

Felony Drug Diversion Initiative

Testimony of Judge Ellen M. Heller (Ret.)
Circuit Court for Baltimore City
111 N. Calvert Street
Baltimore, Maryland 21202

Domestic Policy Subcommittee of the Oversight and Government Reform Committee
House of Representatives
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Background

In response to the ongoing crises created by drug addiction and crime in Baltimore City, a \$1.1 million grant was received from the Federal Center for Substance Abuse Treatment. This one-time only grant, awarded for the period September 1, 2003 through August 31, 2004, was used to support new and innovative substance abuse assessment and treatment programs for adolescent and adult offenders. One of the programs was the Felony Drug Diversion Initiative ("FDI") in the Circuit Court for Baltimore City. FDI was so hugely successful as a pilot program that the City of Baltimore and the State of Maryland continued the program with various levels of funding in 2005 until present.

Need

Prior to the FDI pilot project, individuals charged with nonviolent felonies with serious records had great difficulty and delays in accessing criminal justice drug treatment slots. For most, their only option was incarceration where there was little, if any, drug treatment available. In addition, the huge number of felony drug offenses was clogging the Court's Criminal Docket. It is estimated that 85% of all felony charges are drug related. In 2004, half of the then 30 judges were assigned to the criminal docket. (The other dockets are Civil, Family, and Juvenile.) These cases delayed the trials for serious violent crime cases. The Court, in conjunction with the Office of the Public Defender and Office of the State's Attorney, identified a need for a different model of drug treatment than the traditional criminal prosecution of defendants who were in fact involved with drug offenses because of their addiction.

Implementation

Baltimore City was able to quickly design and implement the FDI program. Within only three months, a working group identified needed program features and completed legal forms and procedures. The working group consisted of representatives from the judiciary, the Office of the State's Attorney, the Office of the Public Defender, the state Division of Parole and Probation, and the Division of Corrections. Baltimore Substance Abuse Systems (BSAS), the substance abuse authority for Baltimore City, contracted with six substance abuse treatment programs to provide a range of substance abuse treatment for FDI referrals.

- The FDI pilot project provided drug treatment as an alternative to incarceration for those individuals charged with felony drug offenses and who were deemed qualified for treatment by an assessment done by a trained in court assessor. Program participants were felons who had serious records and who, in

most instances, faced five to ten years of incarceration. Successful completion of drug treatment and compliance with their terms of parole and probation enabled them to avoid prison.

- The range of treatment went from intermediate 28-day residential treatment to long term six month residential treatment placements. In addition, a small number of individuals received methadone outpatient treatment. Aftercare was also provided that ranged from intermediate residential care to intensive outpatient counseling. Aftercare services were funded by both FDI funding (residential) and existing state, local and federal funding for drug treatment in Baltimore City (outpatient).

Achievements and Features of Program

The FDI pilot project established an impressive record of achievement. Some of its achievements include:

- 73% of program participants successfully completed treatment.
- 86% of offenders who completed treatment complied with the conditions of their probation.
- Both the Office of the State's Attorney and the Office of the Public Defender succeeded in promptly screening eligible offenders within a month of arrest so that they could access treatment options at the earliest point in the criminal justice system.
- The deployment of in court drug assessors to the Circuit Court allowed the program to assess and place defendants into drug treatment programs within 24 hours of their initial court appearance.
- The Court intensively monitored defendants on a monthly basis. Specially trained probation officers performed the monitoring.
- There were significant cost savings notwithstanding that most of the treatment placements were residential—the most costly kind of treatment. Costs for residential include \$215/day or \$1,075 per patient for 5-day detoxification, \$96/day or \$2,688 per patient for 28-day intermediate residential care and \$61/day or \$10,980 for 6-month long term residential. The average cost for offenders diverted to residential treatment is \$6,535 in contrast to the yearly non-capital costs for incarceration of \$25,000.
- Structured after care for remainder of probation period under court supervision and review is part of every participant's plan.
- Job training and placement opportunities as a result of liaisons with government and nonprofit job training programs were added to the program two years ago.
- Monthly meetings of FDI team to review program and participants take place before court sessions.
- Case managers will be added in the next month to assist with housing, job placement and health issues.

Conclusion

Mr. H., a 22-year old African American male, began snorting six pills of heroin and smoking \$50 worth of cocaine daily when he was 14 years old. In January 2004, he was arrested for the second time for possession of a controlled dangerous substance. At that time, he entered the FDI, and was admitted to a halfway house in Hagerstown, Maryland. After completing the six-month program, Mr. H. obtained full-time employment, and is currently drug-free and attends outpatient treatment. Mr. H. reports that FDI "saved my life."

Ms. B., a 39-year old African American female, began using drugs at age 19. After many heroin-related arrests, Ms. B. entered the FDI in April 2004. Ms. B. successfully completed a 28-day treatment program, but then relapsed shortly after being discharged. As a result of her relapse, the judge sentenced Ms. B. to one week of incarceration followed by admission to a long-term residential treatment program. Ms. B. was admitted to a special program for persons with co-occurring substance abuse and mental health problems, and is now stabilized on medication and doing very well. At her last court appearance, Ms. B. thanked the judge for sanctioning her until she could get into treatment.

FDI fundamentally has changed the way that the Circuit Court of Baltimore City handles drug-addicted felony offenders charged with possession of controlled dangerous substances. The level of collaboration and cooperation among the judiciary, court officials, state's attorney, public defender, parole & probation, treatment providers and detention center personnel was unprecedented. The introduction of addictions assessors into the circuit court was extremely well received by all parties. A strongly committed planning group developed new legal processing forms for FDI cases quickly, and procedures were revised, as needed, during the start-up period.

Drug Treatment Courts are a more efficient, less costly alternative to incarceration. There is no "magic" perfect model, and innovations should be encouraged with the goal of prompt placement of an offender into drug treatment. There remain, however, great needs for the "system" to implement these courts, which include:

- Quality drug treatment programs both outpatient and residential
- Job training and placement programs for drug offenders
- "Dual-diagnosis" programs for those offenders in need of mental health support
- Supportive housing
- Adequate and trained personnel including judges, prosecutors, defense attorneys, probation officers, assessors, and case managers

Government at all levels should support these initiatives, which result in a less costly, more longstanding solution to the addiction and crime resulting from drug abuse. In this way, rehabilitated offenders can once again become productive, self-sufficient members of the community.

FELONY DRUG DIVERSION INITIATIVE PROTOCOL

Arrest and Referral

Office of the Public Defender

- Within three (3) to five (5) days of an individual's arrest, the Office of the Public Defender (OPD) will interview defendants in Central Booking to see if any qualify for participation in the program. Those eligible for participation will be felony drug defendants with no history of crimes of violence within the past ten years and those not on parole.
- A defendant will not be automatically eliminated from the FDI Program because of pending charges or being on probation. The Office of the Public Defender will e-mail the judges to whom the defendant is already on probation (including district and circuit court), a form requesting approval to transfer the probation for the defendant, if accepted, into the FDI Program. The form will indicate that the defendant is a possible candidate. District Court Judges will be asked to hold probation in abeyance.
- Before a referral is made to the State's Attorney's Office, an email with potential FDI participants will be sent to the Field Supervisor I Treatment Liaison Unit of the Division of Parole and Probation (DPP). This notification to DPP will be done in order to have a review of the defendant to ensure there are no open probation or parole cases or pending violations of probation or parole. In the event there is a pending violation of probation or parole or other indication that the individual should not be accepted into the FDI, the DPP's Field Supervisor I will notify the Office of the Public Defender immediately. Both the State's Attorney's Office and the Office of the Public Defender will review each potential candidate for crimes of violence pending charges or convictions.

State's Attorney's Office

- The Office of the Public Defender will send a list of potential participants to the State's Attorney's Office (SAO) within five (5) to nine (9) days of arrest. The paperwork will include the referral form, the statement of probable cause, and the potential participant's criminal history.
- Within five (5) to seven (7) working days of receipt of the list, the State's Attorney's Office will review the applications and provide the Public Defender with a list of agreed-upon candidates and their proposed plea offers. If an individual is rejected for FDI participation, that person will be scheduled for a regular arraignment. If the State's offer is rejected, the case is set for an arraignment. Any disputes regarding acceptance into the program, or the plea, should be taken before the Arraignment Judge.

- The Office of the Public Defender shall indicate whether a defendant accepts or rejects a plea offer within five (5) to seven (7) working days of response from the State. If the plea is accepted, the case should be set on the arraignment docket within fifteen (15) days.
- The Office of the Public Defender will arrange to have orders signed for transfer or for holding probation in abeyance where appropriate. These signed orders shall be available by the time of the arraignment.

Felony Drug Arraignment

- Cases for individuals who have been deemed eligible for FDI and accepted the plea offer will be set on a felony drug arraignment docket for 9:30 a.m. three (3) days a week: Tuesday, Wednesday and Thursday. No more than four (4) FDI defendants will be set in on any given arraignment docket. Arraignments shall be within 45 days of arrest.
- In the event arraignment dates for felony drug cases are being set beyond 45 days of arrest, the State's Attorney's Office will submit an add-on form to Criminal Assignment with candidates for the FDI Program. This should be done at least fifteen (15) days before the desired arraignment date. The Criminal Clerk's Office will notify Criminal Assignment no later than ten (10) days before the desired arraignment date and will attempt to process the names on the add-on form and do appropriate data entry in an expedited fashion.

Assessment at Courthouse

- On the arraignment date, if an individual is set for arraignment in the Mitchell Courthouse, the individual should be taken in the morning to one of the two BSAS assessors located on the sixth floor of the Mitchell Courthouse for assessment. There should be two correctional officers accompanying each defendant for an evaluation.
- If the individual is being arraigned in Courthouse East, then the court assessor must perform the assessment in the BCDC lock-up located on the second floor of the Courthouse East Building.
- If an individual is found eligible by an assessor, that person shall be brought before the arraignment judge at 2:00 p.m. to take a plea. If an assessor finds an individual is not appropriate or a plea is rejected, there will be a regular arraignment. If a defendant seeks to withdraw from participation in the FDI Program there will be a regular arraignment. If an individual is accepted in the program, a written contract, a release of medical and/or psychological information, and plea agreement shall be signed.

Probation Order

- A probation order for the FDI Program will be completed by the felony arraignment clerk. That order will indicate that the defendant is participating in the FDI Program. This indication must be highlighted so that the DPP Intake Unit will assign the case to the DPP/FDI designated agent.

Transportation

- A transportation order is to be completed and signed by the in-court assessors and signed by the arraignment judge. This order will provide that BCDC will transport the defendant to a treatment program. All defendants are to be returned to BCDC after the arraignment. Transportation will be done the very next morning after appearance in arraignment court. A copy of the transportation order will be given to the State's Attorney's Office when the plea is accepted.

Court Monitoring

- On a monthly basis, the Court will review and monitor each participant's progress. The participant will appear in court as well as the special Probation Agent, In-Court Assessor, State's attorney and Public Defender. The Probation Agent will submit a completed status sheet for each participant, and treatment programs will submit written summaries of the progress of each participant. The initial review hearing will be set 60 days from the date the defendant enters the first treatment program to avoid conflicts with "black-out" periods.

Team Meetings

- The FDI team will meet on a monthly basis to address issues of the program and any modifications or new initiatives.

Structured After-Care

- Attention will be given to the transition of participants from long-term residential treatment centers to a structured after-care program. The probation agents will complete forms which will address, among other items, the new treatment program, living arrangements, and employment and education.