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**PRE-INCARCERATION TREATMENT OPTIONS
FOR SUBSTANCE ABUSERS,
NATIONWIDE AND IN NEW MEXICO**

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NOTE:

This working paper provides research information for
the New Mexico Criminal and Juvenile Coordinating Council.
It is **not** a statement of the Council's views or opinions.

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TABLE OF CONTENTS

	Page
I. EXECUTIVE SUMMARY	1
II. INTRODUCTION	3
III. DISTRICT ATTORNEYS' PROGRAMS	3
Nationwide Programs	3
New Mexico Programs	4
IV. COURT SERVICES	6
Treatment Oriented Drug Courts	6
New Mexico Drug Court (Second Judicial District)	10
Expedited Drug Case Management	13
V. SUBSTANCE ABUSE TREATMENT PROGRAMS THROUGH PROBATION	
Nationwide Programs	17
Community Corrections Programs	17
Intensive Supervision Programs	18
New Mexico Programs	19
Probation and Substance Abuse Treatment	19
Community Corrections and Intensive Supervision Programs	20
VI. SOME OTHER CONSIDERATIONS AFFECTING TREATMENT DECISIONS	
Does Drug Testing of Arrestees Help to Predict Pretrial Misconduct?	22
Taking a Weekend to Prepare for Treatment Programs (WIP)	23
Case Management as an Alternative to Coercion	23
VII. BIBLIOGRAPHY	25
APPENDIX I NEW MEXICO STATE STATUTE 31, ARTICLE 16A; PRE-PROSECUTION DIVERSION	
APPENDIX II THE CONNECTICUT COMMUNITY CORRECTIONS PROGRAM	

INSET 1	Elements of a Successful Drug Court	8
INSET 2	Do Drug Courts Reduce Recidivism?	11
INSET 3	Inclusion and Exclusion Criteria for New Mexico's Drug Court Program	11
INSET 4	Progressive Sanctions in New Mexico's Drug Court	12
INSET 5	Strategies Used in Differentiated Case Management	13
INSET 6	Do Drug Courts Reduce Case Processing Time and Costs?	16
INSET 7	Effective Substance Abuse Interventions in Community Corrections	18

I. EXECUTIVE SUMMARY

- There are a number of programs that can be used for offenders with substance abuse problems who are not in prison.
- Pre-prosecution diversion programs are typically run through State District Attorneys Offices:
 - In New Mexico, statutory guidelines limit the usefulness of the District Attorney's Office pre-prosecution program for substance abusers.
- There are two types of "Drug Court": Drug Courts with an emphasis on treatment, and Expedited Drug Case Management Programs (EDCM), that serve to move non-violent drug cases through the system more quickly.
 - In a study examining recidivism rates for offenders supervised by the Dade County (Florida) Drug Court, the rates of recidivism were about half that for a comparable group arrested before the Court opened.
 - For EDCM Programs, the more rapid handling of drug cases resulted in increased "street time" for offenders, but not higher rearrest prevalence.
- New Mexico's Drug Court has a focus on treatment for offenders. Quick response to violations and progressive sanctions are important components of the program. Offenders are referred to the New Mexico Drug Court through:
 - Pre-trial Services (diversion) at initial appearance
 - Plea bargaining or conditional discharge by defense attorneys and district attorneys
 - Probation violation proceedings
- Behavioral substance abuse programs work best in Community Corrections. More specifically, the programs shown to work best emphasize the following treatment strategies:
 - Modeling
 - Behavioral rehearsal
 - Problem solving skills training
 - Skills building
- Treatment Matching, or fitting specific treatment strategies to clients, improves outcomes. For example, an offender presenting an anxiety disorder will respond better to treatment if their anxiety problem is addressed.
- Intensive Supervision Programs are alternatives to prison that substantially reduce costs.
- New Mexico's Community Corrections and Intensive Supervision Programs are administered by the Probation and Parole Division of the Department of Corrections.

- To be considered for these programs, offenders must be:
 - Reintegration candidates
 - Diversion (probation) candidates
 - Parole status candidates

II. INTRODUCTION

There are a number of pre-prosecution diversion and probation programs that are used as alternatives to prison for offenders with diagnoses of substance-related disorders. They can be classified as follows:

- Pre-prosecution diversion programs (PDP). The adjudication process is halted pending successful completion of a treatment and supervisory plan.
- Probation programs. These provide treatment and supervisory plans for offenders sentenced to probation.

In any jurisdiction, programs can be administered by the following agencies:

- The district attorneys' office administers the pre-prosecution diversion program, and may also participate in drug court programs.
- Criminal courts specializing in drug cases, usually called "drug courts."
- Adult probation offices administer community corrections, intensive supervision and regular probation programs.

In this paper, we review the programs offered by each of these agencies, both nationwide and in New Mexico. We also include some other considerations regarding treatment decisions for substance abusers who have been arrested.

III. DISTRICT ATTORNEYS' PROGRAMS

NATIONWIDE PROGRAMS

Many District Attorneys' offices run pre-prosecution diversion programs similar to those operating in New Mexico. We contacted the American Prosecutors' Research Institute to find out about programs around the country. The Institute is currently gathering information for us and any promising programs will be described in a supplement to this paper. The following is a brief description of a recent innovative pre-prosecution diversion program in New York.

The Drug Treatment Alternative to Prison Program (DTAP)

The Drug Treatment Alternative to Prison Program is a program that began in Brooklyn in 1990. Due to its success, the program has also been implemented in the boroughs of Manhattan and Queens. DTAP offers repeat, non-violent defendants bound for prison the option of attending a long-term, community based residential drug treatment program. If the offenders complete treatment, their charges are dismissed. Those who fail to complete the program face a minimum 18 month prison term. "Early departure" from the program is met with a prison sentence at least as lengthy as of that the defendant would have served in the absence of DTAP. DTAP lists 7 goals and objectives:

- Identify second-felony defendants who are eligible for admission, as determined by prosecutors and treatment staff.
- Identify available treatment slots in privately run therapeutic communities that are available to DTAP participants on a priority basis.

- Develop collaborative relationships between DTAP prosecutors and treatment providers.
- Implement enforcement mechanisms, including special warrant squads to ensure rapid apprehension of program absconders.
- Maintain a program completion rate of at least 60%.
- Maintain a re-arrest rate of no more than 25%.
- Ongoing program evaluation.

As of March, 1994, DTAP had admitted 400 participants. About two-thirds of all DTAP admissions have remained in treatment (this is compared to the approximately 20-30% program completion rate for most therapeutic communities). Of those offenders leaving treatment, 75% have been returned to custody.

NEW MEXICO PROGRAMS

The District Attorney's (DA) office in each of the thirteen judicial districts in New Mexico operates a pre-prosecution diversion program. General aspects of the program are set down in State Statute 31, Article 16A, 1-8 (see Appendix 1). To be eligible for the diversion program, a defendant must:

- Have had no prior felony convictions for a violent crime and no prior felony convictions for the past ten years.
- The alleged crime was nonviolent, with the exception of domestic disputes not involving a minor.
- If previously on probation, the defendant must not have had probation revoked or rescinded.
- The defendant has not been in a similar program for the previous ten years.
- The defendant must be willing to submit to program requirements.
- The crime does not involve substantial sale or possession of controlled substances.
- The defendant must meet any other criteria established by the district attorney.

There are some differences between judicial districts in program design and execution. For example, no PDP is specifically designed for drug offenders and programs differ as to whether they will accept offenders with drug-related offenses. For this paper, a telephone survey was conducted for five PDPs in New Mexico. The programs are briefly reviewed here.

Third Judicial District, Las Cruces NM. Program Director: Virginia Acosta.

In Las Cruces, the pre-prosecution program consists of the program director, two full-time officers and one half-time officer. Referrals to the program are made by an offender's attorney. Candidates for the program are then screened by means of: a structured interview conducted by the program director, a review of the incident with the case officer (usually the arresting officer) and interviews with any victims. Other screening options are sometimes used; for example, mental health evaluations are sometimes performed at the request of the program director. In addition, a records check is conducted on all candidates. Candidates must: (1) be accused of non-violent offenses; and, (2) have no felony convictions within the last ten years. Most decisions regarding acceptance into the program are made by the pre-prosecution officers

and the program director. However, the final authority to grant acceptance into the program rests with the district attorney.

Once accepted into the program, offenders' needs and conditions of participation are assessed by a structured interview. Offenders are required to "report in" and meet with the officer assigned to their case up to twice per month. Conditions include being drug- and alcohol-free, and may require participation in a drug and alcohol treatment program and/or participation in an eight-week "life skills" program. Surprise visits to the offender's residence and urine tests are not unusual. Other conditions commonly imposed are community service, a required supervision fee and restitution.

Fourth Judicial District, Las Vegas, NM. Program Director: Larry Cockrell.

Offenders whose primary offense is drug-related are not accepted by this program. Thus, drug assessment and treatment programs are not used. Mr. Cockrell is the program director and the only employee involved with pre-prosecution diversion in this district. His caseload typically consists of about 30 people. Offenders are referred to the program by one of the assistant DAs, although Mr. Cockrell is usually allowed the final decision regarding acceptance into the program. He also determines who is in violation of the program. Program violators are referred to the assistant DA for prosecution.

Sixth Judicial District, Silver City, NM. Program Director: Paulette MacDonald.

The program is run entirely by the program director, and the caseload varies from 30 to 60 offenders. Offenders are referred to the program by their attorney, who makes a formal application request of the assistant DA assigned to the case. If the offender is found to be suitable for the program, they are interviewed by the program director, who also contacts the police officers involved in the arrest, and any victims. The director then makes a recommendation as to each candidate's acceptability. Any possession of controlled substances that exceeds a "minor amount" constitutes grounds for non-acceptance. Offenders submit to a thorough background investigation, and only first time felons are accepted into the program. Minimum time served in the program is six months and the maximum is two years. Typically, offenders are required to perform 200 hours of community service and make complete restitution to the victim. In addition, offenders are frequently sent to counseling or treatment programs, and must provide documentation that they have satisfied these requirements. Enforcement is achieved through regular visits with the program director, surprise visits by the program director (often with required urine screening), and through the help of local law enforcement officers. If offenders are not found to be drug-free, they are usually given a second chance and required to attend counseling and to submit to more regular urine tests.

Eleventh Judicial District (Division II), Gallup, NM. Program Director: Andrea Cardy.

The Gallup program is run entirely by the program director, and currently has 30 participants. Offenders are referred to the program by their attorneys and then proceed to an application process. The latter requires a thorough background check and an interview that includes questions about family history, employment history, monthly expenses, health problems, and drug and alcohol use. Offenders are not accepted into the program if their primary offense is

drug related, or if they were found to possess more than a “very small amount” of drugs. The program director mentioned that in the Gallup area, peyote use is common among members of the Native American Church, and that church membership must be verified for offenders for whom this might be an issue. Once accepted, program requirements are matched to each individual’s circumstances. For example, if the offender has not graduated from high school, it is not unusual for one of their required tasks to be completion of a GED. Offenders with drug or alcohol problems are required to complete a treatment program. Offenders are required to report to the Program Director’s office twice each month, and surprise visits to their homes and/or jobs are not unusual. Violation of the program conditions results in case prosecution. The director occasionally implements imaginative measures for those who are close to violation, such as trips to the state penitentiary and interviews with prisoners.

Second Judicial District, Albuquerque, NM. Program Director: Helen Chalamidas.

The Albuquerque program’s guidelines expressly exclude any offender who is addicted to any type of drugs. Additionally, individuals charged with drug possession are only considered if the amount of drugs was small. The program serves about 200 clients at any given time. According to Ms. Chalamidas, the failure rate of offenders in the program has been approximately 10%.

Evidently, the statutory guidelines for PDPs in New Mexico limit the amount of attention that can be given to offenders with substance abuse problems.

IV. COURT SERVICES

TREATMENT ORIENTED DRUG COURTS

History

The drug court movement began in the 1980's in response to the growing number of drug-related court cases. Traditional law enforcement and corrections policies were not having the impact on drug supply and demand that the proponents of the "War Against Drugs" had hoped. In 1987, in response to growing concern over the impact of crack and other felony drug cases on the court's caseload, drug courts (called "N" or Narcotics "Parts") were set up in four of the five boroughs of New York City. In 1989, an administrative order from the chief judge of Florida's 11th judicial circuit set the drug courts in motion in Florida. The first court to employ drug treatment as an integral part of the processing of drug felonies was the Dade County (Miami), Florida, Drug Court, which began operations in June 1989, and has become a model for several other states for diverting drug offenders into treatment. Within a few years, a number of other jurisdictions facing their own drug caseload crises had established special drug courts and by mid-1993 there were at least 15 drug courts operating around the nation.

General goals of drug courts include:

- Concentrating drug case expertise in one courtroom.
- Linking offenders to community-based drug treatment.
- Addressing offenders’ other needs through effective case management.
- Reducing drug use and recidivism.

- Relieving pressures on non-drug caseloads.
- Increasing overall trial capacity.

The drug courts depart from the typical court model by systematically bringing drug treatment to the criminal justice population entering the court system. Traditionally, the court had referred selected offenders "out" to treatment as a condition of probation. In the drug court, treatment is anchored in the authority of the judge who holds the defendant personally and publicly accountable for treatment progress.

General Inclusion Criteria

While many drug courts only handle drug possession cases, some also accept low-level drug sale cases and others may process any drug felony, regardless of the type of offense. Generally, treatment-oriented drug courts tend to exclude offenders charged with drug sale, delivery, or trafficking, unless the offender had a relatively minor role in the transaction, or an underlying drug addiction clearly drives their participation in drug selling.

Core Elements of a Drug Court

One of the most striking characteristics of the expansion in drug court programs has been the diversity in court structure, treatment programs, and target populations. One of the principal aims of the First National Drug Court Conference, held in Miami in December 1993, was to identify core elements of a drug court. More than 400 judges, prosecutors, defense lawyers, and drug treatment specialists designated a number of elements as crucial to the success of a drug court (see Inset 1).

Overview of Program Experiences

Special drug courts are a relatively new innovation, and many are still in the process of being established. With few exceptions, however, the operations of the drug courts have met or exceeded the expectations of those involved in their planning and operation. For example, results indicate dramatic reductions in disposition times in drug courts designed to alleviate calendar pressures by reducing processing time. The reductions result in substantial savings in court processing costs.

Differences between sentences imposed on felony drug offenders in "fast-track" special drug courts and regular courts (or compared with sentences imposed before the special drug court was implemented) suggest that the quicker pleas are achieved by offering somewhat more lenient sentences than those that would be received through standard case processing mechanisms, with higher rates of probation sentences and shorter sentences for those receiving prison terms.

INSET 1
ELEMENTS OF A SUCCESSFUL DRUG COURT

- Judicial commitment and leadership.
- Collaboration among criminal justice agencies, courts, treatment agencies, and community organizations.
- Education and training programs for judges, prosecutors, defenders, and other criminal justice practitioners in substance abuse, addictive behaviors, and treatment approaches.
- Education and training programs for treatment providers and public health officials in criminal justice concerns and procedures.
- A specifically defined target population, based on drug involvement and public safety risk.
- A custom-designed treatment program that addresses the specific needs of the court's targeted population.
- Integrated information management that links the court with criminal justice and treatment agencies and provides adequate supervision for defendants/offenders.
- Funding sources for drug court startup and maintenance.
- A detailed, comprehensive implementation plan that includes scheduled milestones and orientation and training for everyone involved.
- An evaluation strategy that defines desired outcomes, identifies the types of information required to measure those outcomes, and defines a timetable for the reporting and analysis of those outcomes.
- The drug treatment program(s) to which defendants will be referred must be carefully chosen.
- The type of treatment that will be made available, and the critical elements of the treatment process must be carefully considered.
- The treatment program must be located in geographic proximity to the courthouse to ensure that defendants arrive at their critical first treatment appointment.

SUGGESTED PROCEDURAL ELEMENTS

- Have a strong, respected, dedicated and knowledgeable judge.
 - Channel all eligible felony drug cases into the court as early in the adjudication process as possible.
 - Implement a system of full and early discovery.
 - Expedite the production and distribution of laboratory reports.
 - Rotate staff at least once a year, to prevent burnout.
 - Conduct early prosecutorial screening to weed out weak cases, and to avoid “dumping” and “net-widening.”
 - Participation in drug court treatment programs should be voluntary, and there should be an early “grace” period allowing defendants to return to standard adjudication.
 - Expedite placement of defendants in treatment, which should begin as soon as possible following the first drug court appearance.
 - Establish clear rules and procedures for responding to violations of the drug court’s policies. Rewards for compliance and sanctions for non-compliance should be applied fairly and consistently.
-

In drug courts that emphasize the diversion and treatment of drug offenders, there is evidence of reduced criminal and substance abuse recidivism, high program completion rates, and considerable jail and prison cost savings. Some highlights of program experiences to date include:

- The costs of processing and sentencing offenders through drug courts can be substantially lower than standard routes of adjudication. In the Miami drug court program it costs about \$700 per year to maintain a defendant in treatment, although the costs of occasional jail time for those who fail to appear or get rearrested add to this expense.

- Drug courts, even those requiring treatment participation, are able to adjudicate or supervise substantial caseloads. For example, the Miami and Portland drug courts maintain active caseloads of about 1,200 and 600, respectively.
- Many special drug courts, including treatment-oriented courts, have found surprisingly strong support from local media and community groups. Positive media coverage and public acceptance of the use of drug treatment as an alternative to prosecution or incarceration have encouraged drug court judges in Portland, Broward County, Miami, Milwaukee, and elsewhere.

Dedicated Drug Treatment Courts

Treatment-oriented drug courts vary in the restrictions they place on entry into the program. For example, the Portland drug court accepts felony drug possession defendants with any conviction history, although in the past it has excluded gang members. Defendants with up to three prior nondrug felony convictions and any number of prior drug felony convictions are now eligible for the Miami drug court. However, the Broward County, Florida, program only accepts first offenders arrested for felony drug possession.

Defendants in treatment-oriented drug courts are primarily crack and cocaine abusers, although they often have other problems. For example, the Portland program estimates that 10% of their defendants are HIV positive, and 25-30% have mental health problems. Accordingly, drug court clients may require substantial resources and extensive case management efforts in order to maximize their chances of successful participation. An important feature of a successful drug court is flexibility: tailoring some aspects of the program to respond creatively to relapses or other failures. This can only be achieved with the active involvement of the judge.

Program failures tend to occur during the first few months of the treatment. This is a period of difficult transition for many drug abusers, and the requirements of the treatment program may be formidable for many defendants. Some may not be ready to accept the demands of drug treatment or to give up the drug lifestyle. The use of regular acupuncture treatments, especially early in the program, can help ease defendants' cravings for drugs, can relax them, and make them more amenable to treatment intervention.

Brief Description of Dedicated Drug Courts

Cook County (Chicago), Illinois

The Cook County Drug Court is unique, because it is a night court that operates between 4:00 p.m. and 11:00 p.m. each weekday. This "fast-track" program was established in October, 1989, with five courtrooms, which have since been expanded to eight. The drug court was created to help alleviate crowded felony dockets and large pending drug caseloads. Most defendants are sentenced to probation and there is limited drug treatment available.

Dade County (Miami), Florida

Dade County's Drug Court, established in June 1989, channels defendants arrested on felony drug possession charges into its court-run diversion and treatment program. The program lasts 1 year and provides treatment and case management services, including: counseling, acupuncture, fellowship meetings, education, and vocational services, combined with strict monitoring through

urine testing and regular court appearances. Defendants who successfully complete the program have their cases dismissed.

Oakland, California

Oakland's FIRST (Fast, Intensive, Report, Supervision, Treatment) Program, implemented in January 1991, directs less serious felony drug offenders into treatment administered by the County Probation Department. Diversion is generally granted within 2 days of a defendant's release from custody, and lasts for up to 2 years. The FIRST Program uses progressive sanctions to reward program compliance and punish noncompliance, with the severity determined by the seriousness of program failure. The program is divided into three phases: diversion placement, intensive evaluation and supervision, and final supervision and treatment. Treatment includes group probation sessions, educational sessions, regular urinalysis, and a community counseling program. Successful program completion may mean the dismissal of the defendant's case, or reduction to as little as 9 months in the diversion term.

Evaluations of Special Drug Courts

Because special drug courts are a relatively recent innovation, evaluative information about their impact and cost-effectiveness is only now beginning to emerge. An American Bar Association study (BJA, 1993) evaluated court management techniques for handling large felony drug caseloads in the Cook County (Chicago), Milwaukee, Philadelphia, and Dade County, Florida. The primary goal at the first three sites is to expedite processing of drug cases, while Dade County focuses on drug treatment aimed at reducing both drug use and recidivism. Key findings from the study are presented in Inset 2. Similarly, researchers at the New York City Criminal Justice Agency recently completed an evaluation of the impact of New York's "N Parts." Summary findings are also presented in Inset 2.

THE NEW MEXICO DRUG COURT (Second Judicial District)

The Second Judicial District Drug Court is designed to provide community-based treatment and supervision to selected offenders who are identified as having substance abuse issues and who could benefit from drug education and treatment. Drug Court channels non-violent defendants arrested on specified felony drug charges into a comprehensive program of drug treatment and rehabilitation. The treatment programs are provided by private vendors in the Albuquerque area.

Pre-adjudication participants include first time felony drug offenders who are charged with drug possession, use or trafficking of nominal amounts. Post-adjudication participants are required to have no more than one prior felony, must not pose a serious risk to the community, and the current felony conviction must be for a non-violent substantially drug-related offense. Complete inclusion and exclusion criteria for drug court participants are listed in Inset 3.

INSET 2
DO DRUG COURTS REDUCE RECIDIVISM?
DADE COUNTY

The American Bar Association Study was somewhat reserved in its conclusions regarding the efficacy of the Dade County drug court in reducing drug use and recidivism. Their data on recidivism were based on **all** cases assigned to the drug court, while only one-third to one-half actually **entered** a treatment program. Therefore, any effects of treatment may have been concealed by use of this larger sample. Time at risk for rearrest also was not considered when examining recidivism in the ABA study. However, a more recent outside evaluation, using quasi-experimental techniques, found that recidivism rates after 18 months under drug court supervision (28% for any offense, and 11% for a drug offense) were about half the rates for a comparable group of offenders from a period before the drug court opened. Also, drug court defendants had a longer time before rearrest and were arrested for less serious offenses.

NEW YORK

In general, there were no systematic differences in recidivism patterns between defendants processed through "N Parts" on the sample arrest and those processed through other court parts. Within two years of the sample arrest, 53.5% of the "N Part" cases and 50.9% of those processed through other parts were rearrested. "N Part" cases had a slightly higher rate of drug felony rearrest (37%) compared to non-"N Part" cases (33.5%). Nondrug felony arrest rates were similar in "N" and non-"N Part" courts. However, after controlling for time at risk for rearrest, the research revealed that non-"N Part" defendants had significantly higher annualized arrest rates than did "N part" defendants. This most likely reflected the lower amounts of street time for non-"N" defendants. The mean adjusted annual number of rearrests for non-"N Part" cases was 5.6, while for "N Part" cases the number was 3.3. Drug felony rearrests averaged 1.6 per year at risk for "N Part" cases, and 3.9 for other court parts. Similar patterns were evident across rearrest charge type. Multivariate analyses of recidivism suggested that "N Part" processing had little independent effect on the likelihood of rearrest. The specialized, more rapid handling of felony drug cases in the "N Parts," and the more lenient sentences, apparently did not result in higher rearrest prevalence.

INSET 3
INCLUSION AND EXCLUSION CRITERIA FOR NEW MEXICO'S DRUG COURT PROGRAM
INCLUSION CRITERIA

- First time felony drug offenders:
- Charged with (a) drug possession, use or trafficking of nominal amounts or (b) have drug use as substantial component of conviction of non-violent felony.
 - Have no more than one prior felony.
 - Are eligible for standard probation.
 - Have a history of minimal substance abuse and limited participation in treatment.
 - Are in need of drug education, substance abuse outpatient counseling, and drug monitoring.
 - Do not pose a serious risk to the community.
 - Are identified and screened prior to sentencing.
 - Need monitoring through random urinalysis.
 - Have no other significant treatment issues which would delay or prevent program completion.

EXCLUSION CRITERIA:

- Excludes defendants convicted of drug sales or trafficking of more than nominal amounts.
 - Excludes defendants convicted of violent crimes
-

Referrals to the NM Drug Court are made through three channels. First, pretrial services (diversion) may make preadjudication referrals by means of a drug court contract entered at the offender's initial appearance. Second, defense attorneys and district attorneys may request a referral through plea bargaining or conditional discharge. Third, offenders may be referred from probation violation proceedings.

After referral to the drug court, the defendant must enroll in and complete a three-stage treatment program. The program follows a sequential pattern and the defendant must pass each stage in order to move on to the next. Stage I focuses on drug education and social skills training. Stage II focuses on relapse prevention, and Stage III focuses on the maintenance of a drug-free lifestyle. Passing any given stage and eventual completion of the program is achieved by accumulating program "compliance points" and by remaining drug-free. Dirty urines at any stage in the program may subject a defendant to program sanctions, but are never the basis for an independent prosecution. Sanctions are different for each stage of the program and are progressive, becoming increasingly stringent with each offense. They range from return to previous stages to possible jail time and removal from the program. For more information about progressive sanctions, see Inset 4.

INSET 4
PROGRESSIVE SANCTIONS IN NEW MEXICO'S DRUG COURT

Sanctions in the Second Judicial District's Drug Court Program are progressive. That is, if a participant violates the conditions of the program they are not automatically terminated, but are given some sanction. The second time they violate a provision they are given a more comprehensive sanction. The ultimate sanction is removal from the Drug Court Program and a return to the assigned judge for sentencing. These sanctions and rules are made known to each program participant at the outset. Sanctions are different in each of the three stages of the program:

Stage I

1. The first positive urinalysis for the presence of substances results in an appearance in front of the Drug Court Judge and possibly a day in jail.
2. The second positive urinalysis results in between one and seven days in jail and attendance at a relapse group.
3. After the third positive urinalysis, the Drug Court judge will sentence the participant to between four and thirty days in jail, but will allow them to remain in the program.

Stage II

1. A positive urinalysis during Stage II will require the participant to repeat Stage I treatment. The offender may also be sent to jail for Stage II failure.
2. Participants may be returned to Stage I only one time. A second positive urinalysis in Stage II will result in return to the assigned judge for sentencing.

Stage III.

1. If participants have a positive urinalysis at Stage III, they are required to repeat the Stage II treatment. Participants may also spend some time in jail.
 2. A second positive urinalysis during Stage III will result in removal from the program and return to the assigned judge for sentencing.
-

The active treatment plan is designed to last for approximately six months. Each defendant has input into their individual treatment plan, which is designed in conjunction with the treatment provider and probation officer, and requires the judge's approval. To leave the treatment plan, all stages must be successfully completed, at which time the defendant participates in a graduation ceremony with the district court judge. At this time, if all conditions have been met by the defendant, the court meets the conditions that it agreed to. As yet, the operation and outcome of the Albuquerque drug court have not been evaluated, but outcome study proposals are currently being requested.

EXPEDITED DRUG CASE MANAGEMENT

Apart from the concern for treatment, a second innovation in drug court administration involves the development of several “tracks” for processing cases at different speeds. For example, in 1989 the Bureau of Justice Assistance launched the Expedited Drug Case Management (EDCM) Demonstration Program to help state courts of general jurisdiction address the special management and treatment intervention issues presented by the drug caseload and the drug-involved offender. The goal of the EDCM demonstration program was to develop and test the application of differentiated case management strategies to drug cases and, in addition, to incorporate a variety of treatment and rehabilitation services in the case disposition process, at both pretrial and post- adjudication. Three jurisdictions, each with a different approach for managing the drug caseload, were selected by BJA to develop EDCM programs that could be adapted by other jurisdictions: Middlesex County (New Brunswick), New Jersey; Multnomah County (Portland), Oregon; and Philadelphia, Pennsylvania.

ECDM is based on the recognition that many cases can proceed through the court system at a faster pace than others if appropriate pathways are provided. Therefore, cases do not wait for disposition simply on the basis of the chronological order of their filing. Strategies used in differentiated case management are listed in Inset 5.

INSET 5

STRATEGIES USED IN DIFFERENTIATED CASE MANAGEMENT

- Early screening of each drug or drug-related case, and classification according to the complexity and priority of case processing.
 - Simultaneous early screening of each defendant to determine the extent of drug dependency, the need for educational and vocational training and other rehabilitation services, and eligibility for and amenability to treatment and other community-based supervision programs.
 - Assignment of cases to appropriate case processing tracks, each of which has special provisions for court events and treatment intervention strategies as well as timeframes for their occurrence.
 - Continuous monitoring of the case disposition process, with track reassignment if necessary.
 - Continuous monitoring of each defendant's compliance with pretrial and postadjudication conditions of release, and with the court's response to violations designed to reinforce defendants who were making an effort to become rehabilitated and sanction those who were not.
 - Coordination of existing treatment, vocational, educational, and other community resources for drug case supervision, both pretrial and postadjudication, and development of additional resources, as needed.
-

Benefits That Can Be Achieved Through an Expedited Drug Case Management Program

According to the Bureau of Justice Assistance, the courts using EDCM strategies have been able to improve their capacity to control the caseload shortly after filing, to develop individualized treatment intervention and sanctioning strategies, and to ensure that the court's intervention proceeded in a timely and effective manner. Specific benefits of EDCM strategies are as follows:

- Increased court efficiency.
- Increased productivity of judges, prosecutors, indigent defense counsel, and their staffs.
- Reduction in the number of defendants who fail to appear and in the number of bench warrants that must be issued.
- Reduction in pretrial jail days used for detained defendants.
- Reduction in costs for pretrial detention.
- More effective treatment services for offenders.

Case Differentiation Criteria

The EDCM programs established the factors to be used to determine case processing priority as well as the level of preparation and amount of court intervention required to achieve a timely and just resolution of each case. The case differentiation criteria used in EDCM programs included case characteristics, defendants' backgrounds, potential severity of sentencing, and public policy priorities.

Case-Processing Tracks and Procedures

The EDCM programs created a sufficient number of case processing tracks (generally between three and five) to accommodate the disposition requirements of the caseload. In addition, events and time intervals were identified for each track to promote fair and efficient case disposition and meaningful supervision of defendants. The case processing procedures for each track allowed the court to intervene soon after arrest to ensure that each case was managed expeditiously and that the arrest resulted in an immediate sanction and/or treatment for each eligible defendant in a rehabilitation program. The track procedures supported the court's responsibility for monitoring defendants' compliance with conditions of pretrial release and provided for immediate court intervention when violations occurred.

Pretrial Release and Alternative Sanctioning

From a judicial perspective, the EDCM program involved substantially more court-supervised treatment and support services than other criminal case processing programs. Judges tailored the conditions of pretrial and probationary release for each defendant and then monitored performance after those conditions were imposed. In addition, services had to be carefully monitored to be sure that the changing needs of each defendant were met. Judges frequently conducted routine status conferences face to face with defendants to discuss overall progress as well as specific problems that warranted additional court services.

Developing a cooperative relationship between the court and treatment providers was one of the most important aspects of the EDCM program. Through this relationship, the court set

down the conditions for a defendant's performance, such as urine tests, participation in treatment and counseling programs, and employment. The court also measured performance against the objective information reported by the treatment provider and determined how violations were to be treated. The court and treatment providers talked with one another regularly about the operation of the EDCM program and the methods by which each could reinforce the work of the other.

Program Management and Monitoring

Judicial officials ensured that cases proceeded to disposition according to applicable procedures and timeframes by seeing that resources for the adjudication, rehabilitation, and supervision of drug-involved offenders were available when needed and that the court intervened promptly when violations of conditions of pretrial and probationary release occurred. Most jurisdictions developed specially designed management information systems to accomplish these tasks.

Description and Preliminary Assessment of EDCM programs

Multnomah County (Portland), Oregon. The Multnomah County EDCM program established three case processing tracks.

- The first track is a deferred prosecution track (called the STOP program) to which eligible defendants are assigned within 3 days of arrest for a period of 1 year. Managed by a specially assigned judge, this track allows defendants to complete a treatment program that includes drug education, counseling, and other community support services.
- The second track is for defendants who are charged with drug offenses but are not eligible for deferred prosecution, either because they were terminated from the STOP program for noncompliance or because they face other pending charges.
- The last track is for defendants, most of them drug-dependent, who are charged with drug-related offenses (primarily property).

Different court events and time frames applied to each track, with referral to a variety of pretrial and probation treatment, counseling, and other community-based assistance programs incorporated into all of them, and playing a central role for the STOP program cases. One unique feature of the Multnomah County program has been the integration of the deferred prosecution track with the other case processing tracks. If a defendant is terminated from the deferred prosecution program for noncompliance, that case is referred to the applicable processing track for immediate disposition.

Philadelphia, Pa. The Philadelphia EDCM program targeted felony cases assigned to the Waiver Division of the Court of Common Pleas, which handled approximately 70% of the court's criminal caseload. In general, cases assigned to the Waiver Division were the less serious felony cases--almost all of which involved drug offenses and drug-involved offenders--and were tried

INSET 6
DO DRUG COURTS REDUCE CASE PROCESSING TIME AND COSTS?

Processing Time

The American Bar Association study (BJA, 1993) found that the "speedy disposition" courts achieved more rapid processing of drug cases. The experiences of Cook County and Milwaukee suggested that the segregation of drug cases in special courtrooms, combined with sound case management techniques, can speed up the disposition of both drug and non-drug cases. In Milwaukee, the median number of days dropped from 253 to 117 (and from 196 to 154 days for non-drug felonies) and in Chicago the implementation of night drug courts reduced the median days to disposition from 245 to 69 for drug cases (and from 215 to 170 days for non-drug cases). Although some critics have argued that paying special attention to drug cases drains needed resources from the adjudication of serious non-drug felonies and can, therefore, result in slower disposition times and pending case backlogs for non-drug cases, the ABA findings suggest that "fast-track" drug courts can yield reduced processing time for both drug and non-drug cases. The use of special procedures or dedicated courtrooms to deal with drug cases appears to help improve the management of all types of felony cases.

Cases processed through New York City's "N Parts" had significantly faster processing times compared to similar cases adjudicated through regular court parts. Among cases reaching final disposition in the lower court, time to disposition for "N part" cases was 48.9 days, compared to 115.9 days for other court parts. Recognizing that some of the differences in processing time may be attributable to differences in case or defendant characteristics, multivariate analyses were used to test the independent effect of court part, when controlling for borough, prior felony convictions, and release status. These analyses support the earlier conclusions: court type was the best independent predictor of processing time. The model indicated that "N part" processing reduced time to disposition by approximately 85 days, when other factors were held constant.

The time to disposition for New York City "N Part" cases disposed in Superior Court should, by definition, be much shorter compared to other court parts, since arraignment and felony plea normally occur on the same day. "N Part" cases that received felony dispositions in Superior Court had an average processing time of 13.6 days, non-"N part" cases averaged 151.5 days. The independent effects of court type were tested using regression models with results similar to those found for the lower court--processing through the "N Part" reduced time to disposition by 136 days for cases disposed in Superior Court.

Processing Cost

A comparison of sample case and rearrest processing costs between "N parts" and other court parts, provides an estimate of the long-term costs of "fast-track" type drug courts. The average overall cost of "N part" sample cases was approximately one-third the cost of standard processing (\$9,705 vs. \$26,227). When costs associated with incarceration time were excluded, "N Part" processing was only one-tenth as costly as that of non-"N Part" (\$453 vs. \$4,618 per case). For cases disposed in Superior Court, the differences were even greater.

The average rearrest costs also were substantially lower for sample arrest "N Part" cases, even though the prevalence of rearrest was roughly equal for "N Part" and non-"N Part" cases. The average total processing cost for the sample case plus the first rearrest for "N Part" cases also was about one-third that of non-"N Part" cases (\$12,367 versus \$36,564).

before the bench rather than a jury. Initially, four case processing tracks were established. Tracks A and B targeted incarcerated and nonincarcerated defendants, respectively, whose cases were deemed amenable to disposition at arraignment, or shortly thereafter, or who were eligible for diversion or immediate treatment referral. Track C was for defendants with multiple cases pending who were offered an opportunity to dispose of all of their pending cases in a consolidated plea agreement. All other cases were assigned to Track D.

After the first year, the EDCM program was expanded to the rest of the criminal docket by creating three additional tracks. Regardless of track assignment, each defendant was screened shortly after arrest to determine the extent of drug usage, to assess the amenability to treatment and rehabilitation services, and to identify potential treatment and other referral programs that could be brought to the attention of the EDCM judge as soon as the defendant appeared in the Court of Common Pleas.

Do Drug Courts Reduce Case Processing Time and Costs?

Several evaluations have now been conducted of case processing time in drug courts. As Inset 6 reveals, drug courts significantly reduce the time taken to process many cases. In addition, an evaluation of New York City's "N Parts" indicated a significant reduction in processing costs (see Inset 6).

V. SUBSTANCE ABUSE TREATMENT PROGRAMS THROUGH PROBATION

NATIONWIDE PROGRAMS

Community Corrections Programs

Community corrections is defined as corrections practiced in the community, rather than in a corrections facility. Corrections should be practiced with and for the community. Treatment for substance abusers is often an integral part of community corrections. A paper by Gendreau (1993) reviewed effective interventions, including substance abuse interventions, for offenders involved in community corrections (see Inset 7).

Colorado's Community Corrections

Community corrections in Colorado consists of approximately 20 independently-run halfway houses that provide a structured residential setting. Offenders may be diverted into this program instead of going to prison or they may transition through community corrections after serving time in prison. The Colorado community corrections program costs about \$33.33 per offender per day, with an average of 735 clients participating. Program conditions include curfew requirements, no drug and alcohol use, random drug and alcohol testing, payment of up to \$10 per day as a contribution to program costs, and employment.

Connecticut's Multi-level Community Corrections Program

The Connecticut Community Corrections Program involves a number of programs that include innovative treatment options as well as sanctions for violations. See Appendix II for detailed descriptions of these programs.

INSET 7
EFFECTIVE SUBSTANCE ABUSE INTERVENTIONS
IN COMMUNITY CORRECTIONS

[Gendreau, 1993]

- (1) **Intervention for higher risk clients should include intensive services** that occupy 40-70% of the offender's time and are three to nine months in duration.
 - (2) **Services should be behavioral in nature.** This could include operant conditioning strategies, such as token economies and contingency management programs. Social learning and cognitive behavioral strategies, including modeling, behavioral rehearsal, problem-solving skills, and skills building, are used to reinforce alternatives to anti-social styles of thinking, acting, and feeling.
 - (3) **The treatment approach must match the learning style and personality of the offender.** In addition, it is recommended that the therapist is "matched" to the offender. For example, if the offender is prone to anxiety, the therapist most helpful would be one with higher levels of interpersonal interactions.
 - (4) **Planning for relapse in the community should be emphasized.** Relapse prevention strategies should be taught and role-played by the offender and therapist.
 - (5) Traditional psychodynamic therapies, non-directive relationship oriented therapies, and traditional medical model therapies, among others, **were ineffective interventions.** The author also reviewed the literature on the effectiveness of "punishing smart" strategies, such as bootcamps, restitution, shock incarceration, and scared straight. Of the 174 studies reviewed, only two studies reported recidivism rates of more than 20%. Among the many possible explanations of these findings, the author noted that individuals who are resistant to punishment often are psychopathic, risk-takers, under the influence of a substance, have a previous history of being punished and are often less intelligent.
-

Intensive Supervision Programs

Colorado's Intensive Supervision Probation (ISP) Program

Colorado's Intensive Supervision Probation (ISP) Program is intended to divert offenders away from prison and into community alternatives. One of the primary goals of the ISP program is to target drug offenders. The cost of the ISP program is about \$6.07 per offender per day, which should be compared with the costs of community corrections (\$33.33), probation (\$2.35), and prison (\$52.68). Typical program components include:

- A minimum of two scheduled contacts per week with an ISP officers.
- Random contacts with an ISP officer.
- Prohibition of drug and alcohol use.
- Random drug and alcohol testing.
- Participation in treatment is obligatory
- Payments of \$20.00 in supervision fees each month.

Sentenced crimes of offenders currently participating in the ISP were:

- property/fraud (44%)
- drug crimes (35%)
- violent crimes (13%)
- sex crimes (4%)
- other crimes (4%)

According to a recent report, 86.5% of the ISP participants were found to need drug treatment, 76.5% needed alcohol treatment, and 40.9% were in need of mental health treatment. Outcome evaluations indicated that eligible offenders who participated in employment, counseling, and Alcoholics Anonymous were the most successful. A key problem with the program is drop-out: less than half of the offenders assigned to ISP complete the program.

Arizona's Intensive Probation Services

In 1991, Arizona developed Intensive Probation Services (IPS) to divert serious, but non-violent, offenders from prison. Offenders who have been convicted of a felony and are not eligible for regular probation, or offenders who have violated probation, are eligible for the program. The program requires participants to be employed full-time and complete 40 hours of community service each month. Major benefits from IPS include:

- Cost reduction. The average cost per year of IPS is \$4,270 per offender, compared with the average yearly prison cost of \$16,405 per offender.
- IPS sets not only punishment and public protection as goals, but also rehabilitation. IPS offenders are working individuals who are able to support themselves, pay taxes, restitution, fees, and child support. In addition, the offenders participating in this program perform hundreds of hours of community services.

NEW MEXICO PROGRAMS

Probation and Substance Abuse Treatment (personal communication, Erma Sedillo)

Based on information from presentencing assessment and on recommendations from the probation officer (PO), offenders are assigned to drug/alcohol treatment as part of their probation program. Offenders are typically assigned to one of four levels of probation:

- conditional discharge
- deferred sentence
- suspended sentence
- unsupervised probation

The first three of these require monitoring by probation officers, who often act as referral agents, helping offenders to find an appropriate program that addresses their individual needs and, in most cases, a program that they can afford. There are no department guidelines for referrals, nor is there an information database to which officers may turn. Probation officers must often obtain information individually, and offenders are frequently sent to whatever treatment program is available near their home. Sometimes referral involves sending clients to another state for treatment, or "courtesy supervision." For example, due to the limited inpatient facilities for offenders in New Mexico, substance users who require long term inpatient treatment are often sent to other states. This process involves an official transfer and assignment to a probation officer, who applies the regulations required by the host state. This type of transfer is typically done without charge, and is most commonly used for offenders with family members who can care for them in another state.

Once an offender has entered a treatment program, weekly progress reports should be filed by the program, informing the PO as to the offender's attendance and progress in the

program. If the offender does not attend, or does not meet the program requirements, the PO has a limited number of sanctions with which to work:

- File a preliminary violation report, in which the offender is found to be non-compliant. The offender is referred to the judge who sentenced the case. The PO may recommend that the offender continue on probation.
- File a full violation report. This may lead to a revocation of probation or a change of sentence status (e.g., from deferred sentence to suspended sentence). Offenders may be referred to Community Corrections, Intensive Supervision Probation, or Drug Court, if these programs are thought to be more appropriate.
- If more information is required about the offender's diagnostic status, referral may be made to a 60 day diagnostic evaluation.

With any technical violation, the probation officer has a great deal of discretion regarding when and what to report. Often, a reminder about the possibility of assignment to a 60 day diagnostic evaluation or a change in sentencing status is enough to re-establish an offender's compliance with a treatment program.

There is no program assessment information available to guide probation officers in making referrals. The latter are made on the basis of each program's treatment claims, rather than on systematic outcome evaluations. There is currently no regular assessment of treatment programs' efficacy, nor any evaluation of whether they are addressing client needs in an adequate and professional manner.

New Mexico Community Corrections and Intensive Supervision Programs

Community Corrections and Intensive Supervision are community-based corrections programs administered by the Probation and Parole Division of the New Mexico Corrections Department. The Department operates, or contracts to operate, community-based corrections programs to serve qualifying adult convicted felons in communities throughout New Mexico.

Three categories of adults who have been convicted of a felony in New Mexico may be considered for this program:

- *Reintegration candidates* are adults currently serving sentences for New Mexico felony convictions who are classified as minimum custody. Inmates must be within twelve months of their parole eligibility date or discharge date (including projected good time) to be eligible. These clients must be willing to live in an area served by a program to qualify.
- *Diversion (Probation) candidates* may have a deferred or suspended felony sentence with Intensive Supervision as a condition of their probation. They may be convicted of a violent or non-violent offense and must live in the area the program serves.
- *Parole status candidates* may be referred by Probation and Parole Officers during the parole plan checkout process, by institutional Classification Officers assisting with parole plans, or as a recommendation to the Parole Board by the supervising Probation and Parole Officer as an alternative to the revocation of parole. The Adult Parole Board may also require Community Corrections or Intensive Supervision participation as a condition of parole.

To participate in the Community Corrections Program (CCP) or Intensive Supervision Program (ISP) for adult offenders, the candidate must meet several criteria.

- Reintegration candidates must be classified as a minimum security custody.
- They must be willing to perform community service or provide court-ordered restitution.
- They must be willing to enter into a contract that establishes behavioral conditions and treatment objectives that must be achieved before release from the program.
- They must be willing to wear electronic monitoring equipment.
- Reintegration referrals to a Community Corrections program must be approved by the state selection panel. All referrals, except ISP candidates, must be approved by a local selection panel.

Referrals are made by the Judge, a Probation-Parole officer or an institutional Classification Officer. Offenders are interviewed to establish needs and risk levels, willingness to participate and other pertinent information. Offenders are not considered for the CCP if they are unwilling to sign a behavioral contract.

Although CCP and ISP are similar programs, there are some fundamental differences in their content. The CCP was specifically designed to assist offenders with rehabilitative services. Offenders' rehabilitative needs are assessed prior to acceptance into the program and particular interventions (e.g., alcohol or drug treatment) may be a requirement for successful completion of the program. The CCP may assist offenders directly or indirectly, helping to meet client needs with programs such as rent assistance, job development and placement, and counseling. ISPs are primarily designed to monitor intensively the client's behavior while in the program. The client must also agree to a contract that establishes certain behavioral requirements. Electronic monitoring devices may be used for supervision. Services are not provided for clients, but they may be required to attend rehabilitative services as a condition of their behavioral contract.

Substance Use Data for Community Corrections Clients

More than two thirds (68%) of the clients accepted into community corrections have been determined to engage in abuse of alcohol, and 65% were determined to have abused drugs in the past. Thus, substance abuse treatment and monitoring is a common part of behavioral contracts. The majority of clients (87%) are required to participate in some type of substance abuse treatment. On average (averaged over all state CCPs), 45% of offenders are referred to private agencies to receive those services and the remainder receive direct services. Of Community Corrections offenders, 90% are required to participate in substance abuse surveillance, with 43% of offenders provided with direct service, 27% referred to other agencies, and the remainder receive a combination of both. At discharge, alcohol abuse is reported by only 20% of offenders and drug abuse by 22%.

Programs

Community Corrections regional offices are located throughout the state. The formal operation of each program is very similar, although each has access to different services. For example, the Region V Community Corrections Program, in Albuquerque, provides the following services: supervision, counseling, life skills training, women and family issues classes, housing and

transportation assistance, and community service placement. Seventy percent of clients receiving substance abuse services were referred to other agencies. In Roswell, the Community Corrections Program is administered by Counseling Associates. Program components include: enhanced monitoring, job development, community service and a substance abuse treatment program that emphasizes family involvement. Housing assistance is provided for some clients, as well as educational tutoring for those who require it. Of Roswell clients, 75% are required to attend substance abuse treatment.

VI. SOME OTHER CONSIDERATIONS AFFECTING TREATMENT DECISIONS

DOES DRUG TESTING OF ARRESTEES HELP TO PREDICT PRETRIAL MISCONDUCT?

When considering a defendant for pretrial release, a judge must decide whether there is a significant danger to the public. Testing for drugs during pretrial processing has been suggested as a method for helping the judge to decide whether to order supervised release, continued drug testing, drug treatment, or detention until trial. Positive results from urinalysis may be one way to identify defendants who are at high risk of pretrial misconduct (i.e., an arrest, or failure to appear for trial).

The National Institute of Justice (NIJ) sponsored a study to analyze data previously gathered from six different sites around the United States to determine the predictive value of drug testing for pretrial release defendants. The data used in this study were records of pretrial misconduct of arrestees who were booked into jail at six sites: Washington; Prince George's County, Maryland; Milwaukee County, Wisconsin; Maricopa County, Arizona; Manhattan, New York; and Dade County, Florida.

The data showed that heroin use, as determined by urinalysis, appeared to be a predictor of rearrest. Additionally, positive tests for cocaine predicted failure to appear in court. Testing for marijuana, PCP, amphetamines, and other drugs did not appear to be particularly effective in predicting rearrest or failure to appear. Even when individuals tested positive for more than one drug, testing did not improve the accuracy of predicting rearrests. However, the research findings indicated a number of variables, other than substance use, that were more significantly related to pretrial misconduct, including criminal history, employment and education history, and first time arrests.

In fact, the significance of a positive correlation between a positive drug test and rearrest appeared slight. First-time drug users who tested positive for any illicit substance were better risks for release than repeat offenders who did not test positive for recent drug use. One implication of these findings is that much of the ambiguity of drug-testing results derives from the inability of urinalysis to separate high-rate users from low-rate users, those who are addicted and who will commit crimes to maintain their drug needs from those who may buy drugs on a casual basis with money they earned legitimately. To address this issue, it may be important to use urine test results from two or more previous sequential arrests to establish that an arrestee is a problem user, conduct many urine tests during the pretrial period to determine the level of drug use, and use

other tests for drugs, such as hair testing. Hair testing appears to be a better determinant of long-term drug consumption.

TAKING A WEEKEND TO PREPARE FOR TREATMENT PROGRAMS

The Weekend Intervention Program (WIP) provides assessment and intervention services to drug and alcohol abusing populations. Since 1978, WIP has serviced over 26,000 drug and alcohol impaired drivers and other substance abuse offenders. Assessment focuses on determining the extent and severity of drug use, and results in a treatment plan. WIP offers an intensive, three-day residential program to which offenders may be remanded by the courts or other supervising agencies. The three-day program's goal is to educate and intervene with substance abusers through counseling sessions utilizing a cognitive-behavioral approach. During the counseling sessions, denial is confronted and offenders are encouraged to recognize their need for help. WIP was found to be successful in identifying appropriate treatment programs and in preparing offenders for treatment. A 2-year study conducted by the National Traffic Safety Administration examined the WIP program in Dayton, Ohio. WIP was found to be superior (measured by recidivism rate) to a brief jail sentence or a suspended sentence with a fine. The lowest recidivism rate was in a group for which the court mandated WIP treatment recommendations (Siegal & Cole, 1993).

CASE MANAGEMENT AS AN ALTERNATIVE TO COERCION

Research has shown that achieving long-lasting behavior change among drug users--reducing drug use and associated criminality--is unlikely without drug abuse treatment and other supportive services. Drug users at risk for HIV infection often have multiple and immediate unmet needs, yet such drug abusers face unique barriers to receiving services. They have the reputation of being the least desirable group with which to work, the most unstable, and the most uncooperative. Many service agencies establish barriers that discourage access for this population. Because of its focus on leveraging difficult-to-access services, case management is particularly appropriate for persons with both criminal and drug involvement.

A recent study of almost 1,400 arrestees, conducted in two sites between 1991 and 1993 with support from the National Institute of Justice and the National Institute on Drug Abuse, explored effects of intensive case management. The findings revealed that this intervention, delivered for 6 months to drug-involved arrestees released after booking, significantly reduced drug use in one of the two cities and lowered criminal recidivism in both cities in the study.

Agencies in Portland, Oregon, and Washington, D.C., experienced in providing case management to populations similar to the drug- and crime-involved study participants, were contracted to implement and evaluate a case management program for drug-involved arrestees in the two cities. Certain minimal parameters were stipulated:

- Average caseload size was set at 30 per full-time case manager. An average of two face-to-face contacts and two telephone contacts per month was the recommended minimum level of service for each active client.

- Agencies were required to have formal referral arrangements with specified types of community service providers, including those offering drug treatment programs; HIV prevention programs, counseling, and testing sites; and health and human service agencies.
- Case management and other study staff were prohibited from providing to the criminal justice system information about any project participant.

Participants were assigned at random to one of three types of interventions: control, intermediate, or enhanced. All participants viewed a specially prepared motivational/educational videotape and received a referral guide to relevant services in their community. This was the extent of case management for the control group. Participants assigned to intermediate intervention also received one counseling and referral session with a specialist. Those assigned to enhanced intervention were enrolled in the full 6-month program. Outcomes were evaluated using formal assessment instruments to measure self-reported behavior at the start of the program and again at 3 months and 6 months, and independent data from criminal justice and drug treatment systems were analyzed to gauge the validity of these self-reports.

Reductions in drug use and increased drug abuse treatment enrollment were reported by participants in all three interventions. In Washington, D.C., case management participants reduced drug use to a greater extent than participants assigned to the two other interventions, and case management participants were also more likely to report enrollment in drug abuse treatment. While case management participants in Portland did not differ from participants in the two other interventions with regard to drug use or treatment enrollment, case management clients who received more intensive services were more likely to enroll in treatment. In both cities, case management participants reported less criminal behavior than other participants. In Washington, the reported reduction was corroborated by criminal justice system data showing that case management participants were less likely to be rearrested than other participants.

Thus, case management shows promise in helping to improve behavioral outcomes in a population considered resistant to ameliorative interventions. This project suggests the need for continued integration of a public health approach into a criminal justice setting. Case management in this project had some unique aspects. It incorporated the drug counseling and referral elements of traditional treatment programs but without their supervisory and coercive elements (including periodic urine testing). Although participants were recruited among arrestees, the interventions were not conducted within the criminal justice system, and this factor contributed to compliance. The absence of coercion appeared to enhance the relationship between case managers and clients. In establishing rapport, case managers crossed boundaries maintained in conventional counseling through limited amounts of self-disclosure and direct expressions of emotional support. The case management strategy was more tolerant of relapse or recidivism.

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APPENDIX I

**NEW MEXICO STATE STATUTE 31, ARTICLE 16A; PRE-PROSECUTION
DIVERSION**

History: 1953 Comp., § 41-22-10 enacted by Laws 1968, ch. 69, § 67.

Effective dates.-Laws 1968, ch. 69, § 70, makes the act effective on July 1, 1969.

Laws 1968, ch. 69, §§ 46 and 58 through 68, makes the act effective on July 1, 1968.

Repealing clauses. - Laws 1968, ch. 69, § 69, repeals 13-8-14, 13-8-15, 16-3-2 to 16-3-65, 17-1-6.1 to 17-1-9, 17-1-10, 21-10-9, 22-11-38 to 22-11-40, 25-1-14, 41-11-2 and 41-11-3, 1953 Comp.

Am. Jur. 2d. A.L.R. and C.J.S. references. - Incompetency, negligence, illness or the like of counsel as ground for new trial or reversal in criminal case, 24 A.L.R. 1025; 64 A.L.R. 436.

Attorney's refusal to accept appointment to defend indigent, or to proceed in such defense, as contempt, 36 A.L.R. 3d 1221.

Court-appointed attorney as subject to liability under 42 U.S.C.S. § 1983, 36 A.L.R. Fed. 594.

ARTICLE 16A

Preprosecution Diversion

Sec.

31-16A-1. Short title.

31-16A-2. Purpose.

31-16A-3. Program Establishment.

31-16A-4. Eligibility.

Sec.

31-16A-5. Program functions and responsibilities.

31-16A-6. Waivers; suspension of criminal proceedings.

31-16A-7. Program participation; costs; termination.

31-16A-8. Record keeping.

31-16A-1. Short title.

This act [31-16A-1 to 31-16A-8 NMSA 1978] may be cited as the "Preprosecution Diversion Act."

History: Laws 1981, ch. 33, § 1.

Effective dates. - Laws 1981, ch. 33, contains no effective date provision, but was enacted at the session

which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

31-16A-2. Purpose.

The purposes of the Preprosecution Diversion Act [31-16A-1 to 31-16A-8 NMSA 1978] are to remove those persons from the criminal justice system who are most amenable to rehabilitation and least likely to commit future offenses, to provide those persons with services designed to assist them in avoiding future criminal activity, to conserve community and criminal justice resources, to provide standard guidelines and to evaluate preprosecution programs.

History: Laws 1981, ch. 33, § 2.

Effective dates. - Laws 1981, ch. 33, contains no effective date provision, but was enacted at the session

which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

31-16A-3. Program establishment.

Each district attorney shall establish a preprosecution diversion program in his judicial district in accordance with the provisions of the Preprosecution Diversion Act [31-16A-1 to 31-16A-8 NMSA 1978] to the extent public or private funds permit.

History: Laws 1981, ch. 33, § 3.

Effective dates. - Laws 1981, ch. 33, contains no effective date provision, but was enacted at the session

which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

31-16A-4. Eligibility.

A. A defendant must meet the following minimum criteria to be eligible for a preprosecution diversion program:

(1) the defendant must have no prior felony convictions for a violent crime and no prior felony convictions for any crime for the previous ten years;

(2) the crime alleged to have been committed by the defendant is nonviolent in nature, with the exception of domestic disputes not involving a minor;

(3) if the defendant was on probation previously, his probation must not have been revoked or unsatisfactorily discharged;

(4) the defendant has not been admitted into a similar program for the previous ten years;

(5) the defendant is willing to participate in the program and submit to all program requirements;

(6) the crime alleged to have been committed by the defendant does not involve substantial sale or possession of controlled substances; and

(7) a person meeting all of the above criteria and any additional criteria established by the district attorney may be entered into the preprosecution diversion program. The district attorney may elect to not divert a person to the preprosecution diversion program even though that person meets the minimum criteria herein set forth. A decision by the district attorney to not divert to the preprosecution diversion program is not subject to appeal and may not be raised as a defense to any prosecution or habitual offender proceeding.

B. A district attorney may set additional criteria.

History: Laws 1981, ch. 33, § 4.

Effective dates. - Laws 1981, ch. 33, contains no effective date provision, but was enacted at the session

which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

31-16A-5. Program functions and responsibilities.

The preprosecution diversion program in each judicial district shall include:

A. individual counseling and guidance for all participants;

B. required victim restitution where applicable to the extent practical. In addition to monetary restitution, a program may require public service restitution; and

C. referral resources where clients may be sent for treatment and rehabilitation.

History: Laws 1981, ch. 33, § 5.

Effective dates. - Laws 1981, ch. 33, contains no effective date provision, but was enacted at the

session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

31-16A-6. Waivers; suspension of criminal proceedings.

A. A defendant must secure or be appointed defense counsel to be present at a preprosecution diversion screening interview prior to applying for acceptance into a preprosecution diversion program, and, upon applying, the defendant shall waive his constitutional right to a preliminary hearing as set forth in Rule 15(d) of the Rules of Criminal Procedure for the Magistrate Courts [Rule 6-202D NMRA].

B. If a defendant is certified eligible by the district attorney and by the preprosecution diversion program, the defendant shall also waive his constitutional right to a speedy trial and any rights as provided by Rule 37(b) of the Rules of Criminal Procedure for the District Court [Courts]. Upon entry of this

waiver, the district attorney shall divert the defendant into the preprosecution diversion program and criminal proceedings against the defendant shall be suspended. Participating defendants shall also waive any confidentiality provided by the Arrest Record Information Act [29-10-1 to 29-10-8 NMSA 1978] to permit scrutiny of records; provided that the publication of the personal information, except the name of the defendant, gathered while a defendant is participating in a program shall not be a public record.

History: Laws 1981, ch. 33, § 6.
Effective dates. - Laws 1981, ch. 33, contains no effective date provision, but was enacted at the session

which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

31-16A-7. Program participation; costs; termination.

- A. A defendant may be diverted to a preprosecution diversion program for no less than six months and no longer than two years. A district attorney may extend the diversion period for a defendant as a disciplinary measure or to allow adequate time for restitution, provided that the extension coupled with the original period does not exceed two years. A district attorney may require as a program requirement that a defendant agree to such reasonable conditions as the district attorney deems necessary to ensure that the defendant will observe the laws of the United States and the various states and the ordinances of any municipality and shall require the defendant to pay to his office the costs related to his participation in the program not exceeding one thousand twenty dollars (\$1,020) annually to be paid in monthly installments of not less than fifteen dollars (\$15.00) and not more than eighty-five dollars (\$85.00), subject to modification by the district attorney on the basis of changed financial circumstances. All costs collected by a district attorney pursuant to this subsection shall be transmitted to the administrative office of the district attorneys for credit to the district attorney fund.
- B. If a defendant does not comply with the terms, conditions and requirements of a preprosecution diversion program, his participation in the program shall be terminated, and the district attorney may proceed with the suspended criminal prosecution of the defendant.
- C. The participation of a defendant in a preprosecution diversion program is terminated, the district attorney shall state in writing the specific reasons for the termination, which reasons shall be available for review by the defendant and his counsel.

History: Laws 1981, ch. 33, § 7; 1984, ch. 110, § 5.
Cross-references. - As to creation of district attorney fund, see 36-1-27 NMSA 1978.

The 1984 amendment added the third and fourth sentences in Subsection A.

Effective dates. - Laws 1981, ch. 33, contains no effective date provision, but was enacted at the session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

Laws 1984, ch. 110, contains no effective date provision. But was enacted at the session which adjourned on February 16, 1984. See N.M. Const., Art. IV, § 23.

Prosecutor's unilateral termination limited. - The prosecutor's authority to unilaterally terminate a diversion

program is limited to a termination on the basis of defendant's noncompliance with the program. *State v. Trammel*, N.M., 673 P.2d 827 (Ct. App. 1983).

A trial court may require a prosecutor to keep his end of a diversion program agreement and may determine whether the prosecutor has terminated the preprosecution diversion agreement in violation of his statutory authority. *State v. Trammel*, N.M., 673 P.2d 827 (Ct. App. 1983).

Wrongful termination of agreement as defense. - A claim that a prosecutor has wrongly terminated a diversion agreement is a defense to the initiation of a criminal prosecution and must be raised prior to trial. *State v. Trammel*, N.M., 673 P.2D 827 (Ct. App. 1983).

31-16A-8. Record keeping.

- A. Each district attorney shall maintain an accurate record of each individual accepted into a preprosecution diversion program for the purpose of complying with the requirements of Paragraph (4) of Subsection A of Section 4 [31-16A-4A(4) NMSA 1978] of the Preprosecution Diversion Act.
- B. Each district attorney shall be required to forward to the state police accurate records of acceptance, successful termination or unsuccessful termination of each individual accepted into the program. The state police shall be required to maintain accurate records of all information forwarded to them by each respective district attorney concerning acceptance, successful termination or unsuccessful termination of all preprosecution diversion programs.

History: Laws 1981, ch. 33, § 8.
Effective dates. - Laws 1981, ch. 33, contains no effective date provision, but was enacted at the session

which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

ARTICLE 16A**Preprosecution Diversion****31-16A-5. Program functions and responsibilities.**

Termination of preprosecution agreement by state. - The state may terminate a preprosecution diversion agreement, even if the sole ground is the defendant's nonwilful failure to make restitution, but only if there are

no adequate alternatives to termination which will meet the state's legitimate penological interests. State v. Jimenez, 111 N.M. 782, 810 P.2d 801 (1991).

31-16A-7. Program participation; costs; termination.

Termination of preprosecution agreement by state. - The state may terminate a preprosecution diversion agreement, even if the sole ground is the defendant's nonwilful failure to make restitution, but only if there are no adequate alternatives to termination which will meet the state's legitimate penological interests. State v. Jimenez, 111 N.M. 782, 810 P.2d 801 (1991).

Court review of reasons for failure to pay. - In proceedings to terminate a preprosecution diversion agreement for failure to pay restitution, the court reviewing the termination must first inquire into the reasons for the failure to pay. State v. Jimenez, 111 N.M. 782, 810 P.2D 801 (1991).

If a defendant has wilfully refused to pay or has failed to make sufficient bona fide efforts legally to acquire the resources to pay, the state may revoke a preprosecution diversion agreement and begin prosecution of the alleged crime or crimes. If, however, the court determines that the defendant has not been at fault in failing to make restitution, then the court must consider whether there are alternatives to termination which will meet the state's

legitimate penal interests. State v. Jimenez, 111 N.M. 782, 810 P.2d 801 (1991).

Only if a court determines that alternative measures are not adequate to meet the state's interests may that court uphold termination of a preprosecution diversion agreement. When the defendant has made sufficient bona fide efforts to pay. State v. Jimenez, 111 N.M. 782, 810 P.2d 801 (1991). Six-month trial period starts when arraignment waived. - Since the defendant was originally indicted for numerous offenses, was diverted into a preprosecution diversion program (PDP), after which the state dismissed the indictment, was later terminated from the program because she had violated the terms of PDP contract, was reindicted on the same charges for which she had previously been indicted, and waived her arraignment on the charges in the second indictment, the six-month time period for commencement of trial (5-604B SCRA 1986) was calculated from the date the defendant waived arraignment on the second complaint, and not from the date the defendant was terminated from the PDP, where there was no evidence that the dismissal of the initial indictment and the defendant's later reindictment were

carried out for purposes of delay or an attempt to circumvent Rule 5-604B(6) SCRA 1986. State v. Altherr, 117 N.M. 403, 872 P.2d 376 (Ct. App. 1994).

APPENDIX II

THE CONNECTICUT COMMUNITY CORRECTIONS PROGRAM

Connecticut's Alternatives to Incarceration Program:

Connecticut's Alternatives to Incarceration Program offers multi-level, community-based programs for offenders in lieu of incarceration. The program is available to offenders who are 16 years and older who are either pre-trial defendants or sentenced offenders.

There are a number of programs available:

- **Alternative to Incarceration Centers (AIC):** The AICs and Transitional Housing supervise and provide services for pre-trial and court sentenced individuals. Clients must report to the AIC three times a week if employed and five times a week if unemployed. AICs utilize urinalysis to monitor drug use. Services provided include substance abuse treatment, job development, educational/vocational assistance, life skills training, family assistance, anger management training, and income maintenance assistance. Clients involved in this program must perform community service. The length of stay varies. For those individuals who have been sentenced, length of stay is until the case is disposed. For individuals who have been sentenced, length of stay is a maximum term of 6 months. Non-compliance is reported to the referring agency. Transitional housing offers 24 hour supervision. These beds are often used for non-compliance with day reporting.
- **Day Incarceration Center (DIC):** The DICs are set up to closely monitor and supervise clients. These centers are typically for the most serious offenders. The clients are monitored during the daytime hours for 7 days per week. DICs may require electronic monitoring at night to ensure the clients are at home. DIC clients may be required to reside in the transitional housing. There is frequent testing for drug abuse. Program services include educational/vocational services, GED preparation, anger management, life skills and employment assistance. Substance abuse, family, individual, and group counseling are provided. Community service is required. Sentenced clients are required to participate for four months and pre-trial clients are involved until disposition of their case. Weekly assessments are completed and a case-specific plan is prepared and implemented.
- **Pretrial Services Programs:** This program provides monitoring and social services to defendants who are awaiting trial. Screening of client needs is completed and referral to appropriate programs are made. Referrals are made to drug and alcohol treatment programs, mental health programs, family counseling programs, and employment/education programs. Non-compliance is reported and clients may be incarcerated until trial at that point.
- **Electronic Monitoring:** Electronic monitoring is used to allow clients to remain in their homes during the night or other specified times. There are three levels of monitoring clients: (1) curfew requires offenders to be in their homes at certain times, (2) home detention requires the client to be at home at all times except for employment, education, treatment, or other specified activities, and (3) home incarceration requires the offender to be at home except for medical emergencies, with no visitors allowed. Monitoring is ongoing. If the client violates electronic monitoring, the electronic monitoring contractor receives an electronic signal. The referral source is then notified.

- **Project Green:** Project Green is an innovative program that combines community service with substance abuse treatment. The residential program offers highly structured comprehensive substance abuse education and treatment. The program is targeted at those offenders who are addicted/dependent on drugs and/or alcohol and are capable of performing intensive community service labor. Substance abuse treatment focuses on assistance in living substance free life styles, building self-esteem, acquiring work skills, and obtaining employment prior to reintegrating into the community. Program length is four months.
- **Intensive Youth Services (IYS):** This program was designed to monitor and supervise clients between the ages of 16 and 24. The program is highly structured and provides counseling, treatment, and education. Within the program, clients are taught math, reading, computers, and English. Clients are required to report to the program at 9:00 am through 4:00 pm, Monday through Friday. Urine screens are taken. Length of stay varies. Pre-trial clients remain until the case is disposed. For clients, a maximum stay of 6 months is required. Clients who fail to comply with the program are reported, discharged, and returned to the courts for re-incarceration or other actions.
- **Traditional Inpatient Drug & Alcohol Treatment Programs:** This residential program provides services including drug and alcohol treatment, detoxification, dual diagnosis treatment, and halfway house services (e.g., housing/work release). The substance abuse treatment program includes comprehensive supervision and treatment services. Individuals are taught skills to aid in their efforts to live substance-free lives, skills to enhance self-esteem, vocational/educational skills, and independent living skills, among others. Special programs are available for the dually-diagnosed (e.g., substance abuse and mentally ill). Medical detoxification is also available.
- **Youth Confinement Center (YCC):** This residential program provides highly structured substance abuse treatment for offenders between the ages of 16 and 24. The program provides work and education training, along with therapeutic intervention for substance abuse. The academic portion offers basic educational skills, GED preparation, ESL and college preparatory course work. Offenders are sentenced to participate in this program for at least 6 months, although offenders may be discharged earlier if they have maintained positive program performance and have an appropriate aftercare plan.
- **Women and Children Program:** This program, known as Fresh Start, provides substance abuse treatment and rehabilitation in a residential setting. Dependent children may reside with the program clients. The program accepts alcohol or drug dependent women between the ages of 16 and 30 who are facing incarceration. The program is based upon a four-step model: (1) assessment to determine the appropriate placement level and to develop an individualized plan, (2) intensive substance abuse treatment, including the use of 12 step groups, (3) community reentry preparation to equip the women with the skills needed to return to the community, and (4) trial apartment living with continuous monitoring through visits by the case manager and probation officer.

Initial findings indicate that there are fewer new arrests for clients who participate in the Alternatives to Incarceration Program when compared to those clients who were under the Department of Corrections. Specifically, the differences in the arrest rates were particularly apparent for drug offenders overall, for offenders under 21 years of age, for drug offenders with

prior convictions, for drug offenders under 21 years of age, for clients with previous convictions, and for violent offenders.

Accomplishments of the program include:

- The program supervises over 4,500 offenders daily, who would otherwise be incarcerated. Department of Corrections capacity has dropped below 100% and several small facilities have closed during 1995.
- The use of the diversion programs has allowed the Department of Corrections to hold incarcerated prisoners for longer periods of time. The parole board will grant release to approximately half of the offenders receiving hearings. The most violent and serious offenders will serve 100% of their sentences.
- Independent evaluations of the pre-trial and sentenced offenders have been completed. The findings indicate that rearrest/recidivism rates are lower for offenders participating in the diversion program when compared with offenders who have been incarcerated.
- For pretrial clients, those defendants participating in the diversion program posed less risk to the community of new arrests and failures to appear in courts than defendants who were ordered to post bond without additional conditions.
- Sentenced offenders involved in the diversion program posed less risk to public safety as measured by new arrests over time when compared to a sample of offenders who were released after having been incarcerated. Youth offenders who were convicted of drug offenses are doing better in the first two years after their release from the program than other types of offenders under community supervision.
- Use of the diversion program results in significant savings. For Connecticut, the average cost of an alternative incarceration program slot is \$5000 per year, while the average cost of imprisoning the offender is \$25,000 per year. In addition, use of the program saves capital costs required to construct new prisons.