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9

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SUBJECT: Proposed Additional Drug Court Provision for the Crime Bill

Introduction

In response to Congressional and Administration interest in the possible inclusion of a comprehensive drug court provision in the crime bill we have developed the attached draft legislative language. In doing so we consulted with several drug court experts and reviewed the recommendations of a coalition of approximately 18 drug court judges.¹ We also considered the concerns of state and county court judges and administrators in developing the attached proposal.

As you know, Section XII of the Senate crime bill (H.R. 3355) is labeled as a "drug court" title, but its contents do not fully correspond to this designation. It is composed of three programs from earlier bills -- for pre-trial drug testing, intermediate sanctions, and correctional substance abuse treatment -- which did not in their inception have any relationship to drug courts. A section has been added at the start of the title to permit the unified administration of the three programs by the Attorney General, but this is not sufficient to transform them into an adequately designed program for the support of drug courts.

¹ Available information shows the establishment of such programs in about 20 cities, and the establishment of a much larger number in other jurisdictions can be expected in the near future.

For example, the drug treatment grant program in title XII of the Senate bill could only provide funds for residential substance abuse treatment in correctional facilities lasting between 6 and 12 months, and hence could not be used at all to support the short-term detoxification programs and non-incarcerative drug treatment programs which are essential elements of "drug courts." The intermediate sanctions grant program in the Senate bill is not particularly related to drug abusing offenders, and it is limited in scope to offenders who are 25 or younger, foreclosing the use of the funding in relation to participants in drug court programs who are above that age. Moreover, these programs are designed as formula grant programs, which mandate the disbursement of specified proportions of the funding to the various states, with no discretion by the administering authority about what to fund. This approach provides no assurance that any particular amount of funding will be applied to drug court-related programs.²

We are preparing possible revisions to improve the formulation of the existing drug court related Senate and House provisions and are working with representatives of HUD and Labor to formulate proposed changes to enhance the existing provisions' linkages to job training and placement. However, for a variety of reasons it appears more feasible to propose a new comprehensive drug court provision in the House rather than attempting to address our concerns only in the conference process. The draft bill makes a fresh start by proposing a grant program that is specifically designed to encourage and assist drug court initiatives.

A Comprehensive Drug Court Proposal

Critical elements for properly designed programs of this type include the following:

- On-going judicial supervision of drug-abusing offenders in specified categories.
- Information systems that provide the supervising judges with complete and prompt information about participating offenders' history and status.
- Objective measurement of progress through frequent drug-testing of participants, with prompt reaction, including appropriate sanctions, to relapses or failure to meet program requirements, and positive judicial encouragement of progress and success.

² The House of Representatives has passed the intermediate sanctions and correctional substance abuse treatment grant programs as separate bills. The House bills do not involve even the partial integration of the proposed programs that appears in the Senate bill.

- The prompt application of measured, graduated sanctions for violations, including the threat of prosecution or incarceration for participants who do not comply with program requirements or "drop out" of the program.
- Mandatory participation in drug abuse treatment.
- Integration of other programmatic or "aftercare" services for participants, such as education, vocational training, job placement, housing placement, health care, and parenting or family support services.

Programs with these features offer an alternative to the revolving door of repeated prosecution for drug-abusing offenders, and to relatively meaningless sanctions such as minimally supervised probation. They create a situation in which drug abusers cannot escape the consequences of their actions, and are provided with the necessary motivation for changing their behavior by the threat of penal sanctions for failing to cooperate or make progress. The possibilities for offenders to manipulate the system are foreclosed through continuing oversight, close cooperation among the supervising agencies, and prompt negative consequences for lapses. At the same time, related problems that contribute to drug abuse are addressed through the integrated administration of social services, tailored to the needs of individual participants.

The proposed bill would establish a system of federal support to encourage and assist "drug court" programs. This is essentially a new proposal.

The provisions of the bill are as follows:

Section 1 authorizes the Attorney General to make grants for "drug court" programs. Eligible programs would need to incorporate continuing judicial supervision of specified categories of drug offenders, drug testing and treatment, the authority to seek and impose sanctions on participants who do not comply with program requirements or fail to make progress, and the integrated administration of social services as part of the program. Beyond these essential prerequisites, latitude is left for variations adapted to local conditions and experimentation with different approaches. For example, both pre-trial diversion programs and post-conviction probation programs could potentially be supported. A fully specialized court or section of a court would not necessarily have to be established, so long as the other minimum requirements set out in the section were satisfied.

Section 2 provides the Attorney General with authority over the administration of the program. The various components of the Justice Department could be utilized in carrying out the program, and the Attorney General would be authorized to establish program requirements, standards, and procedures through regulations or guidelines. This would include the authority to adopt guidelines

setting minimum standards for the elements of funded drug court programs, such as continuing supervision, drug treatment, drug testing, graduated sanctions, and integration of aftercare or programmatic services. Subsection (c) contains specific application requirements which are designed to ensure long-term planning and the integration of funded programs with related initiatives, assistance and not replacement of local responsibility, and continuation of funded programs following the conclusion of a limited period of federal support.

Section 3 authorizes the Attorney General to carry out technical assistance, training, and evaluations in relation to "drug court" programs, either directly or through arrangements with other entities. For example, the Attorney General could provide support under this section for a resource center or centers providing assistance and information to drug court programs.

Section 4 authorizes an annual appropriation of \$200 million for the program in each of the next three fiscal years.

The draft legislative language is attached for discussion purposes.

A BILL

To support and assist drug courts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled,

SEC. 1. GRANT AUTHORITY.

The Attorney General may make grants to units of State and local government, and to other public and private entities, for programs that involve continuing judicial supervision over specified categories of persons with substance abuse problems, and that involve the integrated administration of other sanctions and services including --

(1) testing for the use of controlled substances or other addictive substances;

(2) substance abuse treatment;

(3) diversion, probation, or other supervised release involving the possibility of prosecution, confinement, or incarceration based on non-compliance with program requirements or failure to show satisfactory progress; and

(4) programmatic or aftercare services such as education, vocational training, job placement, housing placement, and child care or other family support services.

SEC. 2. ADMINISTRATION.

(a) USE OF COMPONENTS. -- The Attorney General may utilize any component or components of the Department of Justice in carrying out this Act.

(b) REGULATORY AUTHORITY. -- The Attorney General may issue regulations and guidelines to carry out this Act, including specifications concerning application requirements, selection criteria, duration and renewal of grants, evaluation requirements, matching funds, limitation of administrative expenses, submission of reports by grantees, recordkeeping by grantees, and access to books, records, and documents maintained by grantees or other persons for purposes of audit or examination.

(c) APPLICATIONS. -- In addition to any other requirements that may be specified by the Attorney General, an application for a grant under this Act shall --

(1) include a long-term strategy and detailed implementation plan;

(2) explain the applicant's inability to fund the

- 2 -

program adequately without Federal assistance;

(3) certify that the Federal support provided will be used to supplement, and not supplant, State and local sources of funding that would otherwise be available;

(4) identify any related governmental or community initiatives which complement or will be coordinated with the proposal;

(5) certify that there has been appropriate consultation with all affected agencies, and that there will be appropriate coordination with all affected agencies in the implementation of the program;

(6) specify plans for obtaining necessary support and continuing the proposed program following the conclusion of Federal support; and

(7) describe the methodology that will be utilized in evaluating the program.

SEC. 3. TECHNICAL ASSISTANCE, TRAINING, AND EVALUATION.

(a) TECHNICAL ASSISTANCE AND TRAINING. -- The Attorney General may provide technical assistance and training in furtherance of the purposes of this Act.

(b) EVALUATIONS. -- In addition to any evaluation requirements that may be prescribed for grantees, the Attorney General may carry out or make arrangements for evaluations of programs that receive support under this Act.

(c) ADMINISTRATION -- The technical assistance, training, and evaluations authorized by this section may be carried out directly by the Attorney General, or through grants, contracts, or other cooperative arrangements with other entities.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated \$200 million in each of fiscal years 1995, 1996, and 1997 to carry out this Act.

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Drug Courts: A Judicial Manual

Judge Jeffrey S. Tauber