Review of the Madison County (Norfolk), Nebraska Drug Court Program

CONSULTANT:

Judge John Parnham (Ret.)

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## CONTENTS

<table>
<thead>
<tr>
<th>I. INTRODUCTION</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Background</td>
<td>1</td>
</tr>
<tr>
<td>B. Site Visit Schedule And Study Methodology</td>
<td>2</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>II. PROGRAM OVERVIEW AND OBSERVATIONS</th>
<th>4</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Program Overview</td>
<td>4</td>
</tr>
<tr>
<td>B. Team Dynamics</td>
<td>7</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>III. RECOMMENDATIONS</th>
<th>9</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation One: Rebuilding Mutual Trust Among Team Members And Improving Team Collaboration</td>
<td>9</td>
</tr>
<tr>
<td>Recommendation Two: Review Program’s Policies For Application Of Sanctions.</td>
<td>11</td>
</tr>
<tr>
<td>Recommendation Three: Increasing The Number Of Program Participants: Review And Revise, As Appropriate, The Referral Process.</td>
<td>14</td>
</tr>
<tr>
<td>Recommendation Four: Increase Cross-Communication with the Treatment Providers:</td>
<td>15</td>
</tr>
<tr>
<td>(a) Hold Periodic Meetings With The Treatment Providers</td>
<td>15</td>
</tr>
<tr>
<td>(b) Include Both Major Treatment Providers At The Drug Court Staffing</td>
<td>15</td>
</tr>
<tr>
<td>(c) Institute Cross-Training Between Treatment And Justice System Personnel</td>
<td>16</td>
</tr>
<tr>
<td>(d) Institute Mechanisms to Formally Coordinate the Activities and Services of the Various Treatment Providers</td>
<td>16</td>
</tr>
<tr>
<td>Recommendation Five: Cross-Training</td>
<td>17</td>
</tr>
<tr>
<td>Recommendation Six: Develop a Strategic Plan for the Drug Court</td>
<td>18</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>IV. SUMMARY: OVERALL ASSESSMENT AND RECOMMENDATIONS RE ACHIEVEMENT OF 10 KEY COMPONENTS</th>
<th>19</th>
</tr>
</thead>
</table>

| V. SUMMARY | 22 |
I. INTRODUCTION

A. Background

In the Fall of 2010, Janessa Finley, Northeast Nebraska, recently designated drug court coordinator for the Northeast Nebraska Drug Court in Madison County (Norfolk), Nebraska, submitted a technical assistance request to the BJA Drug Court Technical Assistance Project at American University for training in the following areas: reviewing the program’s policies and procedures; increasing capacity; teambuilding; and clarifying criteria for client termination. At the time of the request, the drug court judges and the coordinator had attended some training and had visited an operating drug court program.

Subsequent conversations with Ms. Finley and Judge Robert Ensz, Drug Court Judge, indicated that the program needed technical assistance, rather than training, at this point, to provide recommendations to increase program capacity and to rebuild team relationships following some disruption in program operations resulting, in large part, from changes in drug court personnel. In response to this technical assistance request, Judge John Parnham (ret.), was assigned to conduct a site visit to Madison County to meet with Judge Ensz and other local drug court personnel and to review program services and operations. Judge Parnham had instituted the first adult, juvenile and family drug courts in the First Judicial Circuit (Pensacola) of Florida.

Judge Ensz requested that, since he was stepping down as drug court judge effective January 1, 2011, and that Judge James Kube would become the successor drug court judge, the technical assistance visit be scheduled as soon as possible after Judge Kube assumed responsibility for the drug court so that he could have the benefit of the technical assistance recommendations as soon as possible after assuming leadership for the program. The site visit occurred on January 13-14, 2011.
The Northeast Nebraska Drug Court program had been operating since 2004, having started with a BJA Planning/DCPI Award in 2004, and currently had an enrollment of 14, with a targeted capacity of 30. Since participating in the BJA DCPI training initiative, the drug court judges and coordinator have attended several training conferences and have visited an operating drug court program and therefore have some perspective on the general issues relevant to drug court program operations. The need for the technical assistance addressed in this report focuses on operational issues relevant to the Madison County program per se and critical to developing and maintaining the effectiveness of the program and the interagency support needed.

The Northeast Nebraska Drug Court also has a juvenile drug court program and Ms. Finley also requested feedback from the consultant to improve the juvenile drug court program, recognizing that the focus of this assignment is on the adult drug court. This feedback was provided by Judge Parnham informally during the course of the site visit.

This report summarizes the observations developed during Judge Parnham’s site visit to the Northeast Nebraska Drug Court in Madison County (Norfolk), Nebraska and the recommendations resulting. A preliminary draft of this report was submitted to Judge Ensz and Judge Kube in June 2011 for review in terms of accuracy and adequacy in addressing the technical assistance needs generating the request for technical assistance. Their comments have been incorporated into this final report, along with a summary of the follow up actions taken in response to the recommendations submitted in the draft.

B. Site Visit Schedule and Study Methodology

During the course of the site visit the consultant met with the following:

Jennifer Birmingham, Assistant Public Defender,
Judge Robert Ensz, outgoing Drug Court Judge
Judge James Kube, incoming Drug Court Judge
Bill Mizner, Norfolk Police Chief
Dr. Connie Petersen, Director, Outpatient Clinical Services, Behavioral Health Specialist, Inc.
Joe Smith, County Attorney
Judge Ross Stoffer, County Court Judge (Juvenile)
Dr. Mark Stortvedt, Director, Oasis Counseling
Judge Donna Taylor, County Court Judge (Juvenile)
Two current participants and one program graduate
The consultant also attended the pre-court staffing, a graduation, and the regular court status hearing and reviewed available materials developed for the program. In addition, he met with the two judges who preside over the juvenile drug court and discussed some of the major issues the juvenile drug court program is confronting. The problems for the juvenile drug court appear to be similar to some of the issues of the adult drug court regarding capacity and collaboration among the justice system agencies.
II. PROGRAM OVERVIEW AND OBSERVATIONS

A. Program Overview

As noted earlier, the North East (NE) Nebraska Drug Court program has been operating since 2004 and currently has an enrollment of 14, with a targeted capacity of 30. The number of participants enrolled over the years appears to be decreasing. The program is a post plea deferred sentencing program. Upon arrest, the County Attorney screens the arrest report and reviews the prior record of the defendant to determine if the defendant is "legally" eligible. If appropriate, the County attorney notifies the defendant and defense counsel of the possible eligibility of the defendant for the drug court. The defense reviews with the defendant the participant contract as well as other information regarding the program, and notifies the County Attorney whether the defendant wants to participate in the program. This notification is usually done within seven days of receipt of the offer from the County Attorney's office. Once an agreement is reached regarding a defendant’s participation in the program, the defendant waives a preliminary hearing in the County Court and is bound over to the District Court. At this time the drug court coordinator conducts an intake screening with the defendant and, after this screening, the admission staffing team (which does not include the judge) meets before the weekly staffing to review the application. At this meeting the admissions team accepts or rejects the defendant for the drug court. The criteria used for this decision was not indicated.

If the defendant is accepted into the program, the defendant and counsel appear in the District Court for arraignment and enter a plea of guilty to the charges. The guilty plea is accepted by the District Court which defers sentencing and orders the defendant to appear at a specific date and time for the drug court. At this time the defendant, with counsel, is informed by the judge of all the requirements and restrictions imposed by drug court participation, and the defendant then signs the drug court participation contract. At any time the defendant may voluntarily withdraw from participation or, until the recent Shambley decision, he/she could be unsuccessfully dismissed from the program by consensus of the team. If the team could not reach a consensus, the judge made the final determination. As a result of the recent Shambley
decision\textsuperscript{1}, termination by a consensus of the team will no longer be permitted and, rather, a formal termination hearing will now be required, whenever the defendant voluntarily withdraws from the program or is dismissed, he/she is returned to the District Court for sentencing. If the defendant successfully completes the drug court program, the defendant and counsel appear at graduation and move the court to allow the defendant to withdraw the guilty plea. The court will grant the motion and the County Attorney dismisses the information filed against the defendant and the defendant's bond is released.

Supervision for program participants is provided by probation services which, organizationally, is under the Nebraska Supreme Court and administered by the Nebraska Administrative Office of the Courts (AOC).

There are over 23 treatment providers and at least eight agencies in Madison County which are able to serve drug court clients. The list of providers we are told is continually evolving. These providers are funded through a voucher system established to pay for clients’ treatment utilizing state funds collected through probation enrollment and supervision fees. Once a client is identified as a potential drug court participant the client is interviewed by the coordinator and referred to a provider who conducts an initial clinical assessment. Once the assessment is completed, a level of care is recommended and a list of providers is given to the client and the client chooses his/her provider. The consultant was told that approximately 80\% of the drug court clients are recommended for intensive outpatient treatment services which currently are reportedly available from three of the providers, two of which are: OASIS and BHS.

The program is a four phase program utilizing intensive outpatient treatment along with frequent court appearances and urinalysis.

**Phase One** lasts approximately three months during which the participant is required to appear in court on a weekly basis and submit to random drug testing at least three times weekly. In addition, the participant is required to attend substance abuse support groups three times weekly and attend required treatment programming.

\textsuperscript{1} State of Nebraska v Shambley. Case No. S-10-556 (NE S.Ct., Apr. 8, 2011)
Phase Two lasts approximately three months and requires appearance in court every other week or as directed along with a minimum of random drug testing at least two times per week. Participants are required to attend substance abuse support groups three times weekly and attend all required treatment programming.

Phase Three is designed to address the ongoing recovery needs of the participant and support the participant in his/her return to the community. Phase Three lasts approximately nine months during which time the participant is tested for illegal substances a minimum of once per week. In addition, the participant must appear in court a minimum of one time per month and complete the moral reconation therapy course. They are also required to attend substance abuse support groups three times weekly as well as attend any required treatment programming.

Phase Four is designed to last three months with the focus on maintenance. Participants are required to attend substance abuse support groups three times per week, the alumni group, and drug test at least once per month.

As noted above, there are a number of treatment providers who can service the program. However only three reportedly can provide the intensive outpatient model that is used by the drug court. In the event intensive outpatient services are not required, the other providers can provide services. Currently, the only team members that attend the pre-court staffing are the judges, drug court coordinator/probation officer, and the treatment director from Oasis Center.

Although not formally a component of the technical assistance review, some attention has been given to the program’s information system capabilities following submission of the draft report when issue was taken with certain data presented in the draft – supplied at some point in the technical assistance planning/site visit process -- which apparently was not correct. While these errors have now been corrected, the important issue that they point to is the need for readily available information about the drug court program operations: the population it is serving, the services they are receiving, etc. This type of information should be gathered on an ongoing basis and regularly reviewed to help the team identify areas which might need adjustments as well as assist in planning for the future.

The State Supreme Court has a drug court specific system which the Madison County Drug Court is using. Those drug courts in Nebraska which have participants on probation are
also required to enter information in the probation MIS. The drug court MIS maintained by the Nebraska Supreme Court should have the basic information the program needs to manage and monitor program operations and participant progress as well as to identify operational problems as they occur. Assistance in utilizing/adapting the Drug Court MIS for Madison County is available from the State Drug Court Coordinator at the Nebraska Supreme Court, Scott Carlson.

B. Team Dynamics

When the drug court was first implemented, there was a high level of participation and collaboration among the team. However, in the recent past, team collaboration has diminished significantly along with the number of defendants who are referred to the program. This is reportedly due, primarily, to conflicts between the team members (public defender and prosecutor and judges) involving due process issues and policies. As a result of these unresolved concerns, the public defender’s office does not attend the pre-court staffing although does attend the court sessions. The county attorney’s office does not attend the pre-court staffing or the status hearing. However, at graduation, the county attorney waits outside the courtroom and steps in just to announce a dismissal.

The conflicts appear to involve two legal issues: (a) due process rights of participants when sanctioned and/or terminated; and (b) the *ex parte* nature of the pre-court staffing. The County Attorney and the Public Defender argue that the pre-court staffing, as it is currently configured, is an ex pate proceeding. The judges disagree and suggest the clients can waive any objections they may have to the staffing.²

Regarding the sanction and termination process, the team (including the public defender and county attorney) eventually adopted a written policy. Recently, the Nebraska Supreme Court ruled on an appeal out of the Madison County Drug Court which dealt, in part, with processes drug courts should use when terminating a participant for violating his/her probation. The ruling required that offenders at risk of being expelled from Nebraska’s drug

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courts have a formal proceeding to hear the evidence against them and have the opportunity to offer a rebuttal. The burden is on the county attorney to present the evidence. The opinion appears to resolve one of the due process issues and the drug court should adopt procedures which comply with the decision. As of the date of the site visit, the ex parte issued had not been resolved although, subsequent to the submission of the draft version of this report in June 2011, the court adopted a procedure for recording the staffing which raises further concerns. (See “Note” below.)

III. RECOMMENDATIONS

**Recommendation One:** Rebuilding Mutual Trust Among Team Members and Improving Team Collaboration

The incoming drug court judge should convene a team meeting to discuss this report. At a minimum, the team needs to identify areas of conflict within the team, ways to resolve the conflicts, and modifications to the program which need to be made in order to comply with current Nebraska statutes and case law.

The team currently is composed of the drug court judge, a treatment representative, a probation officer and the drug court coordinator. As noted above, although the public defender’s office is considered a team member, they do not attend pre-court staffing. The County Attorney does not consider his office as part of the drug court team and therefore does not attend either the staffing or the court session. The major current point of contention is reportedly the nature of the pre-court staffing. The resolution of this issue is critical to reestablishing team appropriate team collaboration. However, it is not the only issue that needs to be addressed.

A functioning drug court “team” is essential for an effective drug court. It is one of the fundamental components of a drug court program that affects every aspect of the drug court. It is built upon the shared desire of both the prosecutor and the defense to help the addicted defendant transform his/her lifestyle and become a productive, law abiding member of the community as well a contributing member of his/her family. Although the shared goal is critical to a drug court team, there is another element that is as critical – mutual respect among all team members which extends beyond the pre-court staffing. Without this basic respect for each other, the team becomes fractured, divisive, and ineffective. It is not necessary that team members always agree on every issue, but it does mean that disagreements are resolved in a respectful and supportive manner.

At the core of every successful drug court is the drug court team who shares a common goal and vision for the drug court. Strong interdisciplinary collaboration between team members is critical. Unfortunately, the present diminished level of collaboration for this program also diminishes its effectiveness and influences the number of eligible clients who are referred to the program. It is the drug court judge who must establish and maintain the
attitude of mutual respect and collaboration needed for a drug court program. It has often been noted that establishing a team is relatively easy compared to maintaining it. Periodic team meetings (other than pre-court staffing) are essential.

The proposed meeting discussion should include: (a) concerns regarding the ex parte issue and suggestions as to how to address it; (b) the referral process, with a view to ensuring that it is transparent and promotes participation in the program of all eligible defendants; and (c) increased participation of the treatment providers in the program. As further discussed in Recommendation Four below, there appear to be two major issues regarding the participation of the treatment providers in the program that need to be addressed: (1) the lack of participation of BHS which is one of two main intensive outpatient providers and wants to be part of the team and attend staffings but was asked not to; and (2) the lack of integration of treatment services with the program. The OASIS program appears to understand its role in the drug court but the other providers do not.

This meeting also needs to (1) address the critical need to rebuild the drug court team and the trust and mutual respect that is needed among the team members; and (2) discuss in very basic terms what needs to be done to develop a constructive working relationship among the key entities to make the program the effective resource it can be and which the community needs. The history of the relationships among the various entities involved with the program – particularly the court, prosecutor and public defender -- have unfortunately created a lack of trust which has seriously impaired the collaborative approach essential for the program. There needs to be a “new beginning” for the program, especially since Judge Kube is taking over and it is suggested that he personally reach out to the Public Defender and County Attorney in an effort to resolve the conflicts that have developed. Although the County Attorney has indicated he will not attend either the staffing or court sessions, he is the exclusive gate-keeper for the program and, in that capacity, determines who can actually enter the program regardless of the stated eligibility criteria. As a result of the past conflicts, he is keeping the gate almost closed, resulting in the low number of participants.4

4 Based upon the current structure of the program, the county attorney also agrees to dismiss the charge after the client withdraws his/her plea at graduation -- which provides a major incentive for clients to participate -- and remain -- in the program. The county attorney therefore plays a major role in both the current operation of the program and its potential outreach and impact.
FOLLOW UP DEVELOPMENTS:  In response to the draft of this report submitted to the Court in June 2011, it was reported in a June 29, 2011 follow up memo from the Court that several team/board meetings had been conducted to identify and resolve areas of conflict and two new policies had been implemented: one policy requires “allowing due process when sanctioning a participant. The other new policy eliminates the concern for ex parte communication [at staffing]. A court reporter now records our staffing on the record to alleviate the concerns which arose over ex parte communication.” Judge Kube had also made several attempts to establish a stronger team relationship with both the County Attorney’s and Public Defender’s offices. At the time of the memo, no positive response had been seen and, since the site visit, the public Defender has resigned from the team. BHS however is now attending staffing each week and the gap in communication between that agency and the drug court has been resolved.

NOTE: Having the staffing recorded raises significant concerns regarding the confidentiality requirements that pertain to staffings pursuant to 42 CFR which permits only a limited waiver of confidentiality rights by persons receiving drug treatment, with the requirement that those to whom confidential information may be disclosed must be specifically specified on the waiver5. In addition, having the staffing reported may inhibit the free exchange of information, much of which may be very personal and may include information and statements about third parties who are not part of the drug court.

Recommendation Two: Review The Program’s Policies For Application Of Sanctions.

The Drug Court team should review the current incentive and sanction policy to determine if modifications are warranted. The team should also review the sanctioning process to ensure that it comports with state and federal due process requirements.

Drug courts provide treatment and supervision for persons with chronic, relapsing addictive disorders. Treatment and supervision approaches are based on behavioral principles and social learning theory in which abstinence and recovery is predicated on learning experiences. Infractions, relapses, and other noncompliant behaviors provide an opportunity to teach participants about the recovery process. Incentives and sanctions are key elements of this process, and both positive and negative behaviors are addressed through the use of incentives and sanctions, therapeutically applied.

Sanctions are also critical components of every drug court. Part of the recovery process is learning that for every good decision there is a good consequence and for every bad decision, there is a bad consequence. In instances of participant noncompliance, however, it is also important to distinguish between willful noncompliance vs. noncompliance reflective of

the individual’s addiction and underlying problems. Every team member should have a clear understanding of why and how sanctions are to be used.

When sanctions involve the deprivation of liberty, due process rights must be preserved and appropriate procedures used unless there is a valid waiver of the applicable constitutional rights. The recent appellate decision and other case decisions regarding drug court operations⁶ provide some guidance in this regard. Reference to the website of the BJA Drug Court Technical Assistance Project at American University can provide numerous sample drug court policies and forms that may be useful. Jail time, as a sanction, should be used sparingly and, where indicated, for brief periods. Based upon the consultant’s observations and interviews, it appears the court is careful to ensure that reasonable and motivational sanctions are used very appropriately.

Drug courts vary on the range of sanctions used and their application. Some apply individualized sanctions, based upon a variety of factors that are determined at the pre-court staffing. Other courts use a list of predetermined sanctions for specific behaviors. Most drug courts use a flexible graduated system, escalating the response for repeated instances of noncompliance, as appropriate. It is up to each drug court to decide how to develop and apply a sanction and incentive policy. When deciding, it is important to consider the therapeutic implications and therefore input from the treatment provider is important. It is also important that the entire team understand addiction, its affect on the brain and cognitive functioning, and how addiction – and the recovery process -- affect the way drug court participants are able to comprehend and comply with the structure and requirements of the drug court program at various stages of their recovery. Effective screening and assessments, updated periodically, are also important for identifying mental health disabilities that may affect the participant’s ability to succeed in treatment unless these issues are first addressed.

Information provided to participants prior to program entry should also clearly describe the specific sanctions as well as incentives that can be imposed and the applicable circumstances in which they will be applied. It should also include the process used to impose

⁶ See Compilation of Case law Relating to Drug Court Programs. BJA Drug Court Technical Assistance Project. American University. June 2011 (last update).
FOLLOW-UP DEVELOPMENTS: The program has developed a new sanctioning policy which has been incorporated in the NNDC Policies and Procedures Manual and excerpted below:

Sanction Policy/Procedure

The Northeast Nebraska Adult Felony Drug Court (Drug Court) recognizes the rehabilitative efforts of the participants and these efforts may be occasionally hindered by a participant’s lack of cooperation or violation of the drug court rule. The drug court team also recognized its obligation to the participant and to the rehabilitative process to sanction those violations. The following policy is adopted to protect the due process rights of the participant when the proposed sanction involves a liberty interest.

If the drug court team, including the presiding judge, determines that a sanction affecting the participant’s liberty interest is appropriate, the participant may request a hearing. The hearing shall be conducted, notices provided, and right afforded as in a contempt proceeding (see Neb. Rev. Stat. §25-2122).

In addition, the following shall be provided:

1. The drug court coordinator will advise the participant of the violation the proposed sanction prior to the regularly scheduled meeting of the drug court, provided no emergency situation exists.
2. The participant shall advise the drug court coordinator whether the participant disagrees with either (1) the nature of the violation, or (2) the severity of the sanction. If the participant agrees, the sanction will be imposed without further notice or hearing. If the participant objects to the severity of the sanction and wishes to concede the violation the participant may choose to argue the severity of that sanction at that same regularly scheduled drug court meeting rather than to go to a separate hearing.
3. If the participant disputes either the factual basis of the violation or the severity of the sanction, the drug court coordinator shall contact the appropriate County Attorney and the two shall prepare a notice to be given to the participant and the participant’s attorney if the participant is represented. Such notice shall be given at or before the immediate drug court session.

Following the giving of notice, the presiding judge shall advise the participant of the participant’s right to counsel, right to an evidentiary hearing, and date for the evidentiary hearing. It is anticipated that hearing will be conducted within one week and prior to the participant’s next scheduled drug court appearance based on the drug court philosophy that sanctions, to be effective, should be invoked as soon as possible following the behavior to be sanctioned. Continuances will only be granted for good cause shown.

Recommendation Three: Increasing the Number of Program Participants: Review And Revise, As Appropriate, the Referral Process.

The current referral process should be reviewed to determine if a revised formal referral process should be instituted which begins with a review of all eligible arrestees. The type of

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7 Providing written notice to drug court participants prior to program enrollment of the sanctions they may be exposed to for noncompliance with program conditions was an issue raised by Judge Esnz in the Fall of 2010 which culminated in an inquiry by the BJA Drug Court Technical Assistance Project to other drug courts and preparation of an “FAQ Memo” February 3, 2011 on the topic which has been sent separately to the Court and is posted on the BJA Drug Court Technical Assistance Project website: www.american.edu/justice.
A systematic review that would result would both ensure that no potentially eligible participants are missed as well as suggest possible areas for revision of eligibility criteria if warranted.

The review process should include:

(a) Review of the records of all arrestees charged with drug court eligible offenses to determine which of these arrestees are eligible for the program and not excluded from program eligibility. This process should enable local officials to determine the potential pool of arrestees who might be eligible for the drug court, their demographics, a framework for exploring possible reason(s) why these potentially eligible participants are not entering the program, and determining what action(s) might be taken to involve them;

(b) A similar analysis of the records of all probation violators, including their demographics, to determine who might be eligible for the program vs. who is entering it;

(c) Depending upon the results of this analysis, review of the program’s referral and acceptance process to determine if some modifications might be useful, particularly if there is a significant discrepancy between those entering the program and those who were eligible for the program but did not enter; and

(d) Review of the program structure to determine whether multiple tracks, with different supervision requirements, and service provision, might also be useful to better serve an expanded program population. For example, there may be individuals who warrant the more intensive supervision the drug court can provide, including drug testing, but may not all require the intensity of services the program makes available; and

The capacity issue is a critical one for Madison County. Over the recent past, the number of participants has not reached capacity. This is unfortunate since this program provides an excellent opportunity for the participants as indicated by the past successes. Based on the consultant’s observations and discussions, it appears the low numbers are not a result of a lack of interest in the program or a perception that it is too harsh, but rather from informal discretion applied to the application of the eligibility criteria. The current process allows for a great deal of flexibility in the application of the criteria. Ideally, eligibility criteria should provide objective standards for program entry which a potential client either meets or does not meet.
The process for determining program eligibility as well as program participation needs to be consistent and transparent. If an offender meets the stated eligibility criteria he/she should be admitted unless the program has reached capacity – and, in that case, the situation should be noted in terms of documenting the need for additional resources. Whatever criteria are to be applied for program eligibility and participation should be articulated clearly and then applied consistently; if there are disqualifiers, such as other pending cases, etc., they should be articulated.

**FOLLOW-UP DEVELOPMENTS:** Updating of the referral process was not deemed feasible at this time as it might relate to changing current criteria. However, in an effort to make the process more transparent, arrest records have been requested from the local police department, which request has not, at the time of this report submission, been granted. However, the program is working with the department in an attempt to resolve concerns which the request has raised as well as to contact other area law enforcement agencies.

**Recommendation Four: Increase Cross-Communication with the Treatment Providers**

(a)  *Hold Periodic Meetings With The Treatment Providers*

The program should hold periodic meetings with the treatment providers to discuss issues of mutual interest and concern. These should include: (a) issues the various treatment providers are encountering in providing services for the drug court; and (b) issues the drug court program is encountering regarding treatment services and needs. Regular mechanisms need to be established to foster communication among the providers with each other and with the program that address the range of services, reporting and communication that is required to effectively provide the treatment services needed, ensure that drug court program requirements are being adhered to, and that the comprehensive services needed for program participants are being provided.

(b)  *Include both major treatment providers at the drug court staffing*

As noted earlier, approximately 80% of the drug court clients are reportedly recommended for intensive outpatient treatment services which currently are available primarily from two of the providers: OASIS and BHS. The consultant met with representatives (the directors) of both providers. Currently the director of OASIS attends the pre-court staffing. No one from BHS, however, attends the staffing. In the past, BHS's
director attended but was asked not to attend because some discussions involved clients who are not served by BHS. The BHS director is very interested in becoming re-involved and will contact the judges and request to be present.

The consultant believes it is important that a representative from BHS attend the staffings. The confidentiality issue can be addressed through a written agreement not to disclose information discussed at the hearing unless required by law or permitted by the rules of the drug court.

(c) Institute cross-training between treatment and justice system personnel

The reports that are generated for the drug court team are online forms that are filled out by the providers and forwarded to the coordinator who prints them for the team. There is little communication between the providers and the team/judges except for the Oasis director. The consultant believes it would be of great benefit to the program to have more integration between the providers and the court.

The consultant suggested to both directors that they offer an educational program (cross training) to the team on the issues of addiction, recovery, and relapse. In addition, the consultant suggested during the site visit that the court/team schedule a luncheon with all the providers for the purpose of explaining the drug court concept, how and why it works, how it can benefit the treatment providers, and the court's expectations regarding drug court treatment services and the information it needs regularly from the treatment providers in order to promote the effectiveness of the drug court program.

(d) Institute Mechanisms to Formally Coordinate the Activities and Services of the Various Treatment Providers

The program’s use of several treatment providers makes it incumbent on the program to coordinate their services, protocols, curriculum and reporting with the requirements of the drug court program. The role of these providers should not simply be to handle referrals from the Drug Court but, rather, to design their respective services to support the drug court program design and requirements. Once the nature and level of treatment services are defined, MOUs should be executed with the providers to document these understandings.
In addition to developing formal understandings among the treatment providers as to the nature of services expected to be provided for drug court participants, the nature and frequency of reporting and other communication with the drug court required, a mechanism/procedure for monitoring the services provided and providing other case management functions should be developed. This function should include assessing the progress of participants in the treatment programs, identifying situations in which treatment plans and/or services may need to be adjusted, and ensuring that participants receive the other support services needed to promote/support their recovery.

Follow-up Developments: The recommendations submitted in (b) and (c) above have been implemented. Both major agencies reportedly now are present for staffing prior to the court hearing. The recommended cross-training of treatment and justice system personnel has also been conducted and, hopefully, will continue on a regular basis.

Recommendation Five: Develop Plan for Cross-Training and Continuing Education

A continuing educational/training plan for the team should be developed. The plan should (a) promote interdisciplinary training among the team members regarding their respective disciplines; (b) provide a forum for inviting speakers on relevant topics relating to substance abuse treatment issues, ancillary services (local housing programs, faith based resources, etc.), and/or other issues of interest/import to the team; and (c) offer an opportunity for drug court team members and others to discuss relevant program issues and services. To the extent feasible, interchange should also be developed with other drug courts in the area.

Training for drug court personnel should be ongoing and comprehensive. It should include both role-specific training for team members, best evidenced approaches for drug court programs, as well as interdisciplinary cross-training. Cross-training can be an economical and effective educational tool which helps build collaboration and mutual respect. It is important that each team member understand other member’s roles, responsibilities and limitations to minimize overlap and conflict. It is essential that the cross-training include the treatment providers since drug courts are designed to integrate treatment into the court process and vice versa. Access to the numerous webinars that are being offered, free of charge, should be an important component of this training plan. These webinars address a wide range
of issues relevant to the drug court program’s operations and services. Announcements for these webinars are frequent and, in many cases, the webinars are archived for subsequent retrieval.

**Recommendation Six: Develop a Strategic Plan for the Drug Court.**

The incoming Drug Court Judge should convene a meeting of all members of the drug court team to develop a strategic plan for the drug court program, including a mission statement of the goals for the program and a task plan to achieve them.

The task plan should include:

(a) Updating the Policy and Procedure Manual

(b) Developing an orientation program for new team members

(c) Developing a “Roles and Responsibilities Manual” that will present the position responsibilities and functions for each of the team members which focus on their activity in the drug court apart from their position responsibilities and functions of their non-drug court

(d) Ensuring that adequate information is compiled, analyzed and reported to monitor the progress of participants, ensure that the program and services are operating as intended, and document and report the impacts the program is achieving.
IV. SUMMARY: OVERALL ASSESSMENT AND RECOMMENDATIONS REGARDING ACHIEVEMENT OF 10 KEY COMPONENTS

Key Component 1: DRUG COURTS INTEGRATE ALCOHOL AND OTHER DRUG TREATMENT SERVICES WITH JUSTICE SYSTEM CASE PROCESSING

- Fully Achieved
- Partially Achieved -- Needs Attention To:

Currently only one provider attends the pre-court staffing although there are several providers involved in providing services to drug court participants.

Although there is a treatment representative at most staffings, the level of integration between the court and the providers could and should be improved. It appears most of the providers do not fully understand the drug court concept or how the court can enhance treatment outcomes. The drug court and the treatment providers should conduct a series of cross trainings to improve treatment and court outcomes.

- Not Addressed At This Point

Key Component 2: USING A NONADVERSARIAL APPROACH, PROSECUTION AND DEFENSE COUNSEL PROMOTE PUBLIC SAFETY WHILE PROTECTING PARTICIPANTS’ DUE PROCESS RIGHTS

- Fully Achieved
- Partially Achieved -- Needs Attention To:

Although the drug court promotes public safety, it does so without the full participation of the public defender’s office or the prosecutor’s office. It is therefore difficult to determine the degree of nonadversarial collaboration between the two offices. There is no doubt this program’s effectiveness would be enhanced if the conflicts within the team were eliminated and both offices were active members of the team.

- Not Addressed At This Point

Key Component 3: ELIGIBLE PARTICIPANTS ARE IDENTIFIED EARLY AND PROMPTLY PLACED IN THE DRUG COURT PROGRAM

- Fully Achieved
- Partially Achieved -- Needs Attention To:

The referral process needs to be modified to expedite the identification and screening processes and ensure that participants that are otherwise eligible for the program are able to
enter it. The prosecutor’s office currently has the sole discretion to reject potential clients even if they meet eligibility criteria. This is one of the causes for the low number of participants.

Not Addressed At This Point

**Key Component 4**: DRUG COURTS PROVIDE ACCESS TO A CONTINUUM OF ALCOHOL, DRUG AND OTHER RELATED TREATMENT AND REHABILITATION SERVICES

- [X] Fully Achieved
- [ ] Partially Achieved
- [ ] Not Addressed At This Point

**Key Component 5**: ABSTINENCE IS MONITORED BY FREQUENT ALCOHOL AND OTHER DRUG TESTING

- [X] Fully Achieved
- [ ] Partially Achieved
- [ ] Not Addressed At This Point

**Key Component 6**: A COORDINATED STRATEGY GOVERNS DRUG COURT RESPONSES TO PARTICIPANTS’ COMPLIANCE

- [X] Fully Achieved

  The drug court uses a system of incentives and sanctions to address client behavior. The concern, as expressed by the public defender’s office, was the process the court used to impose the sanction, not the sanction itself.

- [ ] Partially Achieved
- [ ] Not Addressed At This Point

**Key Component 7**: ONGOING JUDICIAL INTERACTION WITH EACH DRUG COURT PARTICIPANT IS ESSENTIAL

- [X] Fully Achieved
- [ ] Partially Achieved
- [ ] Not Addressed At This Point
Key Component 8: MONITORING AND EVALUATION MEASURE THE ACHIEVEMENT OF PROGRAM GOALS AND GAUGE EFFECTIVENESS

___ Fully Achieved

__X__ Partially Achieved -- Needs Attention To:

It is important to this program to conduct an independent outcome and process evaluation. The outcome evaluation will document program performance and the process evaluation will identify areas of operation that require adjustments or modification.

___ Not Addressed At This Point

Key Component 9: CONTINUING INTERDISCIPLINARY EDUCATION PROMOTES EFFECTIVE DRUG COURT PLANNING, IMPLEMENTATION, AND OPERATIONS

___ Fully Achieved

__X__ Partially Achieved -- Needs Attention To:

Interdisciplinary education is essential for all drug courts. Madison county is experiencing team dysfunction which is complicated by team turnover. There is a new drug court judge, coordinator and probation officer. Cross training helps everyone understand the drug court concept and the roles and responsibilities of each team member. It also helps develop mutual respect between team members and ensures continuity.

___ Not Addressed At This Point

Key Component 10: FORGING PARTNERSHIPS AMONG DRUG COURTS, PUBLIC AGENCIES, AND COMMUNITY-BASED ORGANIZATIONS GENERATES LOCAL SUPPORT AND ENHANCES DRUG COURT EFFECTIVENESS.

__X__ Fully Achieved

___ Partially Achieved

___ Not Addressed At This Point
V. SUMMARY

The Madison County, Nebraska Drug Court is a sound and well developed program that has been in operation for some time and has obviously helped change the lives of many. The offer by the prosecutor to dismiss charges upon a participant’s successful completion of the program provides a major incentive for program participation as well as participant recovery and reintegration into the community. The judges involved with the program appear to be uniquely aware of and committed to the therapeutic focus of the court. At the time of the technical assistance visit, the program was in the midst of key personnel changes. The judges were rotating and the coordinator was still new. A probation officer was also slated to come onboard shortly to provide relief for the coordinator who, at the time of the visit, was managing a caseload in addition to her coordinator responsibilities. Changing personnel is always a challenging time for a drug court team, even under the best of circumstances. However, the Madison County program appears to have become strengthened during this transition period, as evidenced by the prompt response to the technical assistance recommendations in the draft of this report even before its formal submission. With the solid foundation that has been developed, coupled with the openness and commitment of the judges and others involved with the program to make whatever improvements will strengthen it, the Madison County Drug Court is poised to serve as a significant resource for drug addicted offenders in the County.