosa Counties. By virtue of its size,

diversity of treatment resources, the number of persons and agencies involved in a drug case management initiative, and slightly different legal practices, the program in Escambia County may require special planning and coordination. A planner or coordinator, familiar with the criminal justice system, county government, and the business and civic communities should be designated immediately. In addition to refining strategies and procedures, the coordinator will develop a time-frame for implementing the program, and will communicate the court's goals and objectives to all participants, as well as to the business, civic and religious communities. If the community at large understands the overall strategy totally and fully, and internalizes it, the potential success of the program will be increased.

2. Nature of Court Monitoring of Defendants in the Special Drug Case Program

Given the addictive nature of drug usage, the court must expect an incidence of drug positive urine from participants, and should not automatically terminate participation in the program on this basis. Instead, the court must examine the defendant's efforts toward compliance, and the overall direction of his participation. Defendants who are arrested for sale of drugs or crimes of violence should be terminated from the program. The court should consider including a community service component, picking up trash from public property, removing graffiti, or a similar activity of community benefit. The defendant stands to benefit from this program and must tender something of value in exchange for the unusual time and interest the court system takes with him. The defendant must also satisfy any pre-existing court imposed financial obligations, including the cost of supervision.

3. Alternative Legal Structures

The drug case treatment program may take one of several structures.

a. Pretrial Intervention Program (e.g., Diversion/Deferred Prosecution)

Under this option, and quite similar to the Pre-Trial Intervention Program, no plea would be tendered at the time of entry into the program, and the case would simply be held open until the defendant completed the program requirements or was otherwise terminated from the program. The defendant would obviously need to waive application of any speedy trial provisions. Upon termination from the program, or voluntary withdrawal, the defendant's case would simply be reinstated. If the defendant successfully completes the program, the prosecution would enter a nolle prosequi or dismiss the case.

b. Entry of Nolo Contendere Plea

An option for the Court to consider, if permitted under Florida law, would be to require the defendant to enter a nolo contendere plea upon entry into the program and to waive all speedy trial rights. Such an option would involve the Court's withholding adjudication and, upon successful completion of the program, dismissing the case and expunging the defendant's record. If the defendant failed to comply with the conditions of the program, a conviction would be entered and the defendant would be subject to appropriate sentencing. The distinctive feature of this option is the interjection of an element of finality of disposition upon entry in the program. The Court would not have to worry about an inability of the prosecution to locate witnesses nine or ten months down the road, nor would the Court have to concern itself with a potential subsequent influx of cases awaiting disposition.

4. Necessary Changes in Local Practice

a. Role of Counsel at First Appearance

Adoption of the type of special drug case program discussed in this report would require changes in local practice with respect to the role of counsel at first appearance. Substantial rights of both the prosecution and the defense are involved in this program, and future difficulties will be avoided if counsel for both sides are present at time of entry into the program. The prosecution can state their agreement with admission into the program on the record, thereby protecting the assigned judge, or may persuade the judge that the defendant is not an acceptable candidate for inclusion in the program. In any event, since the cases of defendants who successfully complete the program will be nolle prossed, the consent of the prosecutor would be required for entry into the program. Defense counsel can explain the program to the defendant in detail at first appearance, and convince him/her of why program participation would be appropriate under his/her personal circumstance.

If an adjudicatory rather than a diversionary approach is adopted (i.e., if the defendant is to enter a nolo contendere plea upon entry into the program), he/she must either waive preparation of bills of information or the State's Attorney must prepare the bills more quickly. Absent either of these occurrences, pleas must be delayed and, at the earliest, can only be tendered at arraignment.

b. Caseload of Administering Judge

Further, the judge assigned to administer the program should receive a reduction in his non-drug related caseload. The program judge will have an increased inventory with periodic status listings with the defendant and counsel to review the defendant's

progress, and should receive adjustments to his remaining inventory.

5. Program Scope

Initially, the program must be kept small in scope as intensive and regular supervision by the probation officer is required. It should be limited to 50 to 100 participants at any given time, as intensive supervision by the program officer is implicit in any possibility of success. Defendants who are subsequently arrested for violent felonies or drug sale cases, or who are not intellectually committed to the program should be promptly removed from the program as you cannot let the overly considerate treatment of uncooperative or unsuccessful participants operate to reduce the efforts of those defendants who are making legitimate strides toward rehabilitation.

6. Program Locus

The program should also operate out of a single courtroom as ultimately any new program assumes the personality of the assigned judge, and consistency in treatment of violators must be communicated to participants. The job of the probation officer is made easier by an ability to communicate predictable consequences of violations to the defendants prior to the occurrence of the violations.

7. Program Duration

A defendant's participation in the program should also be at least a year in duration, as the program seeks to change the lifestyle and essential character of the defendant. Comprehensive efforts of this sort cannot be effectuated in a lesser period of time.

V. RECOMMENDATIONS RELATING TO DEVELOPMENT OF A COMPREHENSIVE COMMUNITY-BASED TREATMENT PROGRAM

The leadership of the First Judicial Circuit recognizes the need to step beyond the traditional roles of the court in combating the serious problem of drug abuse and it is to this end that the technical assistance team has focussed. The following recommendations focus on the coordination of community treatment and other resources with the adjudication of drug offenses and are divided into two broad categories: (1) Community-wide responses, and (2) criminal justice alternatives.

A. Community-Wide Response

The ultimate solution to the problem of substance abuse requires an all out effort embracing every facet of the community. At present there is no one dedicated entity committed to fighting drug abuse and its ancillary effects. The court in its wisdom recognizes this is not a problem that can be effectively dealt with in the criminal justice arena alone. If we look to local law enforcement efforts in combating drug abuse we see they have set a precedent for the community to follow. By forming a multi-jurisdictional, multi-agency task force they have marshaled available resources in order to produce the most effective results.

The community-at-large would be well served to follow the same strategy. It should be noted that combating the supply side of the drug threat requires interdiction and tough consistent law enforcement, the long term solution to this problem requires attention to the demand side as well. The reduction of the demand for illegal drugs and alcohol through treatment and rehabilitation and prevention is an all important undertaking. Based on this premise the following recommendations are offered:

1. A community-wide coalition against substance abuse should be formed

In order to achieve success of the special drug case program proposed, it is imperative that all facets of the community become involved in the solution to this community-wide problem. The Circuit cannot hope to reduce the demand for the illegal drugs until community attitudes toward substance abuse are significantly changed. Several communities across the nation have had measurable impact gathering volunteers from the public sector who bring their talents and expertise to form a well-publicized local consortium committed to fighting drugs. Suggested areas of concentration for such a coalition may include:

a. Law Enforcement, Courts, and Corrections

Key participants in this sub-group would be local law enforcement executives, jail administrators, the prosecutors office, the defense bar, probation and parole authorities, and representatives of various federal enforcement agencies acting within the circuit. Initial goals of this working group may include a survey of treatment resources available to the justice system, effectiveness of existing treatment, rates of arrest, treatment within the jail setting, opportunities for alternatives programming such as diversion, etc.

b. Workplace

This sub-group would consist of the chief executive officers of a cross-section of private enterprises within the Circuit. The local Chamber of Commerce may already have a substance abuse sub-group which would be an ideal starting point for this group. Initial agenda items may include the establishment of drug free workplace criteria, employee assistance programs, drug prevention in the workplace, etc.

This sub-group, by virtue of its experience in planning, organizational

management and budgeting, will prove to be an invaluable resource to the coalition-at-large. This work group may also want to consider utilizing the services of existing advertising/public relation firms to help spread an anti-substance abuse message. Donated use of radio and TV time, newspaper advertising space, billboards etc., can be of invaluable aid in assisting the coalition's efforts. In addition, the development of the anti-drug abuse message itself, a logo or theme for an anti-substance abuse campaign, for example, may be donated by local agencies.

c. Schools

Participants may include representatives of the local school board, teachers union, student representation, private schools, local community colleges and universities. This group may address the need for substance prevention and education within the school setting, and may be able to offer assistance in surveys, research and evaluation.

d. Neighborhood/Religious Groups

Leaders of community-based organizations, civic associations, and religious leaders represent potential participants in this sub-group. This group may wish to consider the establishment of substance abuse ministries within the religious establishment, as well as store front prevention/ outreach efforts delivered through the existing infrastructure of civic associations. This sub-group may also prove to be effective in delivering an anti-drug message to individual homes and families. This group may assist the coalition-at-large in identifying levels of need and community perceptions of the drug problem and proposed solutions. Existing public service organizations such as the Optimists, Lions, League of Women Voters, etc. may have existing infrastructures that may be useful to achieving the goals of the community

coalition proposed.

e. Treatment/Rehabilitation

This sub-group would include local treatment providers, the medical community, prevention experts, etc. Among their initial tasks may be an examination of local treatment practices, local treatment needs, distribution of public treatment dollars, etc. It is important that all treatment providers be included in this group, both public and private.

The above represents a suggested organizational format for a community coalition. The needs and wants of the Circuit may dictate the addition of other sub-groups or the elimination of some of those we have suggested. Regardless, it is essential that local policy makers become active participants in the coalition. Representatives should not be sent from various offices to sit for yet "another meeting," but key actors themselves should lead the way for others to follow.

It is recommended the Circuit consider as the first goal of such a coalition the development of a strategic plan for community action to combat drug abuse. This plan should include all the sub-groups under the coalition's umbrella and provide a realistic blueprint for action. This blueprint must be realistic and achievable.

It should be noted that a coalition such as this type can be formed at virtually no cost to the Circuit. Meetings can be held in public buildings, volunteers can record minutes, existing clerical staff can handle the initial paperwork required for such an activity. Although the costs may be minimal, the rewards can be immense. Florida has led the way nationally in the development of coalitions such as the one recommended, and many communities which have already established such coalitions would be more

than happy to host a visit from the First Circuit so that first-hand experience can be obtained.

B. Criminal Justice Recommendations

Although the First Judicial Circuit is not experiencing the backlog in case delay felt by many urban jurisdictions across the country, the ravages of substance abuse are nonetheless evident within the justice system. Strained treatment resources, correctional facilities and system dysfunction can be felt on a daily basis. During our on-site visit the court expressed a keen interest in developing an alternative method in dealing with drug possession/drug-related offenders. Regardless of what form this alternative programming takes, the following steps should be considered before any decisions are made regarding an alternative adjudication process for certain designated drug cases.

1. Identify a Target Population

The court needs to assess the existing defendant population that may be drug involved. A quick count can be made of the number of arrests that are possession/purchase felonies. The circuit may also want to consider drug related misdemeanors. A decision has to be made early in the process as to whether alcohol-related cases will be included.

2. Method for Case Disposition

Once a target caseload is identified, consensus must be reached within the justice system as to an appropriate dispositional sanction for the defendants in question. Whether the sanction includes diversion, probation or a jail term must be decided early in the process. Consideration must also be given to those offenders who "fail" the program and what sanctions may be available to deal with them. It must be kept in mind

that this caseload is failure prone by its very nature. In order for any program to have a measurable impact on the system, graduated systemic responses to relapse must be developed prior to implementation.

3. Treatment Resources

While it was made abundantly clear during our visit that the Circuit does not have sufficient treatment resources to meet its current needs, let alone meet the needs of an expanded program, a reconfiguration of existing resources may be possible. "Treatment" does not necessarily mean a 28 to 60 day residential stay. Treatment, like sanctions, should be configured, on a graduated scale, from least to most restrictive.

Ideally, assessment and identification of offenders potentially eligible for the special drug case program should be done prior to initial appearance. This assessment can be conducted at the jail by using an instrument developed in conjunction with local public and private treatment providers. A quick assessment of this type cannot be considered the "final word" but it can provide the court with information needed to make an initial referral.

Once this referral is made and the defendant agrees to participate, the defendant can be given an opportunity to perform in an outpatient setting that can be conducted at modest cost to the circuit. Should significant failure and relapse occur, existing treatment slots and residential facilities can be prioritized to accept court-referred clients. Client monitoring can be achieved through intensive urinalysis. While this may represent a significant expenditure on the part of the circuit, sources such as the local law enforcement trust fund may be approached to procure urine testing equipment. Staffing cost as well as recurring supply needs must be anticipated in the program's

overall budget. Even though a sliding fee may be imposed, it is not realistic to expect a program such as this to be self-supporting.

4. Criminal Justice Supervision

Depending upon the disposition of each case, an appropriate supervising agency must be identified to provide routine supervision of program participants on behalf of the Court. Agencies such as PTI, State Probation, or Pretrial Services may be considered. Regardless of the agency selected, an immediate and effective relationship must be established between the treatment provider and the agency responsible for defendant supervision. Treatment participation should be the number one priority of client supervision functions. Program clients are faced with the most difficult task in their lives, i.e., overcoming their addiction. We are dooming this population to fail if we load them up with a multitude of tasks which are sometimes at odds with each other. Treatment should override all other supervision obligations. The criminal justice agency selected to support the Court's monitoring role must defer to the treatment needs of individual clients. The purpose of the treatment program is not to catch defendants who fail, but rather to help them succeed. Success is dependent upon the client becoming and remaining drug-free. The client may put up a multitude of obstacles to prevent effective treatment, the justice system must work to overcome the obstacles, not add to them. Procedures must be worked out between the treatment provider and the supervising agency to coordinate violation identification and reports, client whereabouts, etc.

5. Case Processing Procedures

When a client is identified prior to bond hearing as being drug involved, and

meets the criteria established by the Circuit for participation in the special drug case program, he/she should be taken before the designated judge. This judge will instruct the defendant as to the nature of the program, the rules of admission, requirements for successful completion, and any dispositional information that may be required. If the client agrees to participate in the program, he/she should then be taken directly to a treatment facility for intake, assessment and the first phase of treatment.

As noted in Section IV above, it is important that the court exploit the defendant's disorientation shortly after arrest and offer effective treatment at this point. When a client returns for arraignment, (two to three weeks later), the court should have a progress report submitted by the treatment provider. This report need contain only the most basic information, (i.e., client attendance at treatment, urine results and addiction assessment). At this point the court must decide whether or not the client may continue in the program. If the defendant continues in the program, he/she should sign a waiver of a speedy trial if a diversion or deferred prosecution program is envisioned by the First Circuit, and a waiver of treatment confidentiality so that the provider may share with the courts the necessary treatment progress information.

Again, it must be stressed that addiction is a disease of relapse and as a result, failure should be expected throughout the treatment process. Other jurisdictions have found that the direct involvement of the court in the substance abuse treatment of individual cases is a vital component to overall success. Clients who do well should be encouraged, clients who don't should be cajoled. The frequency of court appearances should be set depending upon the client's success or failure within the prescribed treatment regimen. Clients who do well and remain relatively drug-free can be

scheduled for a date some 30 days hence. Clients who have difficulty in either getting or remaining drug-free should be set earlier.

Typically, treatment associated with these programs falls into three phases:

Phase I: Intensive treatment

- * intensive contact between the client and the treatment provider.
- * assessment of extent of client's substance abuse and addiction problems.
- * Frequent reporting and urine drops.
- * Average duration is 30 days, depending on progress of the defendant.

Phase II: traditional outpatient therapy

- * includes individual and group counselling, NA/AA meetings.
- * contact with client two to three times a week.
- * urine collected on a random basis, frequently enough to ensure drug abuse detection.
- * Average duration is 90 - 150 days, depending on progress of the defendant.

Phase III: Aftercare Component

By the time a client reaches this phase, he/she has shown an ability to remain drug-free for at least 30 consecutive treatment visits and has received a recommendation from the treatment counsellor which has been agreed upon by the court. It is during this important phase of treatment that the program attempts to get the client ready for reintegration into society. Educational/ vocational assistance will probably be required in most cases. The First Circuit has available a multitude of services such as the

community college system, DVR and others who stand ready to follow the court's lead in assisting this population. It is imperative that program administrators keep in mind that these clients will be returning to the same environment that surrounded them during the development of their addiction. It is not enough simply to get them drug-free, we must give them the tools to remain drug-free. These tools include a decent education, and an opportunity to make a productive living. Once a client completes Phase III, he/she should have demonstrated an ability to remain clean and sober for an extended period (usually six months or so), and have completed prescribed educational/vocational requirements. At that time, graduation from the program may occur.

(Note: Some jurisdictions have had success using acupuncture as an adjunct with traditional treatment. Acupuncture may be made available on a voluntary basis to clients through all phases of the treatment process. The State of Florida requires acupuncture to be administered by State Certified Acupuncturists. Most jurisdictions have found that they can usually meet the demands presented by criminal justice populations by employing local acupuncturists on a part-time basis.)

6. System Participants

The overall premise of programming such as this is quite simple, the Court, State Attorney, and the Public Defender all work in tandem with treatment providers to enable each defendant to become and remain drug-free. All resources within the criminal justice system are utilized to achieve this end.

a. State Attorney

Although the State Attorney may not prosecute each case assigned to the special

drug case program in the same manner as other cases, the Office serves an important role in the treatment process. The Assistant State Attorney in court may frequently take a noncompromising approach in order to provide the court with a hammer that is sometimes needed with difficult clients. It may also be called upon to remind the defendant of the possible sanction he/she may face, as well as congratulate those defendants who successfully complete the program. Regardless of whether an eligible defendant decides to participate in the special drug case program, the prosecution still retains responsibility for assessing the strength of the case and, in the event that a lab report or other information subsequently becomes available which indicates that the case cannot be prosecuted, the state should indicate this situation and take appropriate action. In that event, the defendant can decide whether or not to continue with the program voluntarily.

b. Public Defender

The Public Defender will discuss the rules and conditions of the program with each defendant prior to admission. The PD will also examine the facts of the case surrounding the arrest to ensure the State has a triable case. The Public Defender is often called upon to assist the defendant in other matters such as, emergency housing, health issues, etc. Due to the relationship between the Public Defender and the defendant this office represents an important resource to the court in convincing the defendant of the desirability of becoming and remaining drug-free.

c. System Coordinator

It has been the experience of many jurisdictions that a full-time coordinator may be needed to oversee program activity. The Chief Judge should consider naming

such a coordinator to ensure program policies and practices are being met on a daily basis, and to correct program deficiencies as they may occur. It must be remembered that we are asking the criminal justice system, which is adversarial by its very nature, to behave in non-traditional ways. One cannot expect the system to change overnight. The presence of a coordinator who brings with him/her the apparent authority of the Chief Judge will go a long way to ensure success. Frequent meetings may be required during the initial phases of program development to review the day's calendar and any problems that may have occurred. It must be kept in mind that when a defendant enters a program of extended duration he/she not only brings their addiction with them, but a multitude of other problems as well. The Court cannot successfully treat addiction in isolation of these other problems. The court will look to the Public Defender, the State Attorney and Program Coordinator for assistance in dealing with client issues such as, housing, unemployment, health issues, AIDS, etc.

VI. CONCLUSION

It is the firm belief of the Technical Assistance Team that the First Judicial Circuit would benefit by the establishment of the special drug case program envisioned by Judge Parnham and addressed in the comments and recommendations of this report. While these recommendations are not without cost to the community, it is felt the benefits are enormous. The First Circuit is surrounded by jurisdictions who have varying levels of experience with programs such as those we have suggested. The court should avail itself of these experiences and establish linkages with these jurisdictions as soon as possible.

In addition, the Office of Treatment Improvement (OTI) offers request for grant applications annually in the criminal justice/ drug treatment arena. The OTI spending plan for FY 92-93 has not been approved as of yet, but its preliminary plan indicates that substantial funding is available for treatment and incarcerative settings and treatment for diversion courts. Further information may be obtained by writing the Office for Treatment Improvement, 5600 Fishers Lane, Rockville, Maryland 20857.

A viable drug strategy by the Court must address the demand for drugs which, through its existence, creates the supply. As long as the drug susceptible populations have no other economic possibilities, drug sale and usage will grow. As long as the demand for drugs grows, the supply will increase. The inability to effectively address the demand side of the drug equation is one of the specific failures of the drug strategies of many criminal justice systems. Prevention and treatment are obviously extreme priorities, and these twin goals must be accompanied by educational and employment components. We do not suggest that implementing our recommendations will be easy.

A concerted effort by criminal justice, business, civic, and government leaders is required. From our perspective, however, judicial system and community leaders in Escambia and Okaloosa Counties have the ability, the will, and the imagination necessary to make a potentially substantial impact on drug usage in their counties and these resources must be nurtured to full growth.