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THE AMERICAN UNIVERSITY

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PROGRAM BRIEF

ADJUDICATION OF DRUG OFFENDERS

**Prepared in Conjunction with
Regulations Implementing
The Anti-Drug Abuse Act of 1986**

March 1987

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ADJUDICATION OF DRUG OFFENDERS

PROGRAM BRIEF

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STATE IMPLEMENTATION OF THE ANTI-DRUG ABUSE ACT OF 1986

ADJUDICATION PROGRAM BRIEF

I. Introduction

The Anti-Drug Abuse Act of 1986 (Pub L. 99-56) authorizes the Bureau of Justice Assistance (BJA) of the U.S. Department of Justice to award grants to the states, on a formula basis, to develop and implement state-wide strategies to combat the production, distribution and possession of Controlled Dangerous Substances. The Act requires that these state strategies be developed in a coordinated manner which addresses the systemwide planning necessary to implement drug enforcement initiatives undertaken by specific criminal justice agencies.

This Program Brief is one of several Program Briefs prepared by BJA for the implementation of the Anti-Drug Abuse Act of 1986 and addresses adjudication process issues which should be considered in the coordinated, system-wide strategies required under the Act. Included in the definition of "adjudication" are all of the functions performed by the prosecution, defense, pre-trial agencies, courts and agencies performing case disposition tasks. In Section IV, a summary is provided of adjudication programs proven affective in other areas which jurisdictions may consider adapting for the drug program initiatives undertaken under the Act.

II. Lack of Coordination of Current State Narcotics Adjudication Activities

A substantial percentage of all prosecutions are related to the violation of drug laws and/or offenses associated with the need for drugs. As a consequence, all aspects of the network of criminal justice services are increasingly involved in the narcotics control effort, leading to excessive caseloads and workloads. In attempting to deal with this problem, it is common for jurisdictions to merely seek more resources under the assumption that more of the same will lead to a successful response strategy. This assumption does not recognize the interrelationship among criminal justice system agencies and the need to coordinate with one another regarding the impact of programs initiated in one agency on the operational functions of others.

There is a growing awareness that the failure of the criminal justice system to control crime in general and drug abuse in particular is due, in part, to the fact that each of its components work more in isolation of other parts of the "system" than in a unified, goal-directed effort. Critics inside and outside the system have begun to

recognize that too many programs and efforts, however well intentioned and appropriately developed, do not always work because they are not really systemic in design or consideration.

A law enforcement program designed to increase apprehensions, for example, might be considered successful when and if the numbers of targeted perpetrators increase. However, if prosecutors are unable to prosecute and/or if the courts cannot handle the increased dockets in effective and efficient ways, how can the law enforcement program be described as successful from a criminal justice perspective? Similarly, if the courts double the number of offenders sentenced to correctional facilities or to terms of probation, society may support such an effort to control crime, but correctional facilities and programs may be incapable of managing such caseload increases. Obviously, the criminal justice system will be poorly served if one component shifts its activities without some recognition of the impact of the shift on other components.

Almost two decades ago, a comprehensive statement challenging the idea of a criminal justice "system" appeared in Law and Order Considered, a staff report to the National Commission on the Causes and Prevention of Violence (The Eisenhower Commission). In this report, Professor Daniel J. Freed wrote:

"It is commonly assumed that... three components - law enforcement..., the judicial process... and corrections -- add up to a 'system' of criminal justice. The system, however, is a myth."

"A system implies some unity of purpose and organized interrelationships among component parts. In the typical American city and state, and under federal jurisdiction as well, no such relationship exists. There is, instead, a reasonably well-defined criminal process, a continuum through which each offender may pass; from the hands of the police, to the jurisdiction of the courts, behind the walls of a prison, then back into the street. The inefficiency, fallout, and failure of purpose during this process is notorious."

Although there are considerable disagreements concerning models, theories, and concepts associated with the notion of a system, most authorities agree that a systems approach related to organizational functions must include such issues as interrelationships and goals. When we examine the criminal justice system, these factors are of essential importance.

Without an understanding and recognition of how individuals and organizations relate to and among each other, without an understanding of the significance of organizational goals, and without a recognition of the impact one component of a system can have on other components, we cannot understand the administration of criminal justice nor can we possibly measure success from a system perspective. The best we can do is what we have been doing: measuring success quantitatively on a component basis.

III. Need for Systematized Adjudication Strategies for Handling Narcotics Cases.

Systematization must occur at all levels of the adjudication process and must assure that the agencies involved in the adjudication process are meaningfully linked with one another in terms of their goals, resources and operations.

A. Role of Adjudication Agencies in Developing State Strategies

The Anti-Drug Abuse Act of 1986 requires that each state develop a coordinated strategy for the enforcement of state and local laws relating to the production, possession and distribution of controlled substances. It is essential that the Courts and all other agencies involved in the adjudication process take an active role in developing the state strategies and, in particular, that the impact of any law enforcement initiatives contemplated be clearly delineated and planned for by all adjudication agencies affected. Critical issues which the courts and adjudication agencies must address in implementation planning are discussed in Section E below.

B. Clarifying Federal-State Relationships

There is considerable jurisdictional overlapping between the federal government and the states regarding narcotics prosecution authority and activities. Regularly, the F.B.I. gains information about street sales and possession, and local law enforcement agencies gain intelligence that could greatly assist the federal government in going after large foreign and domestic operations. In addition, there are several federal programs for narcotics enforcement in addition to those which will be undertaken pursuant to the Anti-Drug Abuse Act of 1986.

Federal, state and local drug prosecution activities must be closely coordinated to affectly address the drug abuse problems in each state. Guidelines must be established, including working agreements, "divisions of territory" or some other working basis to encourage the accumulation and dissemination of drug information and intelligence and to coordinate federal and state narcotics prosecution activities. Each state should have working agreements in place that establish policy as to the respective role and activities of federal and state prosecution agencies within the state and for the coordination and

necessary sharing of information among them. These agreements should be designed to encourage effective, intelligent integration of federal and state drug prosecution efforts which support the distinct program priorities of the federal and state agencies involved while, at the same time, minimize duplication of effort and the failure of one level of government to share information which may be essential to another. Consideration should also be given to assuring that state and federal drug control activities are coordinated on a regional basis to avoid simply transferring the drug problem from one jurisdiction to another.

C. Coordinating Multi-Jurisdictional Activities

Many states are part of multi-jurisdictional regions whose criminal justice problems are not tied into state-wide funding or policy. The District of Columbia and New York City areas are good examples of such regions. While recognizing the adjudicative authority of each state, consideration should be given to developing regional multi-jurisdictional approaches to systematize the narcotics adjudication efforts of these jurisdictions. The systemic affectiveness, for example, of a policy in one jurisdiction for limited plea bargaining in certain types of drug offenses, or expedited prosecution, may be diminished if no such policies exist across the border. Apart from policy coordination, additional operational benefits will likely result from regular communication among adjudication agencies in multi-jurisdictional regions regarding drug policies, procedures and caseloads.

D. Coordinating Adjudication Functions with all Agencies Involved in the Drug Initiative

In most jurisdictions, narcotics control activities are undertaken in a piecemeal fashion, with priorities often articulated by one agency with little consideration given to the operational impact and costs required by other agencies responsible for implementation. Since the adjudication process is essential to implementing all drug enforcement initiatives adopted in the state, the importance of coordinated planning of the statewide drug enforcement program with the state's courts and other adjudication agencies cannot be overstated. At a minimum, the coordinated planning between courts and other adjudication agencies and the rest of the system must assure (a) the articulation and application of consistent policies and procedures, (b) assurance of minimal overlapping or duplication of functions and maximum gathering and sharing of information in a timely and meaningful manner; (c) assurance that each agency involved in the adjudication process knows its specific role in implementing the drug initiative and has the capability to do so; and (d) mechanisms for frequent reporting and discussion of

the activities undertaken by each adjudication agency to ascertain the capability of the adjudication system to carry out the state drug strategy, identify problems occurring and to promptly respond to them.

E. Systematic Planning Among Courts and Other Adjudicative Agencies to Implement the State Drug Strategy

In addition to coordinating with the rest of the system, the courts and other adjudicative agencies must systematically plan to implement the state drug strategy. Adjudication agencies within each jurisdiction should consider adopting the following processes or programs for achieving a systematic approach to address drug offenses:

- o mechanisms for accessing information systems for tracking drug defendants to determine amount of criminal activity; participation in justice system programs; "success" of specific programs; program availability; etc.
- o expedited filing of information or indictment by the prosecutor to contribute to the elimination of any unnecessary delay in case processing (e.g., U. S. Attorney's "Day of Arrest Indictment" program in the District of Columbia)
- o court delay reduction programs to expedite the processing of drug cases in order to provide post adjudication court ordered programs as early as possible for the addicted defendant;
- o specialized drug courts with specialized prosecution and defense teams
- o criminal arrestee drug testing;
- o pre-trial defendant drug monitoring, detoxification and rehabilitation;
- o availability of private drug detoxification and rehabilitation services;
- o drug diversion programs
- o halfway houses
- o specialized corrections and probation/parole services for convicted drug offenders;
- o post-adjudication drug monitoring, detoxification and rehabilitation programs for offenders in jail, prison or on probation or parole;

- o sanctions for failure to participate in required (court ordered or parole conditioned) programs;
- o offender payment for detoxification and rehabilitation services where there is an ability to pay;
- o monitoring and independent evaluation of programs to determine what works for what percentage of participants and at what cost;

The mere existence of such discrete programs, however, is not sufficient to assure the systematic coordination of adjudication process functions essential for meaningful implementation of the Anti-Drug Abuse Act. Rather, the impact of each of these programs must be weighed and linked to one another and into a total, coordinated adjudication program plan.

For example, drug diversion programs are meaningless unless they are linked to prosecutorial and court policies, community resources and program experience. Similarly, information systems will be useless unless they are developed to capture the information essential for planning and monitoring activities of the agencies using them. A procedure for expedited filing of indictment or information will lose its impact unless accompanied by appropriate support from public defender agencies. A court delay reduction program will have minimal affect if probation and correctional facilities cannot accommodate an accelerated rate of convicted defendant referrals.

In other words, simply adding a program without carefully linking it with the rest of the system, may have minimal impact. Similarly, policy changes in one agency will have repercussions throughout the system. If the system-wide impact of the policy change is not considered, the best intentioned policy change can be defeated. Changes in plea bargaining policies or sentencing practices, for example, will evoke a response from every agency involved in the adjudication process. Whether that response will be to support the policy change or to defeat it will, in large part, depend upon the nature of coordinated planning that was undertaken to put the policy in effect. Most criminal justice systems operate on a delicate balance of policy and practical considerations which are applied to decisions made during each stage of the criminal justice process, from initial arrest to final disposition. The impact of "tampering" with this balance, regardless of the

beneficial community goals such "tampering" seeks to achieve, must be dealt with early on so that the system does not become imbalanced, dysfunctional or unable to perform.

F. Assessing Current Drug Adjudication Activities and Resource Needs to Implement the State Drug Strategy

Prior to or within the framework of developing a systematic adjudication program for dealing with drug offenders, a thorough assessment should be made of existing adjudication drug programs and resources. This assessment should include:

- (1) delineation of the goals, objectives and capabilities of these various programs;
- (2) the impact or degree to which these programs are meeting their stated goals and objectives; and nature of problems experienced;
- (3) the respective resources of these various programs and their availability for performing adjudication tasks required under the state drug strategy;
- (4) mechanisms for coordination and communication among the programs and within the adjudication system;
- (5) the degree to which these programs meet adjudication system needs required to implement the state strategy.

In addition to identifying gaps in current adjudication programs and resources, a review should be made of present legislation, agency procedures, mechanisms for inter-agency cooperation and other aspects of policy and procedural practice relating to current drug adjudication activities with a view to recommending possible changes which would enhance the capability of adjudicative agencies in implementing the state drug initiative.

IV. Relevant Adjudication Programs for Inclusion in State Adjudication Drug Strategy

A number of adjudication programs initiated by BJA and its predecessor, the Law Enforcement Assistance Administration (LEAA), have demonstrated their effectiveness in improving the adjudication process. These programs can also contribute to anti-drug strategies. Each program focuses on discrete aspects of the adjudication process and may be implemented separately. However, they can be most effective if integrated into a systemic, coordinated narcotics adjudication program.

A. Career Criminal Prosecution

1. Critical Elements

A number of prosecutor offices have initiated special units within their offices to concentrate on persistent offenders and have developed special treatment procedures for processing such cases. The units have varied in terms of organization and objectives but generally share the following critical elements:

- (1) an organized separate unit within the prosecutor's office and staffed by experienced prosecutors;
- (2) intake procedures designed to identify cases for prioritized prosecution;
- (3) prompt notification by police of potential cases and early prosecutor-policy coordination during investigation;
- (4) vertical prosecution assignments whereby one prosecutor has the responsibility for a case from beginning to end;
- (5) generally improved or enhanced assignment of resources to the trial of career criminal cases;
- (6) assignment of witness coordinators to assure witness cooperation and attendance;
- (7) limited plea bargaining;
- (8) close coordination with law enforcement during investigation, evidence collection and development of prosecutorial strategies;
- (9) coordination with the Courts regarding bail settings, trial scheduling and disposition;
- (10) coordination with corrections regarding parole determinations.

2. Special Issues To Consider

Much if not all of the elements of career criminal programs could be adapted for the prosecution of drug offenses. Several additional issues, however, must be considered in the development of a drug prosecution strategy.

(a) Implementing special provisions of the Anti-Drug Abuse Act

The Anti-Drug Abuse Act of 1986 changes existing federal law by mandating fifteen-year, no parole, sentences for defendants convicted of a firearms offense and who have three prior convictions for violent offenses.

Violent offenses are specially defined to include drug offenses. If these or similar statutes are in effect at the state level, career criminal-type models should consider their implementation. These provisions also may be relevant to prosecutorial screening decisions.

(b) Using selection criteria to support state drug strategies.

In addition to the mandatory sentencing provisions of the Anti-Drug Abuse Act, policy determination must be made in each state early on as to the type of drug offenders and offenses for which the jurisdiction seeks expedited prosecution. In addition, since some major drug offenders may lack criminal histories necessary to identify them for traditional career criminal-type programs, special strategies may be needed to identify appropriate offenders or offenses for career criminal-type treatment. It may be necessary to develop a drug component within an existing career criminal unit, to modify an existing career criminal program or to develop a special unit altogether to deal with drug matters.

(c) Assuring timely lab reports and other testimony required for adjudication.

Prosecutors throughout the country have been overwhelmed by the difficulty of obtaining timely laboratory reports and other testimony necessary to prosecute drug offenders. Assuming a major increase in the number and complexity of drug cases, this problem may become monumental. In many jurisdictions, lab reports are prepared by police technicians for whom court testimony is one of a number of functions. Some jurisdictions have dealt effectively with this problem either through private contract with a lab or direct employment of lab technicians under prosecutorial control. Regardless of how the problem is resolved, each jurisdiction must implement procedures to guarantee prompt production of lab reports and related testimony to assure timely disposition of drug cases filed.

3. Integration of Prosecutorial Policies with Courts and Other Adjudication agency Programs and Resources.

Special drug prosecutorial programs must be carefully planned and integrated with all other adjudication agency programs. There must be assurance, for example, that public defender agencies will be able to support special prosecution initiatives, that necessary pre-sentence reports can be prepared in a timely manner and that correctional agencies will be able to accommodate expedited prosecutions.

B. Court Delay Reduction

1. Critical Elements

Many jurisdictions have undertaken court delay reduction programs, both on a state and local level. While these programs have varied in scope, they have generally included the following elements:

- (1) analysis of the case processing system of the court, including the critical events for case management control and the interactions and relationships of other agencies involved with the court in case processing;
- (2) analysis of the time, tasks, and resources in the jurisdictions required to perform critical events in the adjudication process, from arrest to disposition;
- (3) collection and analysis of statistical data on actual case processing times in the jurisdiction and the identification of delay points;
- (4) development of time standards for processing specific types of cases and appropriate policy and procedural changes to assure adherence to these standards in most cases;
- (5) monitoring mechanisms to determine the degree of adherence to these time standards and to identify special types of cases warranting special processing treatment.

2. Special Issues To Consider

A court delay reduction program in itself will not directly impact drug adjudication capabilities although it will allow special resources to be available for the "extraordinary" case by promoting expeditious treatment for most cases. However, by adapting court delay reduction strategies to the management of drug cases, a court will be able to focus upon the unique processing tasks required to adjudicate drug offenses and develop appropriate mechanisms - both policy and procedural - to assure their fair and expeditious processing. Among the special issues relating to drug offense adjudication which court delay reduction program techniques can address are:

- (a) development of management information capabilities to identify the case processing

tasks, time and resources required to adjudicate drug offenses;

- (b) identification of "complex" drug cases which may require special scheduling, tracking and/or resources;
- (c) creation of appropriate dispositional alternatives, including rehabilitation, detoxification and monitoring programs;
- (d) review of pretrial policies and procedures to assure that defendants not warranting detention are released and those who do warrant incarceration are, in fact, jailed;
- (e) appropriate diversion programs for less serious offenses and special classes of offenders.

3. Integration of Court Delay Reduction Programs with Other Adjudication Agency Programs and Resources.

Any change in pretrial or trial policies or procedures may have potential repercussions throughout the adjudication system. Even the simplest change can meet with resistance and defeat if proper planning and coordination are not done. Advancing the starting hour of court, for example, may be an excellent technique for providing additional time for adjudication but if the change is not coordinated with police and prosecutorial agencies whose employees staff the court's criminal trials, the change may precipitate great tension. Similarly, any policy to expedite drug offenses with special, prioritized scheduling must be supported by an appropriate information system which can identify the targeted cases. Moreover, to the degree that court delay reduction techniques result in expedited adjudication of drug cases, there must be in place adequate coordination mechanisms to assure that the agencies responsible for disposition - i.e., probation and corrections - can accommodate an accelerated rate of referrals.

C. Jail Capacity Management/Pre-trial Alternatives to Incarceration

1. Critical Elements

Many jurisdictions have developed fairly comprehensive programs for pre-trial alternatives to incarceration and jail capacity management programs. These programs generally share the following characteristics:

- (1) The formation of a jail policy board with representatives from the judiciary, corrections/sheriff, prosecutor, public defender, pre-trial services, law enforcement, probation, victim/witness service organizations and County Board or City Manager, who provide inter-agency coordination and address major policy issues;
- (2) management capability to continuously monitor and evaluate jail capacity and the impact of jail capacity management programs;
- (3) provision of comprehensive pre-trial services, including screening and interviewing, verification of relevant information, and supervision and tracking of those defendants not incarcerated;
- (4) provision of appropriate non-institutional options for convicted defendants;

2. Special Issues to Consider

Alternatives to pre-trial detention and other jail capacity management programs can have a major impact by permitting release of those defendants not warranting incarceration and assuring that jail space is available for those who do. Jurisdictions can thereby focus their resources on serious drug offenders by removing defendants involved in less serious crimes - both drug and other - from the jail system. In addition, these programs can be tailored to handle special types of drug offenders for whom incarceration alternatives, including treatment, may be appropriate.

In adapting programs for pre-trial alternatives and jail capacity management to drug cases in particular, special concern should be given to assuring that these programs have the following capabilities:

- (1) mechanisms for coordinating with local drug programs, particularly non-governmental; and
- (2) adequate screening, diagnostic and treatment services

3. Integration of Jail Capacity Management Programs with The Overall Drug Adjudication Program

Programs for pre-trial alternatives and jail capacity management must be incorporated into the adjudication process from the start. Prosecutors must work

together with pre-trial service agencies and the defense bar to identify the types of offenses and offenders appropriate for pre-trial alternatives and the types of alternatives that might be considered. Similarly, the agencies in the adjudicative process must determine, together, which cases and which offenders might be appropriate for non-institutional dispositional alternatives and the types of alternatives appropriate. In addition, there must be on-going communication between these adjudication agencies and the agencies responsible for monitoring alternative programs as to program experience, fall-out rates and impact.

D. Other Programs

Various other programs to expedite the adjudication process have been successfully operating and may be of assistance to jurisdictions in addressing their drug problems. Two of the most notable of these programs are TASC (Treatment Alternatives to Street Crime) and Jury Management. Further information on these and other programs, can be obtained from the State and Local Assistance Division, BJA.

V. Sources for Further Information and Assistance

A. BJA Technical Assistance and Training Programs

Cooperative agreements with the EMT Group, Inc., the National Center for State Courts, and Pre-trial Services Resource Agency make available free technical assistance and training in the area of career criminal prosecution, court delay reduction, jail capacity management and pre-trial services in the form of information dissemination, on-site consultation and peer-site visits.

In addition, training curricula address the needs of jurisdictions implementing basic and advanced components of these programs.

B. BJA Program Briefs

The Bureau of Justice Assistance has developed a series of Program Briefs which describe the critical elements and implementation strategies found to contribute to the success of the following adjudication programs:

- Career Criminal Prosecution
- Court Delay Reduction
- Jail Capacity Management/Pre-trial Alternatives to Incarceration
- Jury Management Improvement

In addition, other Program Briefs dealing with implementation of the Anti-Drug Abuse Act of 1986 from the perspective of law enforcement and corrections are available.

C. Training and Technical Assistance Programs

Adjudication Technical Assistance Project

1. The EMT Group, Inc.
3615 Wisconsin Avenue, N.W.
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(202) 362-4183
2. National Center for State Courts
300 Newport Avenue
Williamsburg, Virginia 23187-8798
(804) 253-2000
3. National District Attorneys Association
1033 North Fairfax Street, Suite 200
Alexandria, Virginia 22314
(703) 549-9222
4. Pre-trial Services Resource Center
916 F Street, N.W.
Washington, D.C. 20004-1482
(202) 638-3080
5. National Institute of Corrections
320 First Street, N.W.
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