# Massachusetts District Drug Courts: Drug Court Site Visit Summary

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# DRUG COURT SITE VISIT SUMMARY

## TABLE OF CONTENTS

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## INTRODUCTION AND OVERVIEW

This report is part of a three-year grant awarded to the Massachusetts Department of Public Health, Bureau of Substance Abuse Services by the Bureau of Justice Assistance to expand existing Drug Courts across the Commonwealth and enhance and standardize Drug Court practices within existing courts. It provides an unprecedented opportunity for the substance abuse treatment and court communities to come together to achieve a comprehensive system of supervision and treatment for court-involved individuals with substance use disorders.

The first Drug Court program in Massachusetts (MA) started in 1994 and drew probationers from jurisdictions throughout the Greater Boston area. As local programs opened in multiple jurisdictions, the cross-jurisdiction program was replaced with local programs across the State.

There are now 12 Drug Courts within the District Court system. During fall 2012 and winter 2013, a site visit team consisting of a judge, probation officer, substance abuse treatment providers, researchers and policy advisors visited the 12 District Court Drug Courts across Massachusetts to assess their current capacity, operating procedures, and challenges. A list and description of site visit team members is located in Appendix A.

Section I describes the drug court model as defined by the Bureau of Justice Assistance and the Substance Abuse and Mental Health Services Administration. Section II summarizes current practice within the 12 Drug Courts the site visit team visited. Section III provides recommendations to address current challenges and promote a systematized model of drug court operations, such as standardized consent forms, screening tools, and professional development opportunities.

## SECTION I: THE DRUG COURT MODEL

The Bureau of Justice Assistance defines a Drug Court as a specially designed court calendar or docket, the purposes of which are to achieve a reduction in recidivism and substance abuse among nonviolent substance abusing offenders and to increase the offender's likelihood of successful rehabilitation through early, continuous, and intense judicially supervised treatment, mandatory periodic drug testing, community supervision, and use of appropriate sanctions, incentives (rewards) and other rehabilitation services.

Research over the past twenty years has consistently found that Drug Courts reduce criminal recidivism by an average of 10-15% in comparison to randomized or matched comparison samples of drug offenders who were on probation or undergoing traditional criminal case processing.[i] Drug Courts were particularly effective for the highest-risk, highest-need probationers. The most recent review of drug courts across the country found that the most effective Drug Courts adhere to a

common set of services, policies and characteristics. These include the following services: frequent judicial status hearings (at least twice per month); consistent levels of praise from the judge; frequent urine drug testing (at least twice per week); frequent clinical case management sessions (at least once per week); a minimum of thirty-five days of formal drug-abuse treatment services; [ii] and the following policies and characteristics: extensive leverage over participants; predictability of sanctions and incentives; and a consistent point of entry. The more effective Drug Courts maintained one point of entry into the program, either at pre-adjudication or post-adjudication, but not both.[iii] A complete list of the 10 Key Components of Drug Courts and the Seven Design Features are located in Appendix B.

## SECTION II: CURRENT PRACTICE: MA DISTRICT DRUG COURTS

All MA adult Drug Courts are post-plea, post-adjudicatory programs requiring routine court appearances before a designated program judge. Most potential participants are identified at the time of surrender on violation of probation and are screened for Drug Court at the time of their surrender hearing. If they don't participate in Drug Court, potential participants would otherwise be incarcerated for their violation.

Each court adheres to the 10 Key Components of Drug Courts and the Seven Design Features to varying degrees. Although capacity varies, each District Drug Court is operated by an interdisciplinary team of criminal justice and behavioral health professionals who strive to identify eligible defendants early and motivate them to engage and participate in a program of behavioral change. Drug Court participants are required to maintain regular contact with their Drug Court case manager, submit to frequent, random and monitored alcohol and drug testing, participate in substance abuse treatment, and comply with the other conditions of Drug Court participation and probation. This section discusses current practice and in relation to the evidence-based strategies for Drug Courts, which are recommended by the Bureau of Justice Assistance.

**Drug court screening**: "Screening" determines eligibility and appropriateness for participation in drug court. Screening for drug court eligibility primarily involves two components: 1) the review of legal requirements (e.g., residency requirements, sex and arson offenses, etc.), and 2) clinical appropriateness of the individual being considered for admission. The National Drug Court Institute recommends, that at a minimum, a screening tool should consider:

1. Drug use severity
2. Presence of major mental health problems
3. Motivation for treatment
4. Criminal thinking patterns.[iv]

When identifying a standardized screening tool, Drug Courts should consider: 1) how the information will be used; 2) ease of administration, scoring, and interpretation; including but not limited to the clients risk to reoffend, various life skill needs and clinical aspects; 3) classification accuracy, reliability, and validity; 4) time required to administer; 5) affordability (many can be downloaded for free); and 6) staff qualifications and training requirements.

Under current practice, there is not a criminal justice population-validated, no or low cost tool in place. MA District Drug Court Teams tend to base eligibility on the experience or perspective of the drug court team or a team member (e.g.: typically the probation officer makes the recommendation to the judge), and not on a standardized screening process. Although experience of the drug court team should not be discounted, a standardized tool would increase accountability for admission decisions, ensure participants are appropriate based on a standard threshold for eligibility and prevent subjectivity in initial screening decisions.

**Evidence-based clinical assessment: "**Assessment" determines suitability for specific types and intensity of services, and it routinely occurs after the offender is admitted into the drug court program. The assessment process provides a more detailed, in-depth, and dynamic picture of client problems and helps to specify appropriate types and levels of services

Once potential participants are accepted into the Drug Court Program, some Drug Courts employ an assessment tool, which is administered by the Drug Court probation officer. This tool was created in the late 1990s by a former Drug Court Team, and includes identifying information, dependents, education employment, substance abuse history, treatment experience, relapse and sobriety, familial substance abuse, mental health treatment history, medical history, and criminal history and court involvement. This tool provides a comprehensive portrait of the participant.

Other Drug Courts do not administer an assessment through probation, but rather work with an outside treatment partner who conducts an assessment to determine treatment need and level of care. Some Drug Court probation officers employ their own assessment at time of admission into the program, often based on their own experiences and perceptions, and then work with a treatment partner to conduct the outside assessment.

A few challenges were identified during the site visits relevant to assessment:

- There is not a standard procedure for the drug courts to partner with outpatient programs to provide independent clinical assessments for every client at the time of enrollment in the drug court. Although clinical assessments are reimbursable, the staff time that an agency has to commit to being present in the court to provide this service at drug court enrollment may not be cost effective for the agency.

The Bureau of Substance Abuse Services will work with contracted providers and the drug courts to reduce this barrier.

- There is an unclear process for levering the ORAS within a Drug Court setting to ensure the required ORAS information is collected, but is not duplicative of other information collected for the purposes of monitoring Drug Court participation.

- Absent of federal funding, there are no dedicated clinical assessors to determine level of care needs for Drug Court participants.

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**Drug court team membership:** Ideally, the composition of a Drug Court Team should include a judge, a dedicated probation officer, a prosecutor, a defense attorney, a treatment team, and enabling or recovery support services providers. The site visit team was impressed with the level of dedication by all of the 12 District Drug Court Teams. It is apparent that members believe deeply in the work that they do, and have a strong sense of commitment to participants. Even where some teams lack tools, such as standardized screening and assessment tools, training and education, and sufficient partnerships with providers, they make the most efficient use of existing resources and verbalize a desire to enhance current practice.

Currently, each District Drug Court in MA has a different team composition based upon internal court support for the Drug Court. In addition, unless they work for the Center for Public Counsel Services (CPCS), public defenders don't get paid for their time in the Court. Instead, bar counsel work pro bono for their time in Drug Court staffing sessions and only get paid for their time representing individual cases in court.

Notably, the Drug Courts varied greatly in terms of the roles the public defender and assistant district attorneys play on the team. In some Drug Courts, the public defense is only present at a surrender hearing to represent the individual held in violation. In others, there are multiple public defenders who consistently work with the Drug Court. The same holds true with the district attorneys; whereby in some of the Drug Courts, there are dedicated district attorneys who work with the Drug Court, some on rotation and others on a permanent basis. In others, the district attorney is only present at the time of sentencing or disposition on a surrender hearing.

Another issue expressed at many of the site visits is that the Committee for Public Counsel Services (CPCS) seems to perceive that the Drug Court model does not account for participants' due process. There are a few Drug Court sites that do have the full participation of CPCS attorneys; however, this issue requires outreach, education, and relationship building on behalf of the Trial Court and CPCS.

Lastly, because there is no Probation-wide policy or protocol about caseloads for Drug Court Probation Officers, most probation officers who work with Drug Court also carry another caseload of reporting and non-reporting probationers. There was a widely held sentiment that probation officers are not able to sufficiently meet the needs of their Drug Court participants because of the time necessary for their other caseloads. Of all Drug Courts, only one site has a dedicated caseload of Drug Court Probationers because they are classified as "intensive case supervision".

**Drug testing:** Drug testing is a common challenge for probationers as it may be cost-prohibitive or difficult to find a lab which will test for the required substances. Drug Court clients are mandated to more frequent drug testing than Medicaid will pay for because the need does not meet the threshold for "medical necessity". Most clients in residential treatment programs have their drug tests covered as part of their treatment, but those residing in the community must pay for their drug tests independently. In addition, the policy within the Office of Community Corrections is to test only those engaged in intensive treatment levels (Levels III and IV). This leaves a large number of Drug Court participants who are not being drug tested with adequate frequency.

**Treatment:** Overall, the Site Visit Team was quite impressed with the numbers and dedication of private providers involved with Drug Courts. The Teams have cohesive partnerships with providers and work in tandem to meet the needs of participants. However as in most jurisdictions around the country, budgetary constraints preclude a continuum of care that follows evidence-based practice and meets all levels of need. In MA, this is also the case.

Other issues appear to originate from the philosophy of the judge or probation officers about level of care or treatment option. First, some of the Drug Courts have an inherent belief that all new participants must start off in residential treatment based on their extensive drug use and criminal history. Therefore, regardless of assessed or perceived need, all new participants spend up to 90 days in residential treatment. The Site Visit Team understands the theory behind this policy; however, it does not align with current evidence-based practice, which indicates that level of care determinations should be based on an unbiased clinical assessment, and not a matter of standard practice. In addition, many District Drug Courts do not employ Medication Assisted Treatment because they do not "believe" in its use, they have seen it fail, or it conflicts with the Drug Court mission to keep clients drug free.

In other Drug Courts, there are confusing boundaries between the court officials, the probation officers and the treatment partners. For example, in certain situations, all participants enter intensive outpatient treatment – the level of care that is provided by the primary treatment partner for that Drug Court. Best practices demonstrate that although treatment providers serve as integral members of the Drug Court Team, it is the court officials that should mandate the ultimate treatment decision, based on a *recommendation* from the provider who conducts the assessment. Formal policies and procedures, which define each Drug Court Team member's roles, would be helpful in clarifying how treatment decisions are made.

Another issue which was prevalent throughout most of the 12 District Drug Courts is the lack of strategies to identify and address trauma. Although research has shown that ninety-five percent of women and 89 percent of men entering jail diversion programs have experienced physical or sexual abuse, and even more justice-involved individuals have trauma histories than are identified,[v] the Drug Courts fail to adequately address this need.

The Site Visit Team identified a ripe opportunity for collaboration between the Office of Community Corrections (OCC) and Drug Courts. Overall, several Drug Courts are currently partnering with OCC to provide treatment and recovery support services for probationers. A standard policy or process for collaboration between the courts and OCC would greatly benefit Drug Courts and better ensure that the treatment and post-treatment needs of participants are met.

**Sanctions & incentives:** There is strong conviction among some Drug Courts that consistency in sanctions is integral to the success of the program. In other Courts, sanctions are applied on an ad hoc basis, whereby the each case is considered individually and sanctions are applied irregularly. Notably, there is strong consensus among many of the Courts that the most effective sanction is detention, or "a day in the dock". Some Drug Courts require all participants who relapse to spend a period of incarceration as a sanction, while others reserve it for new offenses or more serious violations. There is also an overwhelming belief that many incentives are ineffective. Most Drug

Courts identified the most effective incentives as reduced reporting, fewer court appearances, and praise from the judge.

**Data collection & evaluation:** Although there have been isolated assessments and evaluations of Drug Court programs, Massachusetts has struggled with standardized data collection and reporting within Drug Courts and with external partners, including community treatment providers. This hinders information sharing and ongoing programmatic evaluation. BSAS is currently working with the Trial Court to identify data fields which can be collected in the MassCourts Database. In addition, BSAS is working with the Drug Courts to implement a standardized consent form, which complies with 42 CFR, and will allow for future data collection and analysis of Drug Court programs.

## SECTION III: ADHERENCE TO THE 10 KEY COMPONENTS

This section includes a brief summary of overall achievement for all 12 District Drug Courts toward the 10 Key Components of Drug Courts as determined by the Site Visit Team.

**Key Component 1:** Drug Court integrates alcohol and other drug treatment services with justice system case processing.

- All drug courts integrated treatment services with case processing to some extent.
- Six (50%) of the drug courts fully achieved this goal.

**Key Component 2:** Drug Court uses a non-adversarial approach; prosecution and defense counsel promote public safety while protecting participants' due process rights.

- Almost all drug courts (91.7%) employed a non-adversarial approach to some extent, with six (50%) fully achieving this goal.
- One court had not yet addressed this component.

**Key Component 3:** Drug Court identifies eligible participants early and promptly places them into the Drug Court program.

- None of the drug courts fully achieved this goal, although 11 (91.7%) partially achieved it.
- One court had not yet addressed this component.

**Key Component 4:** Drug Court provides access to a continuum of alcohol, drug and other related treatment and rehabilitation services.

- All drug courts provided access to a range of treatment and rehabilitation services to some extent.
- Four courts (33.3%) fully achieved this goal.

**Key Component 5:** Drug Court monitors abstinence by frequent alcohol and other drug testing.

- All drug courts monitored abstinence to some extent.

- Seven courts (58.33%) fully achieved this goal.

**Key Component 6:** Drug Court employs a coordinated strategy to govern Drug Court responses to participants' compliance.

- Almost all drug courts (91.7%) employed a coordinated strategy to govern responses participants' compliance to some extent, with six (50%) fully achieving this goal.
- One court had not yet addressed this component.

**Key Component 7:** Drug Court judge maintains ongoing judicial interaction with each Drug Court participant.

- Almost all drug courts (91.7%) fully achieved this goal, with only one court partially achieving it.

**Key Component 8:** Drug Court engages in monitoring and evaluation to measure the achievement of program goals and gauge effectiveness.

- Over half of the courts (58.33%) had not yet addressed evaluation of the program.
- Five courts (41.67%) partially achieved this goal.

**Key Component 9:** Drug Court has promoted continuing interdisciplinary education for effective Drug Court planning, implementation and operations.

- All courts partially achieved this goal.

**Key Component 10:** Drug Court has forged partnerships among Drug Courts, public agencies, and community based organization to generate local support and enhance Drug Court effectiveness.

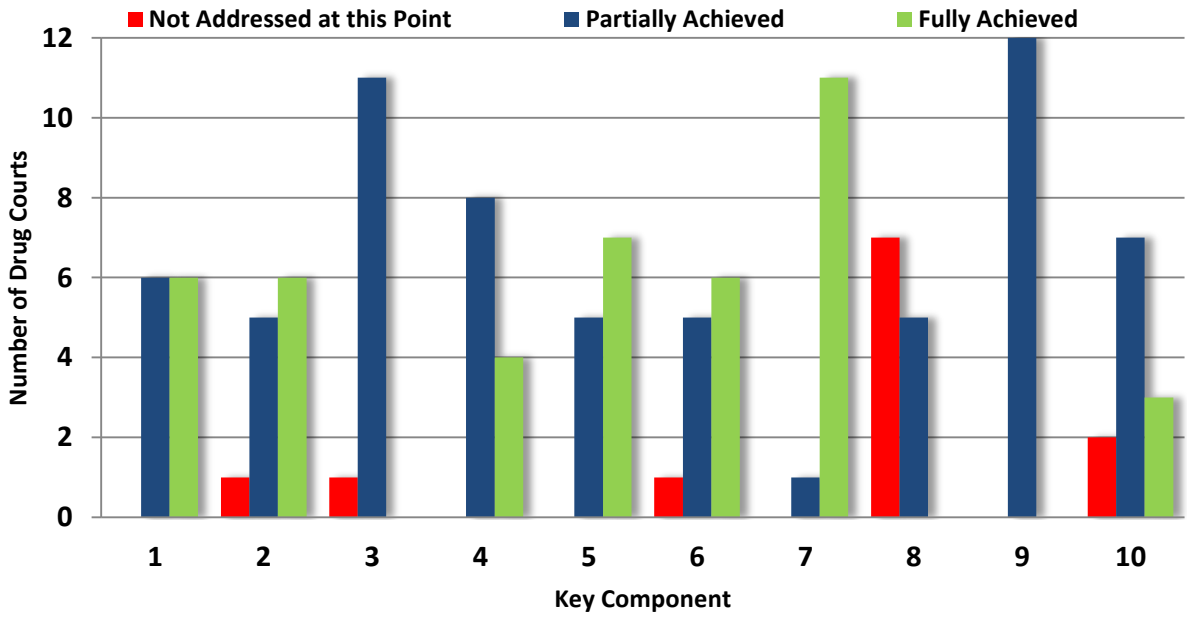
- Most courts (83.3%) have engaged in partnerships with other organizations in the community to some extent; three (25%) fully achieved this goal.
- Two courts have not yet addressed this component.

**10 Key Components Summary**

- Components doing well: 1, 4, 5, 7
- There were four components for which all courts partially or fully achieved the goals
    - Component 1: Drug Court integrates alcohol and other drug treatment services with justice system case processing.
    - Component 4: Drug Court provides access to a continuum of alcohol, drug and other related treatment and rehabilitation services.
    - Component 5: Drug Court monitors abstinence by frequent alcohol and other drug testing.
    - Component 7: Drug Court judge maintains ongoing judicial interaction with each Drug Court participant.

- Component 7 is notable because almost all drug courts (91.7%) fully achieved this goal (i.e., had a judge who maintained ongoing judicial interaction with each Drug Court participant).
- Components needing attention: 3, 8, 9
    - There were three components for which no drug court fully achieved the goals:
        - Component 3: Drug Court identifies eligible participants early and promptly places them into the Drug Court program.
        - Component 8: Drug Court engages in monitoring and evaluation to measure the achievement of program goals and gauge effectiveness
        - Component 9: Drug Court has promoted continuing interdisciplinary education for effective Drug Court planning, implementation and operations.
- Component 8 is particularly notable for the percentage of courts (58.33%) that had not yet addressed evaluation of the program. See Figure 1 and 2 due to the lack of resources.

**Figure 1 - Number of Drug Courts Reaching Each Achievement Level by Key Component**




## SECTION IV: RECOMMENDATIONS AND CONCLUSION

In May 2013, the Trial Court and BSAS will begin the development of a drug court strategic plan. The plan will inform the development of a policies and procedures manual to guide new and existing Drug Courts in their work. In addition, the strategic plan will inform the development of the MA Drug Court Center of Excellence, a statewide training and technical assistance entity to guide drug court operations and support sustainability. This would include information such as: Trial Court policies on starting new courts, court operations, basic guidelines for screening, assessment, data

collection, sanctions and incentives, and treatment. Below are some preliminary recommendations to guide future planning and decision making based on the impressions of the Site Visit Team.

**Description of Recommendations**

| Category | Recommendation | Responsible Agency(ies) |
|---|---|---|
| Drug court screening | Adopt a standardized eligibility tool to increase accountability for Drug Court admission decisions, ensure participants are appropriate based on a standard threshold for eligibility and prevent subjectivity in initial screening decisions. | Office of the Trial Court/ Drug Court Enhancement Project, Center of Excellence |
| Trauma screening | Ensure all new Drug Court clients are screened for Post-Traumatic Stress Disorder using a validated screening tool. | BSAS/ Drug Court Enhancement Project, Center of Excellence |
| Evidence-based Drug Court assessment (probation) | Identify the ways in which the ORAS can be best leveraged within a Drug Court setting for decision making within the program phases, including monitoring compliance, and measuring improvements (clinical and life skills). | Office of the Trial Court |
| Evidence-based clinical assessment (providers) | Develop a repository of evidence-based clinical assessment tools as a resource for Drug Court providers and encourage their use throughout the Commonwealth. | BSAS/ Drug Court Enhancement Project, Center of Excellence |
| Dedicated clinical assessors | Advocate for General Revenue Funds to hire dedicated clinical assessors for Drug Courts. | Office of the Trial Court/BSAS |
| Reimbursement | Identify payment strategies for reimbursing providers for clinical assessments administered for new Drug Court clients. | BSAS |
| Drug Court team membership | Develop a plan for outreach to defense and prosecution to encourage their participation in Drug Courts and improve their understanding of the ways in which Drug Courts protect the due process rights of participants. | Office of the Trial Court |
| Probation Training | Prioritize training about substance use disorders; specialty courts; and screening for substance use, mental health and/or trauma | Office of the Trial Court/ Drug Court Enhancement Project, Center of Excellence |
| Drug Court Team and Participant Training | Provide an overdose training to Drug Court teams and drug court participants | Drug Court Enhancement Project, Center of Excellence |
| Licensure for Probation Officers | Develop a specialty training track for probation officers to receive their Licensed Alcohol and Drug Counselor (LADC) and other appropriate licensure with a commensurate salary adjustment | Drug Court Enhancement Project, Center of Excellence |
| Treatment Partnerships | Engage in MOUs with all Drug Courts and treatment partners to formalize relationships and ensure accountability for participation in the Drug Court team process | Office of the Trial Court/BSAS |
| Informed Consent | Identify and implement a standardized informed consent form across all drug courts. | Office of the Trial Court/BSAS |

| Category | Recommendation | Responsible Agency(ies) |
|---|---|---|
| Judicial mentoring | Implement a judicial mentoring initiative, whereby judges in long-standing Drug Courts engage with newer judges to: enhance leadership capacity, support individualized participant interaction, and ensure they feel comfortable in a non-adversarial judicial role. | Drug Court Enhancement Project, Center of Excellence |
| Judicial training | Train new Drug Court judges alongside their team on the 10 Key Components and Seven Design Features through nationally-offered training opportunities. | Drug Court Enhancement Project, Center of Excellence |
| Drug testing | Provide drug testing through Probation for Drug Court participants in accordance with the requirements of the programmatic phase. | Office of the Trial Court |
| Caseload size | Adopt a process to ensure manageable caseload sizes for probation officers who work with Drug Court probationers. | Office of the Trial Court |
| Sanctions and incentives | Adopt formal presumptive graduated sanctions and incentives which are implemented with consistency. | Office of the Trial Court |
| Levels of care | Examine the existing continuum of care available for Drug Court participants and determine if there are gaps in levels of care. | BSAS |
| Court-based collaboration | Develop a standard policy or process for collaboration between the courts and OCC to leverage OCC resources and to support the aftercare needs of Drug Court participants. | Office of the Trial Court |
| Recovery support | Strengthen existing recovery support services for current Drug Court participants and for Drug Court graduates, such alumni groups. | Drug Court Enhancement Project, Center of Excellence |
| Community integration | Implement an Advisory Committee structure where community partnerships are forged to help with community integration. | Drug Court Enhancement Project, Center of Excellence |
| New Drug Court identification | Adopt a formalized process for identifying need for and launching new Drug Courts, including: outreach to new partners, including: local officials, judges, former participants, treatment providers, health centers, community coalitions, employers, etc. | Drug Court Enhancement Project, Center of Excellence |
| New Drug Court planning and implementation | Develop a new court readiness planning tool for courts to engage in planning and implementation and ensure they have the capacity to meet the needs of participants. | Drug Court Enhancement Project, Center of Excellence |
| Data collection and management | Gather standardized client data on Drug Court demographics, progress, and outcomes. Data should be reported in the MassCourts Database. | Office of the Trial Court/BSAS |

## CONCLUSION

The 12 District Drug Courts should be commended for their dedication and commitment to their participants. Each Team works tirelessly to offer an environment which supports participants' clinical needs and reduces their potential for reoffending. This report serves as a blueprint for

developing a statewide infrastructure to support their efforts and to ensure Drug Courts are equipped with the strategies to best serve their communities. The forthcoming strategic planning process and cultivation of the Center of Excellence will further these efforts, with a systematized Drug Court model which adheres to nationally-endorsed best practices.

# APPENDIX A: SITE VISIT TEAM MEMBERS

The Honorable Robert H. Ziemian – Team Lead

Marie Burke, Statewide Drug Court Administrator

Dr. Lisa Braude, DMA Health Strategies

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Paige Shaffer, Synthesis Inc.

# APPENDIX B: 10 KEY COMPONENTS AND SEVEN DESIGN FEATURES

## KEY COMPONENTS

**Key Component #1:** Drug courts integrate alcohol and other drug treatment services with justice system case processing

**Key Component #2:** Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights

**Key Component #3:** Eligible participants are identified early and promptly placed in the drug court program

**Key Component #4:** Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services

**Key Component #5:** Abstinence is monitored by frequent alcohol and other drug testing

**Key Component #6:** A coordinated strategy governs drug court responses to participants' compliance

**Key Component #7:** Ongoing judicial interaction with each drug court participant is essential

**Key Component #8:** Monitoring and evaluation measure the achievement of program goals and gauge effectiveness

**Key Component #9:** Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations

**Key Component #10:** Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness

## SEVEN DESIGN FEATURES

1. Screening and Assessment
2. Target Population
3. Procedural and Distributive Justice
4. Judicial Interaction
5. Monitoring
6. Treatment and Other Services
7. Relapse Prevention, Aftercare and Community Integration

# ENDNOTES


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[iii] Ibid.

[iv] National Drug Court Institute Quality Improvement for Drug Courts: *Evidence-Based Practices, Monograph Series 9.* Prepared by the National Drug Court Institute, the education, research, and scholarship affiliate of the National Association of Drug Court Professionals. (2008). National Drug Court Institute.

[v] Policy Research Associates. (2011). Final report of the evaluation of CMHS Targeted Capacity Expansion for Jail Diversion Programs initiative. Delmar, NY: Author.