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Baltimore Judges on Effective Solutions to Working with Substance Abusers in the Criminal Justice System

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Contents

INTRODUCTION 3

Methodology: Judicial Focus Group Process 5

FINDINGS 6

Baltimore judges recognize the need to treat rather than incarcerate people with substance abuse problems 6

Judges do not believe that current treatment alternatives to incarceration are sufficient to address the needs of Baltimore's large substance abusing population 7

Standard probation with treatment conditions is not seen as an adequate disposition for peoplewith serious substance abuse problems 8

Judges wish to make more use of Baltimore's Drug Treatment Court and Felony Diversion Initiative for people facing prison sentences 10

In large part because other options are not available, judges have come to rely heavily on Health General Articles 8-505 and 8-507, which are resource intensive 10

More resources are needed for residential treatment and for people with "dual diagnosis" 11

To make the best sentencing decisions, judges need more information on defendants' needs and the availability of treatment 12

RECOMMENDATIONS 14

#1: Increase the capacity of Baltimore courts to assess defendants' drug treatment needs by placing assessment units in all courthouse buildings and screening more defendants in Central Booking 14

#2: Implement better information-sharing systems among assessors, treatment providers and the criminal justice system 15

#3: Enhance judicial training on substance abuse and Baltimore's treatment system 15

#4: Expand the use of methadone maintenance to include jail detainees and people on methadone treatment waitlists 16

#5: Improve supervision of substance abusers who are participating in court-ordered treatment by fully implementing Proactive Community Supervision in Baltimore 17

#6: Expand Baltimore's Drug Treatment Court Programs and the Felony Diversion Initiative 18

#7: Reduce the cycling of substance abusers and the mentally ill through jails and other institutions by studying the population of "frequent users" of the city's courts, jails, shelters, and substance abuse treatment facilities to identify patterns and craft effective responses 19

#8: Expand supportive housing and residential treatment capacity in the City 20

#9: Improve representation of substance-addicted defendants by hiring more public defenders and expanding the number of defendants served by the Division of Client Services 21

HOW TO PAY FOR IT?
Ways to raise revenue for treatment spending, and redirect spending from the corrections system to the public health system 22

Raise the alcohol excise tax 22

Establish more compacts among private sector investors and the city and state 23

Reform Maryland's sentencing laws, and redirect the savings to drug treatment 23

INTRODUCTION

In the past five years, elected officials in a majority of states have responded to fiscal pressures and public support for a public health response to drug addiction by enacting sentencing and correctional reforms designed to reduce costs and improve outcomes. In 2004, Maryland lawmakers enacted a set of reforms designed to expand options available to judges, prosecutors, and the state's parole commission for placing addicted defendants in community-based treatment rather than prison. In doing so, the state's elected leaders recognized that the long-term solution to the drug problem lies in "treatment, not incarceration."

Maryland's state and local policymakers have also demonstrated a willingness to invest in drug treatment. State support for substance abuse treatment grew significantly at the beginning of the decade, rising by nearly $50 million between fiscal years 2000 and 2003 before a fiscal crisis brought an end to growth in treatment spending. Local officials in several jurisdictions – notably the City of Baltimore – have also invested local funds in efforts to combat drug addiction.

In 2006, the Justice Policy Institute (JPI) published an analysis of local and statewide trends in the use of substance abuse treatment for drug users. The report's author found that the state had made "slow progress" but remained far from the goal of providing "treatment, not incarceration" to nonviolent substance abusers.[1]

Nowhere was the gap between intentions and reality more evident than in the City of Baltimore. Baltimore imprisons people convicted of drug offenses at a far higher rate than any other jurisdiction in Maryland. Baltimore is also more punitive than a large majority of Maryland counties in terms of the balance between treatment and prison admissions. State resources devoted to fighting drug abuse in Baltimore are overwhelmingly devoted to incarceration, with just 21 to 26 cents spent on treating defendants for each dollar spent imprisoning people convicted of drug offenses.[2]

The current brief explores Baltimore's continued reliance on incarceration despite significant state, local, and private investments in a treatment system that is considered a national model. The authors have attempted to clarify the nature of the problem by focusing on the experiences of the judges who sit on Baltimore's Circuit and District courts and who decide whether to incarcerate or treat defendants.

This report includes an analysis of the judges' comments during focus group meetings, coupled with recommendations that would continue to move Maryland toward greater use of treatment and away from the use of incarceration. The following are some of the major findings in this report:

- District and Circuit Court judges believe that providing treatment for people with substance abuse problems instead of incarceration is a more effective means of improving public safety.
- Judges do not believe that current treatment alternatives to incarceration are sufficient to address the needs of Baltimore's large substance abusing population.

1 Kevin Pranis, *Progress and Challenges: An Analysis of Drug Treatment and Imprisonment in Maryland from 2000 to 2005* (Washington, DC: Justice Policy Institute, 2006). http://juliel.mm-tools.us/justicepolicyinstitute/content.php?hmID=1811&smID=1581&ssmID=49.

2 Pranis, *Progress and Challenges*

- For people facing prison sentences, Baltimore's Drug Treatment Court and Felony Diversion Initiative should be more available.
- In large part because other options aren't available, judges have come to rely heavily on Health General Articles 8-505 and 8-507, which are resource intensive.
- Judges have identified a lack of available beds at residential treatment facilities and a gap in care for people with both substance abuse and mental health problems.
- Many judges would like to receive additional training on substance abuse and available treatment options.
- Judges recommend an increase in or expansion of residential care facilities and a more holistic approach to helping substance abusers caught up in the criminal justice system.

Based on the concerns and barriers to "treatment, not incarceration" identified by judges, the Justice Policy Institute recommends various policy reforms that would help the judiciary move more people who need treatment into the public health system. Specific reforms JPI recommends include:

- increasing the capacity of Baltimore courts to assess defendants' drug treatment needs by placing assessment units in all courthouse buildings and screening more defendants in Central Booking;
- improving information-sharing systems among assessors, treatment providers, and the criminal justice system;
- providing enhanced training on substance abuse and Baltimore's treatment system for interested judges;
- expanding the use of methadone maintenance to include jail detainees and people on methadone treatment waitlists;
- improving supervision of high-risk substance abusers who are participating in court-ordered treatment by fully implementing Proactive Community Supervision in Baltimore;
- expanding Baltimore's Drug Treatment Court programs and the Felony Diversion Initiative**;**
- studying the population of "frequent users" of the city's courts, jails, shelters, and substance abuse treatment facilities to identify patterns and craft effective responses;
- expanding supportive housing and residential treatment capacity in the City; and
- improving representation of substance-addicted defendants by hiring more Office of the Public Defender (OPD) attorneys and staff to increase the number of defendants served by OPD's Division of Client Services.

While most of these reforms could reduce costs associated with prisons and crime, JPI recommends that several proposals be considered to help pay for these new public health policy reforms. Specific ways Maryland could pay for these changes include:

- raising Maryland's alcohol excise tax to help fund expanded treatment;
- establishing more "compacts" among private sector investors, the city, and the state to fund initiatives that reduce criminal justice costs and reinvest the resulting savings in expanded programming; and
- repealing the state's drug mandatory minimums and directing the savings to drug treatment.

Methodology: Judicial Focus Group Process

Maryland's District Courts have general jurisdiction to try any case, but they typically handle low-level offenses such as drug possession, prostitution, theft, and trespassing. District Court cases are decided by judges rather than by juries, and defendants charged in District Court have the option of requesting a jury trial in the state's Circuit Courts. Circuit Courts handle more serious felony cases.

Between June 2006 and January 2007, Adam Brickner, president of the Baltimore Substance Abuse Services (BSAS) convened two judicial focus groups to learn about Baltimore judges' views on the provision of treatment services for substance abusers in the criminal justice system. Each focus group consisted of between half a dozen and a dozen judges who currently serve in the District or Circuit Courts of Baltimore. The Justice Policy Institute designed the focus group process and collected data during the meetings.

District and Circuit Court judges participated in separate focus group sessions but came to similar conclusions, so their comments are presented together.

FINDINGS

Baltimore judges recognize the need to treat rather than incarcerate people with substance abuse problems

Baltimore judges saw substance abuse as a major problem in the criminal justice system. They strongly supported the principle that treatment, not incarceration, is the appropriate disposition for a large majority of nonviolent cases involving drug-addicted defendants.

Judge-participants who preside in the city's District Courts were unanimous in their conviction that nearly every case they see is drug-related. One asked rhetorically, "What case doesn't have to do with drugs?" (District Court Judge #1). Another described addiction as a persistent problem that frequently accompanies defendants into the courtroom.

> They commit crimes over and over again because they haven't received treatment. Sometimes they can't make it to court without using. They come to court high all the time. (District Court Judge #2)

Circuit Courts handle more serious felony cases than District Courts. A judge with experience on both benches explained, however, that Circuit Court defendants differ little from District Court defendants: many are substance abusers and most are convicted of low-level drug crimes.

> Having served in both District and Circuit court, the people are the same. We get very few high-level drug dealers. People on the corner, some are drug addicts and some aren't. I ask, "Do you have a drug problem, a money problem, or both?" Some say, "I have a dealer's habit." (Circuit Court Judge #8)

Baltimore judges often end up incarcerating defendants whom they believe to be substance abusers, even though many have concluded that little or nothing is accomplished in the process. Judge-participants were skeptical of the notion that most defendants would be frightened or deterred from drug activity by the prospect of jail time. One observed, "People are used to going to jail" (District Court Judge #4). A colleague concurred: "They don't want to do it, but it's how they live their lives. They aren't surprised when they get sentenced to jail" (District Court Judge #1).

Several described prisons and jails as revolving doors for substance abusers. Not one judge expressed confidence that correctional officials would be able to address the problem during a defendant's term of incarceration.

> Before [I began to use commitments to treatment], I was incarcerating most defendants who violated probation or cases where the state was looking for jail time. They would come out and if they had a problem before, they would still have it when they came out. (District Court Judge #2)

> As a matter of desperation, you send people to DOC [Department of Corrections] knowing that they won't get treatment there, and knowing that when they're released you start all over. (Circuit Court Judge #8)

Baltimore judges are understandably reluctant to sentence nonviolent drug abusers to incarceration given these experiences. One District Court judge commented, "We don't sentence people to jail until they have so many guilties that *they* want to go to jail because they're tired of it" (#2). Another called prison a "last resort" for many judges.

> Incarceration for most of us is a matter of last resort, usually when someone has violated probation. Some send people to prison when they don't follow the judges' orders. Others like me do it when you've exhausted all of the other avenues. (Circuit Court Judge #8)

The City of Baltimore and the State of Maryland have made strides toward a treatment-based response to substance abuse and drug-related crime, but one judge observed that the criminal justice system remains too focused on the use of incarceration. Another argued that the task of addressing drug addiction should be left to the health system.

> There's a drug problem in almost every case we have. So much money is wasted because it's not PC [politically correct] to advocate for drug treatment instead of prison time. Politicians want to look tough. But almost everyone we see needs drug treatment – almost every prostitution, possession, and trespassing case. (District Court Judge #2)

> When is society and our government at all levels going to decide that a drug problem is a health care issue and not a criminal justice issue, and that the criminal justice community cannot solve this problem? (District Court Judge #3)

Judges do not believe that current treatment alternatives to incarceration are sufficient to address the needs of Baltimore's large substance-abusing population

Baltimore judges have a wide range of options for sentencing drug-addicted defendants to treatment in a community (i.e., non-correctional) setting. District and Circuit Court defendants can be sentenced to probation and required to participate in a treatment program, which is generally state-funded and delivered in an outpatient setting. They can also agree to participate in drug treat-

Sentencing Options in Maryland for Defendants with Treatment Needs

Felony Diversion Initiative (FDI)

The FDI is a state-run, federally-funded program that allows people charged with nonviolent offenses and who have a history of substance abuse to be assessed at the courthouse by two substance abuse experts. If a person is found to be in need of treatment, that person is soon transferred to an inpatient treatment program, rather than imprisoned for long periods of time. Unlike traditional drug courts, FDI placement is at the discretion of the judge and not the State's Attorney. Inpatient care is followed by aftercare services that include job training, placement services, and continued treatment to encourage transition back to the community. Specially trained parole and probation officers work as a team to support participants in the program, which requires monthly progress hearings overseen by a Felony Diversion Initiative judge.[1]

Baltimore City Drug Treatment Courts (BCDTC)

The drug court is a multi-agency collaboration overseen by a judge and includes a series of rewards and sanctions. For many people participating in drug courts, particularly Circuit drug courts, successful completion means avoiding a prison or jail sentence. Additionally, people who participate in drug courts receive housing and employment services.[2] Baltimore City has two drug treatment court programs: one for the Circuit Courts and one for the District Courts. The two programs use similar processes and guidelines. After meeting certain criteria, an eligible person is assessed and referred to drug treatment court. In Circuit Court, a guilty plea for the offense that began the process is entered and a person is put on probation while receiving services through the drug treatment court. In District Court, participants must serve a two-year suspended sentence to qualify for the program.

Health General Articles 8-505 and 8-507

Health General 8-505 is the statute concerning the evaluation of someone whom a judge deems to be in need of residential care for drug dependency. Once a judge signs an order for an 8-505 evaluation, the results potentially trigger Health General 8-507, which is a separate order for an individual to be placed in residential treatment. There is often a waiting list for placement in residential treatment. A person recommended by the judge for residential treatment may still have to serve some type of sentence for the offense that brought them before the court. Under Health General 8-507, the judge retains the case rather than referring it to drug court.[3]

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1 Maryland Division of Probation and Parole, *2006 Program and Services Report* (Towson, MD: Department of Public Safety and Correctional Services, 2007). www.dpscs.state.md.us/publicinfo/publications/pdfs/dpp_annual_report06.pdf.

2 Julie Mackin and others, *Baltimore City Drug Treatment Court (Adult Offenders in Circuit Court): Process Evaluation* (Portland, OR: NPC Research, 2007). www.courts.state.md.us/opsc/dtc/pdfs/balt_city_adult_circuit_process_rpt.pdf.; Julie Mackin and others, *Baltimore City Drug Treatment Court (Adult Offenders in District Court): Process Evaluation*. (Portland, OR: NPC Research, 2007). www.courts.state.md.us/opsc/dtc/pdfs/balt_city_drug_treat_court_dist-adult.pdf.

3 George Lipman, Health General 8-505 and 8-507 (Annapolis, MD: Maryland Judiciary, 2006). www.courts.state.md.us/reference/pdfs/8507nov06.pdf.

ment court where they receive a higher level of supervision and are required to appear before a judge on a regular basis. Finally, District and Circuit Court defendants can be assessed and committed to the custody of the Department of Health and Mental Hygiene to be placed in treatment (usually residential) under Health General Articles 8-505 and 8-507 (so-called "8-505/8-507" commitments).

Baltimore City Circuit Court judges have two additional options at their disposal. The first is the Felony Diversion Initiative, which operates much like a drug court but is managed by the judiciary rather than the State's Attorney. Secondly, there is the Office of the Public Defender's Client Services program, which provides more individualized assessment and some case management services for a limited number of clients. Thus judges appear at first glance to have all the tools they need to address the substance abuse problems of defendants who appear before them.

Yet judges who participated in the District Court and Circuit Court focus groups said that the reality is quite different. They expressed frustration with the inability of the criminal justice and health systems to provide quality treatment and meaningful supervision to the vast majority of substance abusers.

Standard probation with treatment conditions is not seen as an adequate disposition for people with serious substance abuse problems

On paper, judges may have many options for placing drug-addicted defendants in treatment, but in practice, an overwhelming majority are placed on standard probation supervision and ordered to enroll in an outpatient treatment program. Probation is not the preferred option for Baltimore judges, but it is the only place outside of prisons and jails where the door is always open. The city's drug courts – large by national standards – handle fewer than 900 cases at any one time according to the most recently available figures. The Felony Diversion Initiative enrolls just 112.

In the words of one judge, "There are 5,000 people in Baltimore City on probation [and] most are on standard probation" (Circuit Court Judge #8). Another noted, "There's no alternative to using [probation]" (District Court Judge #4). A third judge summarized the frustration expressed by many judges over the lack of a realistic alternative to standard probation.

> Even people using 8-505/8-507 and drug courts are the minutiae compared to the rest of us who are using Probation and Parole, giving a suspended sentence and putting the magic words 'drug treatment' and 'random urinalysis' on the order. We're depending on Probation and Parole to find treatment and they're not. Defendants are not getting the treatment they need, people addicted 5, 10, 20, or 30 years. We're talking about the general population except for the 1 percent that Judge #2 is talking about that's falling through a huge sieve. (District Court Judge #3)

Judges consistently described the probation system as completely overloaded and incapable of providing meaningful supervision to clients with serious and longstanding addictions. They perceive a high failure rate for substance abusers on probation and believe that many probationers never receive court-ordered treatment. This perception may be due in part to the fact that judges spend more time with probationers who are brought back before the court for failing to meet supervision conditions than with probationers who succeed. Nonetheless, the view that drug-addicted probationers receive few services was widespread and strongly held.

> My impression from watching people flow by in large numbers and listening to what they have to say is that if you send someone to drug treatment court or [the Felony Diversion Initiative], they get fairly intensive supervision. If you just tell them to get treatment on probation, not much occurs. The defendants will constantly say, "They didn't really do much for me." The impression one gets is that not much happens. (Circuit Court Judge #3)

Several indicated that it was unrealistic to expect probation agents to supervise substance abusers effectively, or to expect defendants to overcome drug addictions without close supervision. "There are people that are followed, but they are the exception to the rule. With current caseloads, they would be the minority" (Circuit Court Judge #2).

> The probation agent rarely sees the defendant, at most once a month. We're expecting people in active addiction to force themselves to seek treatment and it breaks down at the get-go. The probation agents' caseloads are so large that they're not monitoring defendants the way drug-court probation officers monitor them. The judge gets a violation report maybe a year later saying that the defendant did not meet the [treatment] condition. He was given a referral and didn't go – given another. Nobody is really overseeing them. A lot of judges think most of the people we order to treatment on probation ... we don't have great expectations that they will succeed. (Circuit Court Judge #8)

> If you put a person on probation and can't supervise them, by the time they violate you've lost a tremendous opportunity. You need to address the relapse issue immediately by monitoring the people… The Probation Department is too gross of an entity to address that problem. They need close attention. (Circuit Court Judge #10)

One judge observed that the problem goes beyond the defendant's motivation to succeed.

> We send them to do all these things, but they don't have a clue even if they're motivated to do it. Their lives are not organized enough to carry it out. That's why we lose so many people. They don't bring to process the kind of skills you need to succeed. It's like having a job. (District Court Judge #4)

Judges believed that many or most of the people sentenced to probation with treatment conditions would eventually end up back in front of them for violating supervision conditions. One judge estimated that "90 percent of the people we place on probation violate" (District Court Judge #1). "Not going to treatment" was cited as the primary source of violations (District Court Judge #5).

The focus group participants indicated that they were reluctant to order defendants who had violated probation conditions back to outpatient treatment, but would instead try to place them in a more structured program. But frequently the outcome of a probation violation was jail time rather than placement in a more intensive treatment program.

> We use [8-505] assessors for people on probation for whom probation/outpatient isn't working. We ask: "What do you want to do because outpatient doesn't work?" [The defendants] ask, "Well what's the sentence going to be?" (District Court Judge #2)

> It's frustrating. Most of the people who come back from probation on VOPs [violation of probation] have not received treatment because they didn't get assessed or show up to their treatment program, and then you're forced to give them jail even though they haven't had treatment. (District Court Judge #5)

One judge said that he simply refuses to place defendants on standard probation unless they "swear to me under oath that they *don't* have a drug problem" (District Court Judge #2). Another judge expressed concern about resistance among probation agents to the use of methadone treatment.

> My understanding is that medication is looked at in a more positive way [by the medical community] and a lot of money is going into methadone clinics. I found that probation agents really frown on this. Many people frown on it because they think they're substituting another drug. (Circuit Court Judge #8)

Judges wish to make more use of Baltimore's Drug Treatment Court and Felony Diversion Initiative for people facing prison sentences

Baltimore's Drug Treatment Courts are the leading alternative to standard probation. The drug court program has been rigorously evaluated and is considered a national model. Circuit Court judges largely saw the drug court as a viable alternative to standard probation, although several argued that its success is largely attributable to the high quality of probation supervision rather than the relationships established between judges and defendants. The Felony Diversion Initiative was also described by Circuit Court judges as a program where drug-addicted defendants could receive "fairly intensive supervision" and treatment.

> The model for drug court is a therapeutic relationship between judge and defendant. It takes time. We have many more people in Circuit Drug Treatment Court so you don't have as much time and judges rotate through, sitting for three or four months. It's difficult to develop a relationship. In Circuit Court it's a waste of time having people come to court for progress reports. There is nothing magical about it: the reason it works is because supervision is done right because of caseloads, and because access to inpatient treatment is eventually guaranteed. It's just probation done right, and the other way is probation done wrong. (Circuit Court Judge #8)

> Probation agents develop that relationship with the defendant. Every drug treatment court graduation I've attended, and I've been going for two years, a bunch of graduates thank their probation agent for the intense supervision that they give. It's a different kind of probationary period. (Circuit Court Judge #10)

District Court judges, however, did not see the drug court program as a viable option in most cases. The major barrier appeared to be a requirement that drug court participants receive a minimum two-year suspended prison term. Although District Court judges suggest that drug court may work best for motivated people, the two-year suspended sentence is not always appropriate. "Some people have kids or other obligations and would do anything to stay on the street. For them, drug court is the right option" (District Court Judge #4). Another judge described using the drug court "every once in a blue moon" (District Court Judge #5).

One judge further explained that District Court cases involve relatively minor offenses and rarely merit two-year sentences.

> One of the stumbling blocks with drug court is if you haven't given at least a two-year suspended sentence they won't be eligible for drug court. Assuming they're going to violate several times, drug courts need two years to play with. Off the bat that knocks off 80 percent or more of our cases. I won't go to a 30-day sentence but many judges impose 30, 60, or 90 days – most under two years – unless the defendant has a very long record and then you're getting into DOC sentences. My personal minimum is six months but that is under two years. (District Court Judge #3)

In large part because other options are not available, judges have come to rely heavily on Health General Articles 8-505 and 8-507, which are resource intensive

Maryland state law contains an unusual provision that permits judges to order defendants to the custody of the Department of Health and Mental Hygiene to receive substance abuse treatment. Among the focus group participants, Baltimore District Court judges were particularly enthusiastic about so-called "8-505" or "8-507" commitments, which generally result in a residential rather than an outpatient placement. One judge who makes extensive use of the provision explained that it allows judges to place long-time substance abusers convicted of minor crimes in residential treatment.

> That's the big difference with the 8-505s. This guy's charged with a series of trespasses, which is nothing, but he had been using for 37 years. I told him you can have a commitment or incarceration. He chose commitment. He did great and was a model for the program. I said they should take him down to the legislature. A lot of the people need inpatient treatment and sending them to drug court if they're not getting inpatient treatment doesn't work. The most effective penalty is taking someone off the street and putting them in an effective environment where they can get help. (District Court Judge #2)

> With the 8-505 and 8-507 I can see people being helped in almost every case, although some people don't make it. I have only said no to one defendant in a case involving a robbery of a 62-year-old woman. In every other case I have said yes and thrown it out as an option. There are people with long histories of drug abuse and alcohol abuse who I have seen successfully complete these programs. (District Court Judge #2)

The enthusiasm for 8-505/8-507 commitments among District Court judges may be attributable to the fact that they have fewer viable treatment sentencing options than their Circuit Court counterparts. District Court judges also indicated that 8-505/8-507 commitments are preferred because they "allow [the judge] to keep control" of the case (District Court Judge #4). Another judge concurred: "I don't use the drug court anymore because I am comfortable with 8-507. You can keep control of the case and bring them back every 30 to 60 days" (District Court Judge #2).

The main drawbacks of the 8-505/8-507 commitment process are the limited availability of state-funded treatment beds and resulting delays in the placement of defendants in treatment. Judges complain that the state does not, in their view, comply with the requirements of the law by providing assessments and treatment in a timely fashion.

> We need to have more effective coordination. I don't know how many judges are using 8-507, only a minority now, but if one day 26 [judges] decide to use it, you will have a big problem. If 50-some judges were using the commitments, the system would not be equipped to handle it. There's not enough money or enough slots. (District Court Judge #2)

More resources are needed for residential treatment and for people with "dual diagnosis"

Judges who participated in the District Court and Circuit Court focus groups were universally troubled by the shortage of residential treatment beds – a complaint echoed by professionals throughout Baltimore's criminal justice system. Judges acknowledged that the City of Baltimore and the State of Maryland have made strides in the area of outpatient treatment, which is now readily available to substance abusers who are caught up in the criminal justice system. Nevertheless, focus group judges believe that many of the defendants who appear before them require long-term residential treatment.

> My understanding is that outpatient treatment is readily available. If you order drug evaluation and treatment, they have access. Inpatient is different. There is a waiting period, fewer beds. (Circuit Court Judge #8)

Judges differed in how they determined whether a particular defendant required inpatient treatment. Some suggested that all heroin abusers need to be treated in a residential setting (Circuit Court Judge #6). Others looked for past outpatient treatment failures in a defendant's history (Circuit Court Judge

#8). Judges who made frequent use of 8-505/8-507 commitments or OPD Client Services often attributed their success to the use of residential rather than outpatient treatment.

One judge also argued that not enough resources are being devoted to people with dual diagnoses of mental illness and substance abuse.

> I don't know how big the population is but the Mental Health Court is getting pretty busy. As I've seen, it is very complicated, more than someone who is just a drug addict. Not enough money is being given to deal with those issues. (District Court Judge #2)

To make the best sentencing decisions, judges need more information on defendants' needs and the availability of treatment

Inadequate supervision and a shortage of slots in programs that are considered highly effective (including residential treatment) were two of the leading concerns voiced by judges in the focus groups. But participants were equally troubled by their inability to get timely, objective information on defendants' needs, the availability of program slots, and outcomes at the individual and aggregate levels. They complained of having to guess at defendants' substance abuse problems and then sentence to treatment with no knowledge of the places where defendants would be referred.

One participant reported that judges rarely receive assessments from pretrial services, and that the assessments do not inspire confidence even when they are provided. "Once every 100 people you'll have an assessment from pretrial along with their record, but most of the time it's just conjecture" (Circuit Court Judge #11). Another observed that judges must rely on defense attorneys – who may know little more about their clients than the judge – to identify substance abuse treatment needs and suitable sentencing options.

> We're expected to be addictions treatment professionals and we're not. Everyone says "please send me to some form of therapy." The addictions unit of pretrial was supposed to advise the court on recommended treatment. There is nothing in front of the court but listening to the defense counsel pitch an argument and trying to gauge if it's the truth. (Circuit Court Judge #7)

> In a large urban jurisdiction with large caseloads, frequently the persons you'd expect to provide you information – the defense – may not know any more about their clients than we do. They're going to give you the best they have – frequently sketchy information that's not helpful because they probably just met them. We don't have access to an on-the-spot assessment from a clinical professional. The prosecutor's office has its own agenda. (Circuit Court Judge #9)

Another expressed similar doubts about the competence of prosecutors to determine which defendants require treatment. "Prosecutors don't have training either and they are making decisions without any rational basis at all." (Circuit Court Judge #8).

The concern was particularly acute for defendants who suffer from both mental illness and substance abuse problems. A Circuit Court judge observed that Probation and Parole assessors are "not qualified to make a 'dual diagnosis' evaluation" (Circuit Court Judge #8).

Judges were also bothered by a lack of information on program outcomes. One questioned whether substance abuse treatment works over the long term and argued for better dissemination of information on program outcomes.

> With respect to available programs, it's hard to get adequate information. It's hard to get licensing or certification information – there are very few of those kinds of programs. I have no real way of knowing if it's a good program or a bad program. The Client Services Division gives us recommendations to programs that are not necessarily certified, and that they don't have great assurance about. We ought to know before we send people. (Circuit Court Judge #9)

The Office of the Public Defender (OPD) Client Services Division received positive reviews from Circuit Court judges. One "quickly concluded that Client Services at the Public Defender's office provided far better treatment services than Probation and Parole" (Circuit Court Judge #6). Another Circuit Court judge attributed the program's success to the advocacy of residential rather than outpatient treatment. "[The access to treatment is better] because they're getting residential. People on standard probation get intensive outpatient" (Circuit Court Judge #8).

Client Services Division of the Office of the Public Defender (OPD)

The Client Services Division is composed of social workers who advocate for treatment or community-corrections alternatives for people instead of incarceration in Baltimore City. Client Services works with clients to address a number of issues, including substance abuse, mental health, serious physical disabilities, and developmental disabilities. Social workers provide a holistic approach, assessing all aspects of a client's life and working with family and friends. Although Client Services works with people charged with both felonies and misdemeanors, it is often more difficult to find treatment or community alternatives for people charged with more serious crimes. In such cases, Client Services will advocate for the most appropriate sentence using mitigation reports.[1]

1 Karen H. Koski-Miller, Social Work Supervisor, Office of the Public Defender, Client Services Division, Baltimore City, MD, email message to Amanda Petteruti. January 22, 2008.

RECOMMENDATIONS

Baltimore judges would like to work in a system that provides high-quality treatment, supervision, and supportive services on a timely basis to all who need them. But the judges who participated in the focus group are not passive or resigned in the face of what many see as largely dysfunctional treatment and criminal justice systems.

The Circuit and District Court judges who participated in the focus groups were able to identify challenges that they perceive hinder their efforts to direct more people toward substance abuse treatment and away from incarceration. The judges also had specific recommendations or ideas that would help streamline the process or improve access for the people involved in the criminal justice system. The following recommendations are inspired by the judges' comments and some are derived directly from the judges' suggestions for improvement or innovation.

RECOMMENDATION #1: Increase the capacity of Baltimore courts to assess defendants' drug treatment needs by placing assessment units in all courthouse buildings and screening more defendants in Central Booking

The Baltimore judges who participated in the treatment focus groups expressed a need for more information about defendants' drug problems in order to offer appropriate treatment alternatives to incarceration and order the proper level of supervision. They indicated that, in many cases, judges do not know whether or to what degree a defendant's conduct is related to a substance abuse problem because no pretrial assessment of the defendant has been conducted.

Several judges suggested that assessment units should be placed in all courthouse buildings to ensure that any offender with a substance abuse problem can be assessed after sentencing. According to staff at Baltimore Substance Abuse Systems (BSAS), onsite assessment units will soon be available at all Circuit and District Court locations.[3]

> Having assessors saves a step because if they go through Parole and Probation they could lose a month. It's one-stop shopping. They can have a slot in two weeks. If not, they're using by then and committing new crimes or violating. That's one reason why we put Parole and Probation in our building. (District Court Judge #2)

Additional efforts should be undertaken to further identify arrestees at Central Booking who need and are motivated to enter substance abuse treatment, and who would otherwise receive a prison or jail sentence. The OPD Client Services Division was scheduled to position one social worker at Central Booking in February 2008, however the social worker will only be responsible for screening clients for mental illness or crisis intervention.[4] The Client Services Division is well positioned to fill the gap if given the resources needed to hire additional social workers.

3 Romona C. Dixon-Smith, memo to author, "Baltimore City's Criminal Justice System." Baltimore, MD: Baltimore Substance Abuse Systems, Inc., December 6, 2007.

4 Karen H. Koski-Miller, Social Work Supervisor, Office of the Public Defender, Client Services Division, Baltimore City, MD, email message to Amanda Petteruti, January 29, 2008.

> In an ideal system, we would order urinalysis and a needs assessment upon release to pretrial so we could figure out who won't succeed. Who – unless the social impact is too great (i.e., murder) – will probably get out of criminal business if they get treatment. (Circuit Court Judge #11)

RECOMMENDATION #2: Implement better information-sharing systems among assessors, treatment providers, and the criminal justice system

Baltimore has created what many consider to be a model system for coordinating provision of substance abuse treatment services. Yet many of the judges who serve the city feel that they have been left out of the information loop. Participants in the judicial focus groups indicated a need to know more about program availability and outcomes, not to mention defendants' treatment needs.

> I think if you had something where there is an individual in the courtroom who could match up the assessment pretrial with the person who has an open treatment slot that would be great. (Circuit Court Judge #7)

> Like a parking lot with the green signs that show how many spaces are available on each floor. We should know. (Circuit Court Judge #8)

This "gap in service" among substance abuse treatment providers, the courts, and the criminal justice system has been identified by BSAS and Baltimore City's Criminal Justice Coordinating Council, which are in the process of implementing a solution.[5]

A new management information system called SMART (Statewide Maryland Automatic Records Tracking) is being implemented in Baltimore City and the rest of the state; the system will allow "agencies to share client information across different organizational networks while maintaining confidentiality requirements."[6] SMART will be used to manage treatment slot allocation and information about treatment client cases such as services provided, appointment attendance, and urine analysis results. The system, as described, will allow judges, probation officers, and treatment providers to enter and have access to information about clients who are in both the criminal justice and treatment systems.[7]

RECOMMENDATION #3: Enhance judicial training on substance abuse and Baltimore's treatment system

From some of the critical comments made by the Baltimore City judges, it appears that some judicial training provided by Baltimore Substance Abuse Systems would be helpful in clarifying the role of different types of treatment providers and the regulations that govern them. Trainings in addiction, treatment modalities, and the Baltimore substance abuse treatment system would likely be helpful as well in giving judges a better understanding of addiction, treatment, relapse, and the various programs that are doing good work with substance abusers in the City.

> We need education on how to make these decisions between custodial care and methadone treatment. My understanding comes from having an addict who lived behind my office for years and observing him. There is no organized way of approaching this. (Circuit Court Judge #6)

Judges may benefit from training on substance abuse and addiction issues because many defendants who come before them have drug and alcohol problems. A judge who understands these issues would be more likely to take advantage of treatment alternatives to incarceration and to understand that relapse is part

5 Baltimore City Criminal Justice Coordinating Council Substance Abuse Subcommittee and Baltimore Substance Abuse Systems, Inc. Criminal Justice Committee, *Gaps in Obtaining Substance Abuse Services within Baltimore City's Criminal Justice System* (Baltimore, MD: Baltimore City Criminal Justice Coordinating Council, October 2006).

6 Baltimore City Criminal Justice Coordinating Council Substance Abuse Subcommittee and Baltimore Substance Abuse Systems, Inc. Criminal Justice Committee, *Gaps in Obtaining Substance Abuse Services*

7 Romona C. Dixon-Smith, conversation with author, December 2007.

of the recovery process. Judges would also be better equipped to ensure that the terms of probation are appropriate and are met consistently. Judges would be able to recognize and encourage the achievements of the participants in a treatment program and impose appropriate sanctions when participants violate the terms of their probation.

Training or information sharing on the effective, high-quality treatment options that are available in Baltimore City would also potentially prevent the oversubscription of some programs and the underutilization of others. One judge pointed out that, in the absence of information on the outcomes of various treatment programs, many judges simply "start funneling people into the same few programs."

Other judges reported that they had come up with their own, albeit imperfect, solutions to the lack of information and scarcity of treatment options in which they had high confidence. Some indicated, for example, that they simply put defendants behind bars until a suitable program becomes available.

> I won't let anyone walk out. If I want them to get treatment, I keep them in jail. If they find a treatment facility that's acceptable to me, not a storefront, I will consider modifying a sentence but I don't let them hit the street. (Circuit Court Judge #14)

Such actions do not necessarily contribute to the efficient functioning of the criminal justice or drug treatment systems. The efforts of individual judges to secure treatment for the defendants who come before them can paradoxically make the system less efficient and less able to deliver effective services to the addicted criminal justice population. Defendants who could benefit from outpatient treatment or methadone maintenance may take up scarce residential beds because judges have become frustrated by treatment failures. Judges have a responsibility to deliver justice and protect the community, and they may feel that jail or prison is the only option when appropriate treatment services are lacking.

RECOMMENDATION #4: Expand the use of methadone maintenance to include jail detainees and people on methadone treatment waitlists

A significant period of time can pass between arrest and sentencing, which is valuable time when a defendant may be very motivated to "get clean." Yet more time passes between sentencing, assessment, and first appointment at treatment. Defendants' risk of relapse is especially high during these periods, and judges believe that many are overcome by their addictions before they make it through the treatment program door. BSAS has identified this as a problem that needs to be addressed.[8]

The expansion in the availability of methadone would be helpful in reducing heroin addiction, purchasing, and addiction-related criminal activity. One way to do this is to begin methadone maintenance therapy (MMT) with heroin addicts while they are in jail. At New York's Rikers Island Correctional Facility, in-jail MMT has been provided since 1987. The Key Extended Entry Program (KEEP) was developed "to help heroin addicts make the transition from a jail methadone program to local programs."[9] The program allows addicts charged with misdemeanors to be maintained on methadone while at Rikers (average stay is 45 days) and be referred to dedicated slots in community-based methadone maintenance facilities upon release. The program is meant to help stabilize heroin addicts so that they may successfully transition to community treatment.

Other localities have implemented the use of in-jail methadone maintenance treatment as well. King County (Seattle), Washington, has begun a $350,000 pilot project called the Jail-Based Opioid Dependency Engagement and Treatment Program (JODET). Two jails are providing MMT to opioid-dependent

8 Baltimore City Criminal Justice Coordinating Council Substance Abuse Subcommittee and Baltimore Substance Abuse Systems, Inc. Criminal Justice Committee, *Gaps in Obtaining Substance Abuse Services.*

9 Colleen O'Donnell and Marcia Trick, *Methadone Maintenance Treatment and the Criminal Justice System* (Washington, DC: National Association of State Alcohol and Drug Abuse Directors, 2006).

inmates, including those who are not already enrolled in an MMT program. JODET participants can enter a "12-day, medically supervised withdrawal course of methadone and, if charged with only a misdemeanor offense, may be inducted into MMT while still in custody."[10] Additional treatment services are provided in jail by a Master's-level social worker and through on-site medical and psychiatric services.

Bernalillo County (Albuquerque), New Mexico, has "opened the nation's first public health office inside a county jail, and announced that, along with other preventive services such as immunizations, HIV testing, and counseling, the clinic would pilot MMT. The pilot MMT program was designed for inmates who are enrolled in a methadone treatment program at the time of their arrest."[11] Without the interruption of methadone treatments, a person would be better able to transfer successfully into or back to community-based treatment.

In addition to in-jail methadone maintenance, another innovation that could be implemented in Baltimore City to improve outcomes with heroin addicts is interim methadone maintenance. Because many methadone treatment programs are full, potential clients are placed on waitlists. By the time a treatment slot is available, the potential client often loses touch with the program or loses the motivation to enter treatment. Interim methadone maintenance allows individuals on a methadone treatment waitlist to receive methadone for up to 120 days while they are waiting to be formally enrolled in an MMT program. The goal is to "[capitalize] on individuals' possibly transient motivation by providing help when help is requested," according to Dr. Robert Schwartz, who recently conducted a very promising evaluation of interim methadone maintenance with colleagues from the Friends Research Institute, the University of Maryland, and Johns Hopkins University.

The study found that 76 percent of interim methadone patients had entered comprehensive treatment within four months, compared with only 21 percent of persons in the control group. Of persons who entered comprehensive treatment, 80 percent of interim methadone patients, but 64 percent of controls, were still in treatment after about 10 months. Interim methadone participants also reported abusing heroin an average of four of the last 30 days at the four-month follow-up interviews, compared with 26 days for waitlisted patients. Interim methadone patients also spent considerably less money on illegal drugs ($76 monthly for study participants versus $560 for controls).[12] According to the Baltimore City Drug and Alcohol Abuse Council, it would cost approximately $1 million to provide 500 additional interim methadone patients with four months of medication.[13]

RECOMMENDATION #5: Improve supervision of substance abusers who are participating in court-ordered treatment by fully implementing Proactive Community Supervision in Baltimore

Baltimore judges complain that people who are placed on probation and not enrolled in an intensive program such as Drug Treatment Court or the Felony Diversion Initiative do not receive meaningful supervision. They believe that the absence of effective supervision contributes to high rates of noncompliance with treatment orders and eventual revocation from probation.

Yet close supervision of every probationer is neither feasible nor advisable. Researchers have found that, while individuals classified as having a high probability of reoffending ("high-risk") may benefit from intensive programming, "low-risk" individuals are more likely to *fail* if supervised too closely.[14] Evalu-

10 O'Donnell and Trick, *Methadone Maintenance Treatment and the Criminal Justice System,* 14-15.

11 O'Donnell and Trick, *Methadone Maintenance Treatment and the Criminal Justice System,* 14.

12 Sarah Teagle, "Interim Methadone Raises 0dds of Enrolling in Comprehensive Treatment," *NIDA Notes* 21, no. 3 (2007).

13 Baltimore City Drug and Alcohol Abuse Council, *Baltimore City Drug and Alcohol Abuse Jurisdictional Plan; July 1, 2007 through June 30, 2009* (Baltimore, MD: Baltimore City Drug and Alcohol Abuse Council, 2007), 11-12.

14 Christopher Lowenkamp and Edward Latessa, "Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders," *Topics in Community Corrections-2004* (Washington, DC: National Institute of Corrections, 2004). http://community.nicic.org/files/folders/tools_for_evidence_based_implementation/entry6974.aspx.

ations of intense correctional interventions have found that such programs "are more effective when delivered to higher-risk offenders, and that they can increase the failure rates of low-risk offenders." [15]

Officials with the Department of Public Safety's Division of Parole and Probation have drawn on risk-management research to deploy supervision resources more effectively. The Proactive Community Supervision (PCS) pilot program, launched in 2002, resulted in the creation of more individualized case plans and facilitated greater contact between probation agents and people on probation who are considered high risk, in part by reducing unnecessary supervision of low-risk probationers. In addition, "the agent's role has been broadened from surveillance of the offender to engaging the offender in the change process and facilitating the offender's involvement in treatment programs and pro-social activities that focus on building skills to be productive in society."[16]

Currently, probation officers are supervising caseloads of about 103 offenders, which means that some high-risk offenders are not receiving appropriate time and attention from officers. Under PCS, probation officers go from supervising a mix of people considered to be high- or low-risk to supervising people exclusively in one of these groups. Under PCS, caseloads for officers supervising people considered to be high-risk are reduced to between 50 and 55 cases, while officers monitoring people considered to be low-risk are increased to approximately 200 cases.[17]

Traditional intensive supervision programs typically raise revocation rates, but a preliminary review by a joint research team from Virginia Commonwealth University and the University of Maryland found that PCS participants experienced better outcomes than did their counterparts on standard probation. The evaluators examined records for 274 PCS cases and 274 matched comparison cases. PCS participants were 38.3 percent less likely than control group members to be rearrested for new criminal behavior and 38 percent less likely to have a warrant filed for technical violations of supervision conditions.[18]

Despite the encouraging outcomes of Proactive Community Supervision, the governor and legislature have not provided the funding to implement it statewide as originally planned in 2000.[19]

RECOMMENDATION #6: Expand Baltimore's Drug Treatment Court programs and the Felony Diversion Initiative

Baltimore's 10-year-old drug treatment court program has shown that defendants with extensive criminal records, longstanding addictions, and who might otherwise be heading toward a term of incarceration can be ideal candidates for an intensive, therapeutic court intervention. Drug treatment courts have existed for more than a decade and they generally get positive reviews from all the stakeholders, including judges, prosecutors, probation agents, and defense attorneys.

A team of researchers from the University of Maryland rigorously evaluated Baltimore's drug courts and concluded that the program had achieved significant reductions in both recidivism and the use of incarceration. Control group members were three times more likely than drug court participants to be rearrested during the first year of the evaluation.[20] Further, over a three-year period, drug court participants spent a third fewer days behind bars than control group members. Success for people on

15 Lowenkamp and Latessa, "Understanding the Risk Principle," 6.

16 Faye S. Taxman, Christina Yancey, and Jeanne E. Bilanin, *Proactive Community Supervision in Maryland: Changing Offender Outcomes.* (Baltimore, MD: Maryland Division of Parole and Probation, 2006).

17 Department of Public Safety and Correctional Services, *Proactive Community Supervision: A Plan for Making Maryland Communities Safer, Report to the Budget Committees of the Maryland General Assembly* (Annapolis, MD: Department of Public Safety and Correctional Services, 2000). http://web.archive.org/web/20030411210114/http://www1.dpscs.state.md.us/dpp/pppcs.pdf.

18 Judith Sachwald and Ernest Eley, Jr., "Proactive Community Supervision: A Second Chance for Community Corrections and Supervisees," *Perspectives* (Summer 2007).

19 Department of Public Safety and Correctional Services, *Proactive Community Supervision.*

20 Denise C. Gottfredson and M. Lyn Exum. "The Baltimore City Drug Treatment Court: One-year Results from a Randomized Study," *Journal of Research in Crime and Delinquency* 39, no. 3 (2002).

probation was closely associated with participation in treatment.[21]

A separate analysis commissioned by the state Administrative Office of the Courts and BSAS concluded that the city's drug court programs provide significant savings over standard probation when the costs of recidivism and the benefits of employment are considered. The Circuit Court program was found to be particularly cost effective. An investment of less than $10,000 generated more than $5,000 in criminal justice savings and $12,000 in savings from a reduction in the number of victimizations.[22] Baltimore City's drug courts could undoubtedly expand their capacity with more resources, staff, and treatment capacity.

As of September 4, 2007, there were 374 active participants in the District Court drug court.[23] As of December 2007, there were 473 active participants in the Circuit Court program and 106 active participants in the Felony Diversion Initiative.[24] With the number of active participants approaching 1,000 people, Baltimore City's drug courts are handling just a fraction of the drug-involved defendants and persons sentenced to incarceration for drug offenses.

RECOMMENDATION #7: Reduce the cycling of substance abusers and people living with mental illness through jails and other institutions by studying the population of "frequent users" of the city's courts, jails, shelters, and substance abuse treatment facilities to identify patterns and craft effective responses

Baltimore District Court judges describe seeing the same people appear before them time and again. Many of these individuals are unemployed or underemployed, may be homeless, and may pose more of a danger to themselves than to the public. Their crimes are largely low-level, and judges feel that they have few tools at their disposal for addressing their needs. Some judges have simply become frustrated, while others have come to rely heavily on 8-507 commitments to treatment.

New York City has taken a proactive approach to addressing the problem of "frequent users" of criminal justice and social services. Judith Greene of Justice Strategies has studied the efforts of city corrections and housing officials to improve outcomes for drug abusers who bounce back and forth between the city's jails and homeless shelters by matching records for their service populations.[25]

The exercise allowed policymakers to identify a group of "frequent users" of both systems: 3,500 people leaving jails who had experienced at least four jail stays and four shelter stays over the past five years. Members of this group consumed, on average, about 50 jail days and 37 shelter days per year. The overwhelming majority (nearly 80 percent) utilized substance abuse treatment services at high rates, and up to 40 percent were believed to be mentally ill.[26]

According to Greene, a discharge planning subcommittee led by Richard Cho from the Corporation for Supportive Housing devised a plan to address the needs of the "frequent users" with discharge planning and supportive housing. Supportive housing – a combination of housing and supportive services such as drug treatment, mental health care, and employment or life skills training – has been shown to be effective in reducing use of shelters by 84 percent, jail incarceration by 40 percent, and incarceration in prison by 74 percent.[27]

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21 Duren Banks and Denise C. Gottfredson, "The Effects of Drug Treatment and Supervision on time to Rearrest Among Drug Treatment Court Participants." *Journal of Drug Issues (*Spring 2003).

22 Dave Crumpton and others, *Cost Analysis of Baltimore City, Maryland Drug Treatment Court.* (Portland, OR: NPC Research, 2003). www.npcresearch.com/publications_resources.php#DC.

23 Juliette Mackin and others, *Baltimore City Drug Treatment Court (Adult Offenders in District Court): Process Evaluation* (Portland, Oregon: NPC Research, 2007), 5. www.courts.state.md.us/opsc/dtc/pdfs/balt_city_drug_treat_court_dist-adult.pdf.

24 Ryan Smith, Drug Court Coordinator, Baltimore City Circuit Court Drug Treatment Court, author conversation, January 8, 2008.

25 Judith Greene, *New York City: Ahead of the Reentry Curve*. Unpublished paper presented at the Open Society Institute's After Prison Initiative Retreat (Santa Ana Pueblo, NM, November 14, 2006).

26 Judith Greene, *New York City: Ahead of the Reentry Curve.*

27 Corporation for Supportive Housing, "Frequent User Service Enhancement: Reinvestment Financing for Supportive Housing in New York City." Undated brochure. Cited by Greene.

City officials dedicated 100 slots in the existing supportive housing system for the "frequent users" and set aside funding to enhance service provisions for this high-needs population. The JEHT Foundation provided start-up funding for the initiative and negotiated a commitment from the city to continue funding the program if the pilot project actually reduced the use of jail and shelter beds.[28] The New York City Housing Authority has worked with the NYC Department of Corrections and Department of Homeless Services to "develop a waiver for nonviolent and drug-related convictions. The waiver is granted for 'sponsor-based' vouchers that are linked with stabilization and support services that promote public safety and tenant success."[29]

Though early in its career, the demonstration project has shown promising results according to an evaluation by the John Jay College Research and Evaluation Center. Of the 73 clients in the initial evaluation sample, 92 percent — 67 of 73 — remain housed. Importantly, 100 percent have avoided returns to shelter after placement and 85 percent have avoided a return to jail. Comparing the days spent in jail before and after placement in housing, jail days decreased by 52 percent, while actually increasing for members of a comparison group.[30]

Because of this early success, the City expanded the program by funding 50 more housing units, which began in the fall of 2007 and there are discussions about expanding it further in this fiscal year. Other jurisdictions are planning similar demonstration projects, including Chicago; King County (Seattle), Washington; Connecticut; and Hennepin County (Minneapolis), Minnesota.[31]

RECOMMENDATION #8: Expand supportive housing and residential treatment capacity in the City

Baltimore City judges frequently cite a shortage of residential treatment beds, a concern that is shared by others working in the substance abuse treatment and criminal justice systems.

> [The city needs] lots and lots and lots of treatment slots… an addict should be treated at the time and given the treatment he or she needs at that time. (Circuit Court Judge #8)

This shortage of residential treatment slots can result in unnecessary time spent in jail for some defendants while they wait for a bed to open up, or may result in defendants absconding or violating the terms of their probation while waiting for a treatment bed, resulting in a prison or jail sentence.

One of the benefits of residential treatment is that it provides safe, stable housing while at the same time providing substance abuse treatment services. For many clients, stable housing may be as important as drug treatment in staying out of trouble. The problem with expanding residential treatment is that it can be very expensive.

A possible "middle ground" option would be to expand supportive housing opportunities combined with intensive outpatient treatment. This model is already being tested by the Baltimore City Circuit Drug Treatment Court (BCDTC-Circuit). The BCDTC-Circuit has developed a Supportive Housing Service Agreement that it uses with all of the houses to which the program refers participants. Quality controls and regulations of supportive housing (i.e., non-certified or recovery houses) are lacking in Baltimore. The agreement "states that the houses will comply with all zoning requirements, should have insurance, and will provide adequate food and shelter for occupants, among other things."[32]

Recently, a group of housing providers in Baltimore City formed the Baltimore Area Association of

28 Fred Scaglione, "Staying Out!," *New York Nonprofit Press (*April 2006).
29 Corporation for Supportive Housing, "New York City Frequent Users of Jail and Shelter Initiative" (Undated).
30 Corporation for Supportive Housing, "New York City Frequent Users of Jail and Shelter Initiative."
31 Corporation for Supportive Housing, "New York City Frequent Users of Jail and Shelter Initiative."
32 Julie Mackin and others, 2007. *Baltimore City Drug Treatment Court (Adult Offenders in Circuit Court): Process Evaluation* (Portland, OR: NPC Research, 2007),11. http://www.courts.state.md.us/opsc/dtc/pdfs/balt_city_adult_circuit_process_rpt.pdf.

Supportive Housing (BAASH) "to develop standards, self-regulate, and self-certify, and they are working with another area group, Citizens Planning and Housing Association (CPHA) to achieve those ends." The BCDTC-Circuit is now working with BAASH and CPHA, "offering to pay for the first 90 days of housing (for participants), including the $50 admission fee and $10 a day for each BCDTC–Circuit participant receiving housing (with the help of TEMA [Temporary Emergency Medical Assistance] monies). In 90 days, BCDTC–Circuit participants are expected to be sufficiently stabilized to find employment, so will then be able to pay for housing costs themselves."[33]

While this type of arrangement may work for some people, others do need a level of treatment services and support that only a certified residential treatment facility can offer. According to BSAS representatives, they are well aware of the need for more residential treatment slots for criminal-justice involved clients. They will be focusing their efforts on expanding halfway house treatment because it is more affordable, while still providing at least four hours of counseling per week along with supervised living and life skills training, case management, education and employment assistance, and help in returning to independent living.[34] According to the Baltimore City Drug and Alcohol Abuse Council, for an extra $3 million, six months of treatment could be provided for an additional 350 halfway house patients; $1 million more would provide for 28-day intermediate residential treatment for 400 additional patients.[35]

RECOMMENDATION #9: Improve representation of substance-addicted defendants by hiring more public defenders and expanding the number of defendants served by the Division of Client Services

According to the last caseload study conducted in Maryland, public defender caseloads in Baltimore City were at 258 for felonies (including homicide) – well above the recommended level of 156 cases per attorney that would permit effective assistance of counsel. While some new attorney positions have been added in recent years, more are needed. To ensure that drug-addicted felony defendants are adequately represented in Baltimore City, public defender caseload levels should be reduced to levels consistent with recommendations from the National Center for State Courts.[36]

Further, the Public Defender's Division of Client Services received particularly high marks from several judges who participated in the judicial focus groups. Additional funds should be made available to the Division of Client Services so that assessments and quality treatment referrals could be made on a timely basis for a greater number of defendants.

33 Macklin, *Baltimore City Drug Treatment Court (Adult Offenders in Circuit Court),* 12.

34 Adam Brickner, BSAS President, and Romona Dixon-Smith, BSAS Criminal Justice Coordinator, author conversations, December 2007. Halfway house description included in Baltimore City Drug and Alcohol Abuse Council, *Baltimore City Drug and Alcohol Abuse Jurisdictional Plan*, 5.

35 Baltimore City Drug and Alcohol Abuse Council, *Baltimore City Drug and Alcohol Abuse Jurisdictional Plan,* 11-12.

36 Brian J. Ostrom, Matthew Kleiman, and Christopher Ryan, *Maryland Attorney and Staff Workload Assessment, 2005* (Williamsburg, VA: National Center for State Courts, 2005), 7.

HOW TO PAY FOR IT?

Ways to raise revenue for treatment spending and to redirect spending from the corrections system to the public health system

At least one judge who participated in the focus group recognized the need to secure funding for treatment for individuals in the criminal justice system. Without funding and resources, a treatment system is harder to maintain.

> It all boils down to resources. The simplistic history is that this started under Glendening and was picked up by Ehrlich. We have great hope that it will go to the next level. But where is the organized treatment community? (Circuit Court Judge #14)

Over the long term, many of the recommendations mentioned in this report could pay for themselves through reduced costs to corrections, shelters, and other social service systems. If the root causes of a person's behavior can be addressed, that person can be removed from the criminal justice system and start leading a healthy, productive life. The challenge is to measure and capture those savings and reallocate them to the taxpayers or to the components of the system that are effectively generating the savings.

JPI received a number of suggestions from people working within the Maryland criminal justice system about how to pay for these reforms.

Raise the alcohol excise tax

In a recent column in the *Baltimore Examiner*, BSAS's Adam Brickner suggested raising the excise tax on the state's beer, wine, and distilled spirits.[37] According to Brickner and the Maryland Comptroller, the tax on distilled spirits has been the same since 1955, and the tax on beer and wine hasn't been raised since 1972.[38] According to a report from the Center for Science in the Public Interest, the national average beer tax is almost three times higher than Maryland's, the wine tax is almost double, and the national average spirits tax is more than double that in Maryland.[39] The authors found that Virginia, whose population is 35 percent larger, collected over four times more revenue than Maryland from excise taxes and product markups – a total of $98 million more in 2001.[40] Part of this discrepancy is due to the fact that Virginia is a "liquor control state," meaning that the state government is in charge of selling distilled spirits at state-owned liquor stores, so the state receives the profit on all liquor, as well as the beer and wine sold at state liquor stores. Nonetheless, Virginia's alcohol taxes are higher than the national average.

The main problem with raising the alcohol tax for the purposes of paying for drug and alcohol treatment is getting the governor and General Assembly to agree to earmark tax revenues for those purposes. During the 2007 legislative session, Del. William A. Bronrott (Dist. 16) and Sen. Richard S. Madaleno Jr. (Dist. 18) each introduced legislation to raise the alcohol tax and send the proceeds to a special fund for addic-

37 Adam Brickner, "Commentary: The Case for Raising the Tax on a Lethal Drug," *Baltimore Examiner*, November 19, 2007.
38 Comptroller of Maryland, *Alcohol & Tobacco Tax Annual Report: Fiscal Year 2006* (Annapolis, MD, Comptroller of Maryland, 2006), 2.
39 Alcohol Policies Project, *Alcohol Excise Taxes in Maryland* (Washington, DC: Center for Science in the Public Interest, 2004). http://www.cspinet.org/booze/taxguide/TaxMDPrint.htm. Accessed December 8, 2007.
40 Alcohol Policies Project, *Alcohol Excise Taxes in Maryland.*

tion and treatment services.[41] Although neither bill got out of committee, a statement released by Del. Bronrott in January of 2008 seems to indicate that he will reintroduce the legislation again this year, which is particularly important in light of expected budget shortfalls.[42]

Establish more compacts among private sector investors, the City, and the state

An innovative new approach to funding front-end social services and interventions is the "compact," a contract between private sector investors and the government whereby the private sector invests seed capital in a proven intervention designed to save government expenditures on "last resort" public programs (i.e., corrections, foster care, shelters, emergency rooms, the welfare system). As part of the compact, the government agrees to reinvest the savings into the intervention programs to keep generating savings — and reinvestments — into the future.[43]

In Maryland, the Safe and Sound Campaign is leading the way in developing these compacts under the title, "Maryland Opportunity Compact." The Family Recovery Program (FRP) was developed to reduce the amount of time children are in foster care by providing substance abuse treatment to addicted parents. Private partners invested $2.5 million to cover treatment and housing costs of participants. Thus far, 317 people with 346 children have entered the program. More than 50 percent of children of FRP participants who entered care in FY 2006 had a permanent home within a year. Maryland has saved more than $3.7 million from reductions in the length of stay in publicly funded foster care for these children. Based on these savings and future potential savings, the state of Maryland has fully funded the effort for the past two fiscal years.[44]

The Safe and Sound Campaign and the Open Society Institute-Baltimore are in the process of developing a new compact with state and city agencies called "The Public Safety Compact." This compact "seeks to safely restore ex-prisoners from Baltimore City to their families and communities via effective in-prison substance abuse treatment followed by community-based re-entry supports and services and Proactive Community Supervision." The goal is to reduce incarceration rates and save tax dollars and to reinvest these savings to continue and expand these interventions.[45] Initially, 250 people on parole will be included in the program. Private funders will invest $2.4 million for drug treatment slots, re-entry services, and parole and probation officers. It is estimated that $3.3 million will be saved over 3.4 years through reduced prison stays and recidivism.[46]

These are just two examples of compacts between private and public actors using private seed money to reduce public expenditures. Similar compacts could be developed for new programs and treatment slots for people supervised in the community as well.

Reform Maryland's sentencing laws, and redirect the savings to drug treatment

Previous research conducted by the Justice Policy Institute (JPI) notes that mandatory minimums drive up plea bargaining on drug offenses,[47] and in Maryland they serve to help prosecutors obtain guilty pleas to longer sentences.[48] Because of this effect on sentences obtained through plea bargaining, there

41 Brickner, "Commentary: The Case for Raising the Tax on a Lethal Drug."
42 Dan Rodricks, "The tax they should've passed," *Baltimore Sun Blog – Random Rodricks*, January 16, 2008. http://weblogs.baltimoresun.com/news/local/rodricks/blog/2008/01/the_tax_they_shouldve_passed.html
43 Safe and Sound Campaign, "Maryland Opportunity Compact: Family Recovery Program Factsheet" (December 6, 2007).
44 Safe and Sound Campaign, "Maryland Opportunity Compact: Family Recovery Program Factsheet."
45 Safe and Sound Campaign, "Maryland Opportunity Compact: Public Safety Factsheet" (Undated).
46 Safe and Sound Campaign, "Maryland Opportunity Compact: Public Safety Factsheet."
47 C. Lacasse and A.A. Payne, "Federal Sentencing Guidelines and Mandatory Minimum Sentences: Do Defendants Bargain in the Shadow of the Judge?" *Journal of Law and Economics*. 42, no. 1, (1999).
48 Timothy Roche, Nastassia Walsh, and Jason Ziedenberg. *Maryland's Mandatory Minimum Drug Sentencing Laws: Their Impact on*

is no definitive way to project how many of Maryland's 4,900 drug prisoners on any given day are serving a longer sentence due to mandatory minimums, and therefore the precise costs of these laws cannot be known.[49] However, JPI was able to estimate the cost of incarcerating persons sentenced under Maryland's drug mandatory minimums (Criminal Law Article, Sections 5-608 and 5-609), which could run into the millions.[50] Over time, the cost of incarcerating one person on a mandatory sentence accrues and becomes a large sum of money that could be directed elsewhere.

Cost savings could be generated by reforming or repealing these drug mandatory minimums. Using figures provided by the Bureau of Justice Statistics, JPI estimates that Maryland spent $26,398 per person held in prison in 2001 and spends millions incarcerating the people admitted to prison on a mandatory minimum drug sentences every year.[51] Since research suggests that the length of a prison term has a very small effect on recidivism for a class of prisoners who will be released anyway,[52] Maryland's public safety dollars may be spent more effectively meeting drug-involved people's needs through the public health system or through treatment.

In the fall of 2007, Del. Curt Anderson (D-Baltimore) and Sen. Lisa Gladden (D-Baltimore) convened a stakeholders' meeting of judges, state attorneys, legislators, corrections officials and addiction experts. As a result of these discussions, Del. Anderson and Sen. Gladden introduced the Smart on Crime Act (SB 552/HB 845). This legislation applies to individuals who are in possession of very small amounts of illicit drugs, like marijuana. Under this bill, a judge would have the discretion to sentence a person to five years or less in prison, or to community supervision or drug treatment instead of the overly punitive sentences they could currently receive. For larger amounts, the current laws of Maryland would apply. The Smart on Crime Act does not change the law for drug kingpins, volume dealers, or drug importers. It also does not change the law for people with violent prior offenses. Ultimately, the bill's sponsors hold that, contrary to the way the law currently works, someone possessing small amounts of drugs should not be treated the same as someone possessing 10 times that amount.

Incarceration, State Resources and Communities of Color. (Washington: DC. Justice Policy Institute, 2007). www.justicepolicy.org/content.php?hmID=1811&smID=1581&ssmID=23.

49 Roche, Walsh, and Ziedenberg, *Mandatory Minimums,* 10.

50 Roche, Walsh, and Ziedenberg, *Mandatory Minimums,* 11.

51 Roche, Walsh, and Ziedenberg, *Mandatory Minimums.*

52 Patrick A. Langan and David J. Levin, *Recidivism of Prisoners Released in 1994*, (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2002).

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