



U.S. District Court for the District of South Carolina
Written Statement to U.S. Sentencing Commission – Drug Courts

The Honorable Bruce Howe Hendricks
United States District Judge

March 2, 2017

Introduction

These remarks are submitted in light of the Commission’s continued study of sentencing approaches that encourage the use of alternatives to incarceration generally, and specifically with regard to the Commission’s study of “pre-trial” or “front-end” alternative-to-incarceration programs that now exist in a growing sample of federal districts across the country. My comments will mainly address the District of South Carolina’s BRIDGE Program, a pre-trial drug court that I helped to create in Charleston and now supervise on a districtwide basis, with additional locations in Columbia, Florence, and Greenville.

(1) Why South Carolina Sought to Create an Alternative Program

The BRIDGE Program was developed in order to meet a commonly expressed desire among Judges in the District of South Carolina to have more tools at their disposal during sentencing. To be specific, Judges felt that they had inadequate options for sentencing certain non-violent drug offenders, particularly where they

believed a non-incarceratory sentence would best satisfy the purposes of punishment itemized in 18 U.S.C. § 3553(a).

Underlying the BRIDGE Program's inception and development were three core purposes: (1) to provide alternative sentencing tools for a certain class of cases; (2) to better ensure the public safety; and (3) to address the foregoing needs with an eye toward fiscal responsibility. Over six years of operation, Judges in South Carolina have used the BRIDGE Program's resources in a diverse set of sentencing circumstances, to include: (1) "pre-trial" participants who have pled guilty to their offense(s) of conviction and are awaiting sentencing; (2) "post-trial" participants who have already completed an incarceratory sentence and are at risk of being incarcerated again due to ongoing incidences of illegal drug use while on supervised release; and (3) participants whose completion of the Program has been made a special condition of their adjudicated sentence, as imposed by the Judge with jurisdiction over the underlying criminal case. In this way, the BRIDGE Program has proven adaptable to a full range of case postures. Through candid feedback, South Carolina Judges have acknowledged that the Program filled an identified gap in their sentencing tools, and it has been welcomed throughout the District.

(2) How the BRIDGE Program was Developed

The question often arises as to how we developed the BRIDGE Program and whether we received any assistance from a social scientist or like professional. We began by observing a number of federal and state drug court programs that are widely

considered to be successful examples of drug court operations. These programs included Judge Joseph Laplante’s “LASER Docket” in the District of New Hampshire, Senior Judge Earl Britt’s and Magistrate Judge James Gates’ federal drug court in the Eastern District of North Carolina, Judge Keith Starrett’s federal drug court in the Southern District of Mississippi, Judge Chuck Simmons¹ state drug court in Greenville, South Carolina, and Judge Irvin Condon’s state drug court in Charleston, South Carolina. Indeed, we specifically borrowed program documentation from some of these courts, to include participation agreements and program policies. Next, we adapted these policies and procedures to local practice and need, and the above articulated goals. Preparation of the Program’s documentation and structure was at all times done in specific consideration of the National Drug Court Institute (NDCI) 10 Key Components of a Drug Court² and the National Association of Drug Court Professionals (“NADCP”) Adult Drug Court Best Practice Standards.³ A representative of the NDCI performed on-site training and observed the BRIDGE Program in operation in order to provide feedback and advice regarding effective implementation. Finally, we continue to update the training of key personnel through

¹ Judge Simmons is President of the South Carolina Drug Court Association and Chairman of the Board of Directors for the National Association of Drug Court Professionals in Washington, D.C. His advice and counsel have been invaluable in our efforts to establish sound and effective methods and policies in the BRIDGE Program.

² The NDCI 10 Key Components of a Drug Court is available at:

<http://www.ndci.org/publications/more-publications/ten-key-components/>.

³ The NADCP Adult Drug Court Best Practices Standards are available in two volumes at:

<http://www.ndcpc.org/content/nadcp-adult-drug-court-best-practice-standards-volume-1>; and

<http://www.ndcpc.org/content/nadcp-adult-drug-court-best-practice-standards-volume-ii>.

courses offered by the NADCP in order to keep abreast of, and craft responses to, current issues in the community of drug court professionals.

In all of our efforts, we strive to implement evidence-based principles of effective behavior modification, and, importantly, foster cooperative relationships with and among key personnel at the United States Probation Office, United States Attorney's Office, and the Federal Defender's Office. Without these relationships, and a shared vision for adhering to time-tested evidence-based practices, the BRIDGE Program simply could not run.

A related, but distinct, question commonly arises about whether front-end drug courts are suitable for use in federal court. Given that so much of what we know about drug courts has occurred in the laboratory of state court systems, it is sometimes doubted that they can be effectively implemented in the federal system. Preliminary indicators, however, suggest that many federal defendants are actually ideal candidates for drug court. Indeed, property offenders and drug offenders, the two categories of criminal defendants most commonly admitted to drug court, comprise a much larger proportion of the federal inmate population than they do in the state prison system.⁴ Although federal defendants often face longer sentences than their state defendant counterparts, this does not mean that they have the violent criminal histories that often exclude defendants from admission to drug court. From 2010 to 2015, approximately 50% of those convicted of federal drug offenses had a

⁴ See U.S. Department of Justice, Bureau of Justice Statistics, "Prisoners in 2015," tables 9 & 10.

criminal history category of only I.⁵

Additionally, there is every reason to expect that the social science underlying the NADCP Best Practices is applicable to human behavior and psychology generally and that it is not somehow specific to any particular judicial system. In other words, the attributes of drug court programming are not system dependent, but human-nature dependent. In the end, the BRIDGE Program, like its state-court corollaries, is simply a special docket for low level criminal defendants whose offenses are motivated by drug addiction. We should anticipate similar results and, indeed, have observed as much in over 6 years of operation.

(3) How the BRIDGE Program is Run

The BRIDGE Program is designed to retain flexibility with regard to the stage of judicial proceedings at which it is used. As already explained, it can accommodate “pre-trial” participants, “post-trial” participants, and hybrids of the two. Nevertheless, as a primarily “front-end” program, the majority of our participants are in the “pre-trial” stage, meaning that they have pled guilty and are awaiting sentencing.

At the risk of becoming too granular, it may be helpful to explain just *how* a defendant is selected for admission into the Program. Potential participants are referred by judges, defense attorneys, probation officers, AUSA(s), and members of the BRIDGE Team alike. This referral is done by way of a simple form. Probation

⁵ See U.S. Sentencing Commission’s 2010-2015 Sourcebooks of Federal Sentencing Statistics, table 37.

then screens the referred defendant, looking into their criminal history, concurrent state charges, mental health comorbidities, etc. Most importantly, the individual must have a documented substance abuse addiction problem *that motivated the criminal conduct in question*. If there is any doubt regarding the validity of the drug dependency at issue, the defendant will be referred for a thorough evaluation in order to confirm this requirement—a nexus between drug addiction and the offense of conviction.

Next, the presiding judge reviews the referral materials along with the supervising probation officer in light of the BRIDGE Program’s eligibility criteria and determines if the defendant is a good candidate. The potential participant is provided with information that gives an overview of the Program, the goals and methods of its three phases, the system of incentives and sanctions, etc. The candidate is also required to observe one session of BRIDGE Court in order to complete their application. If the presiding judge agrees to accept the defendant into the program, the supervising probation officer seeks approval from both the AUSA and District Judge assigned to the case.

If ultimately approved, the defendant must sign the BRIDGE Program Participation Agreement acknowledging and consenting to all of the supervisory and treatment measures he/she will be required to undergo. In full candor, these measures are quite intrusive and are designed to introduce a disciplined lifestyle from the very beginning of the Program. BRIDGE participants are supervised by a probation officer to ensure that they comply with Program requirements, including: (1)

participation in substance abuse treatment and, if needed, cognitive behavioral therapy; (2) seeking and maintaining employment or full-time education; (3) abstinence from drugs and alcohol and submission to random urinalysis testing; (4) attendance at self-help meetings such as Narcotics Anonymous; (5) maintaining relationship with a sponsor and getting involved in the recovery community; (6) compliance with other directives of the Court, such as avoidance of certain social settings or relationships which have been verified as relapse triggers; (7) complete transparency and constant contact with the supervising probation officer.

These requirements are not without precedent. Indeed, they are quite similar to those conditions commonly imposed by judges for pretrial supervision under 18 U.S.C. § 3142.⁶ In other words, federal judges are already regulating defendants' lives in the ways contemplated by a drug court, but, in drug court, intensive treatment and supervision are enforced through regular judicial accountability. Thus, it might be said that drug courts like the BRIDGE Program are simply more of what the criminal code anticipates and what all judge's want—supervision and safety. To be clear, the BRIDGE Program is not, as some drug court critics might suggest, a misguided attempt at social work conducted by the judiciary. Rather, it is a court-driven program, and we marshal the necessary operational resources through the lens of Section 3142.

Lastly, I will provide a brief description of the U.S. Probation Office's supervision of BRIDGE participants and the mechanics of staffing and court

⁶ See 18 U.S.C. § 3142(c)(B)(ii, iii, iv, vi, vii, ix, x, xii, and xiv)

sessions. We have found that selecting a supervisory probation officer who sincerely believes in the mission and methods of drug courts is perhaps the lynchpin to success at any particular Court location. The probation officers we have assigned to BRIDGE are *extremely* thorough in monitoring participants' drug testing, housing, N.A. attendance, substance abuse and mental health treatment, financial planning, employment and vocational training, continuing education, family and social relationships, and the list could go on. Again, these functions of the probation officer are quite similar to those functions routinely performed pursuant to Section 3142, but with a higher emphasis on treatment as it relates to drug addiction and greater latitude to intrusively monitor participants' relational and environmental circumstances in order to provide effective advice to the presiding judge regarding case-specific methods and goals. Participants are encouraged, indeed required, to take affirmative steps to maintain honesty and transparency at all times. Of course, this greater degree of intrusion and policy of "self-reporting" can sometimes raise concerns about self-incrimination, but its utility in achieving lasting results is unmatched, and its implementation is justified by participants' knowing, intelligent, and voluntary consent, which is a condition precedent to admission to the Program.

Before each session of BRIDGE Court, which meets biweekly, we have a staffing meeting where the presiding judge receives input from the supervising probation officer, the AUSA(s), defense counsel, and treatment providers in order to preview the status of each case and brainstorm solutions to any issues that have

arisen. In the drug court sessions themselves, each participant is required to answer truthfully whether they have used any drugs or alcohol, provide proof of attendance at recovery meetings, proof of hours at work or attendance at school, and verify progress on any other matters the Court has required of them. The empirical research behind drug courts shows that a graduated system of small, but immediate and ultimately increasing, rewards and sanctions has an amplified impact in ensuring compliance with Program requirements. The presiding judge has a large toolbox of options at his or her disposal when deciding how to proceed in any given case.

(4) BRIDGE Program Participant Data

The following numbers represent participant data from the BRIDGE Program from its inception until the present, and across four South Carolina Divisions (Charleston, Greenville, Florence, Columbia):

| | |
|------------------------|-----|
| Total participants: | 109 |
| Graduates: | 43 |
| Active participants: | 30 |
| Terminated: | 20 |
| Voluntarily withdrawn: | 15 |
| Deceased: | 1 |

(5) How the BRIDGE Program Measures Success

The BRIDGE Program measures success in terms of two main metrics: (1) cost savings, and (2) recidivism reduction. However, it must be said that these

quantitative values do not fully account for qualitative impacts in the lives of our graduates and even those who do not complete the program, nor do they account for the secondary and tertiary effects on families, communities, and beyond. Admittedly, these more remote effects are difficult to measure but, as will be discussed, such effects will be the subject of research we have recently associated with our program in conjunction with Clemson University.

First, a disclaimer is in order. We are not social scientists and we do not pretend to be. Nevertheless, with an eye toward holding ourselves accountable, the BRIDGE Team has done its best to track cost savings in terms of dollars saved per dollars invested, and recidivism reduction in terms of subsequent criminal conduct by BRIDGE graduates.

With respect to cost savings, the results of our own calculations are very encouraging. We have explained our methodology for calculating cost savings at length in a separate memorandum, including analysis based upon the marginal cost of incarceration and analysis that incorporated fixed costs as well. For purposes of these remarks, it should suffice to say that, with fixed costs incorporated, the BRIDGE Program saves approximately \$7 in resources for every \$1 spent. Under this rubric, the total savings for the Program are approximately \$3.5 million. It should be emphasized that the numbers we compiled in our memorandum report were all generated with a conservative eye toward the information inputs. In other words, if there was any question regarding the accuracy of claiming particular savings, we

consistently erred on the side of not claiming those savings (e.g. many of the costs attributed to the Program would almost certainly have been incurred by U.S. Probation in providing pre-trial drug treatment to the participants had they not been enrolled in drug court, but no effort was made to disaggregate these “expenses”).

With respect to recidivism reduction, we have knowledge of the following subsequent criminal conduct by BRIDGE graduates. Out of 43 graduates: 2 have incurred state DUI charges; 1 committed a series of supervised release violations (having received a time-served sentence) involving drug possession and use, DUI, and failure to notify Probation of police contact regarding a hit and run incident, and her supervised release was revoked for 9 months with no term of supervised release to follow; 1 reoffended by selling illegal drugs, was readmitted to the Program, and successfully completed it for a second time; and 1 tested positive during supervision, admitted to use, was readmitted to the Program, and is a current participant. The BRIDGE Team makes substantial effort to keep in touch with our graduates, and we have somewhat of a luxury in this respect due to the relatively small size of our participant population. Of course, we have official information about any of our graduates who remain under our supervision. We have no formal evaluation of the aforementioned *qualitative* impacts on our graduates’ lives, families, and communities, but our informal appraisal of these impacts is overwhelmingly positive.

One invaluable resource that has allowed us to maintain continual involvement in our graduates’ lives is our BRIDGE mentor program, run in partnership with the

Federal Bar Association. These FBA mentors are linked with participants during the course of the Program. They assist participants with career counseling, community integration, and other related matters, and they tend to keep up relationship with our graduates long after they have completed the Program. In addition, the BRIDGE Program recently began a partnership with the local Drug Enforcement Agency field office, whereby BRIDGE graduates go to local schools with DEA officers and speak to students about the dangers of addiction. We are encouraged by this development, as we believe it is a sign that Program graduates are beginning to serve as real catalysts for change within their communities.

As the BRIDGE Program has grown and matured, we have recognized the need to substantiate our own internal research with the expertise and impartiality of true social scientists. Accordingly, in October 2016 we began a research partnership with Clemson University and Greenville Hospital System. The first stage of this partnership is for an independent, third-party, retrospective evaluation of the BRIDGE Program's basic metrics in recidivism and cost savings. This research is currently underway. The second stage of the partnership, currently only conceptual in nature, would be a prospective and thorough evaluation, however imagined, of all the qualitative and quantitative attributes of the program in system, societal, and individual impacts. Such an evaluation might reasonably include an examination of the efficacy of any or all of the systems and programming used by the BRIDGE Program. Finally, it is our sincere hope that the Commission, with its unique research

capabilities, might bring additional resources to the table should it take an interest in understanding, validating, and quantifying the efficacy of the BRIDGE Program.

(6) Sentencing BRIDGE Program Graduates

Another common question directed toward the BRIDGE Program concerns how graduates are sentenced and what role the sentencing guidelines play in the sentencing process. To this point, all BRIDGE graduates have received a non-custodial outcome—probation, a time-served sentence, or, less commonly, full dismissal of their charges.

This is not to say that the sentencing guidelines play no role in BRIDGE participants' resultant sentences. Indeed, during the admissions process, the supervising BRIDGE Court judge, the original district judge, and the AUSA collectively consider whether they can tolerate moving from the anticipated guidelines range to a non-custodial outcome. In other words, the breadth of disparity between the applicable guidelines range and a non-incarceratory sentence is weighed on the front end, and potential participants are only admitted to the Program if a probationary or time-served sentence would be satisfactory to the Court and to the prosecution.

That said, participants are expressly and repeatedly informed, and required to acknowledge, that neither the BRIDGE Program nor any of its personnel make any promise as to the sentencing outcome of their case should the participant successfully complete the Program. As a whole, BRIDGE Program policies and procedures are

designed to evaluate each candidate individually and ask whether they are the type of defendant for which a non-custodial sentence would be appropriate. This point highlights a principle already discussed in the first section of these remarks: that the impetus for creating the BRIDGE Program was to provide South Carolina Judges with additional sentencing tools which they felt they lacked for a certain subset of non-violent drug and property offenders.

I suppose it can be extrapolated that BRIDGE sentencing practices place a rather large emphasis on Section 3553(a)(1), which requires the Court, in imposing a sentence sufficient but not greater than necessary, to consider the nature and circumstances of the offense and the history and characteristics of the defendant. In the course of the admissions process, the BRIDGE Program, through screening and evaluation, *requires* that the offense in question be more directly related to substance abuse and/or addiction than to some independent criminal motivation or intent.

One criticism that is often directed at drug courts is the notion that they have the adverse effect of imposing “sentencing cliffs” on a system in which it is already difficult to maintain a satisfactory degree of sentence regularity and consistency. Put more simply, “Don’t drug courts create sentencing disparities between similarly situated defendants where they would not otherwise exist?” The answer to this objection is that, where drug courts are operated properly, eligible defendants are actually *not similarly situated* to their counterparts who are not eligible, even though their offense(s) of conviction and guideline range may appear to be similar. But, the

proper distinction, between eligible and non-eligible defendants can really only be made to the extent that the drug court team is able to associate the criminal conduct in question with a clinical diagnosis. To this end, the BRIDGE Program attempts, as much as possible, to drill down on the nexus between the defendant's conduct and the defendant's addiction, which requires an in-depth look at both the relevant criminal history and the substance abuse history. Respectfully, to the extent criminal activity is established to be motivated by a clinically diagnosed substance addiction, drug court programming necessarily recognizes that such defendants are differently situated from others committing similar conduct, but for different criminogenic factors, thereby justifying the disparity in sentencing outcome.

The sentencing of BRIDGE graduates balances two important considerations, which are sometimes in tension. The original and sentencing district judge, and not the BRIDGE supervisory judge or the BRIDGE Team, always retains discretion over the sentencing outcome. But, the exercise of such discretion is always informed by the important best-practices precept that it does not make sense to have participants stabilize their entire lives and establish a strong recovery network only to *then* incarcerate them once they have done so. In this context, the reasonable approach has been to informally ask, at the outset, whether the sentencing judge can anticipate tolerating a non-custodial sentence for any particular defendant.

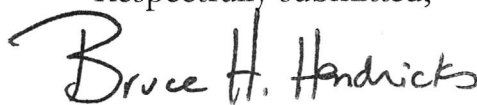
(7) Tracking BRIDGE Program Graduates

The BRIDGE Program includes a three-month aftercare process, whereby

graduates are required to maintain a certain degree of contact and accountability with the supervising probation officer, and to attend at least three sessions of BRIDGE Court as an observer. Judicial accountability, however, is absent in the aftercare phase. Some graduates continue to be under ongoing supervision due to a probationary sentence. Additionally, as already mentioned the Program is still small enough that BRIDGE personnel and mentors stay in touch with many of our graduates out of interest for their welfare. Other graduates voluntarily appear at sessions of BRIDGE Court to encourage active participants, to express loyalty and gratitude, and for continuity with their community of recovery.

In terms of formal tracking and analysis, the BRIDGE Program is in the beginning phases of such research in partnership with Clemson University and Greenville Hospital Systems. As an emissary for the BRIDGE Program, I welcome any additional resources that the Commission may be able to provide for this simple reason—we want to know the Program’s unvarnished results because we want it to be as effective as possible.

Respectfully submitted,

A handwritten signature in black ink that reads "Bruce H. Hendricks". The signature is written in a cursive style with a large initial "B" and "H".

Bruce Howe Hendricks
United States District Judge



United States District Court for the District of South Carolina
Interim Report on the Bridge Drug Court Program

The Honorable Bruce Howe Hendricks
United States District Judge

August 2016

The Drug Court for the United States District Court for the District of South Carolina, known as the Bridge Program (the “Program”), is a supervision and rehabilitation program for defendants whose criminal conduct appears to be motivated, in significant part, by substance abuse and addiction. Often disqualified from participating in Pre-Trial Diversion, or quickly failing out because of their drug problems, these individuals return to court, time and time again, a frustration to themselves and the criminal justice system. Drug courts are a proven and effective approach to ending this cycle. Since the Bridge Program began on November 29, 2010, approximately one hundred and three (103) participants have entered the Program, approximately twenty-nine (29) participants are currently in it, and forty-one (41) have successfully graduated.¹ This memorandum reviews the evidence for the drug court model, argues for the adoption of such programs in the federal system, and describes the costs and savings associated with the Bridge Program.

¹ The remaining participants were either involuntarily terminated from the program or withdrew. One participant passed away.

I. BACKGROUND

The term “drug court” typically refers to a special docket for low-level criminal defendants whose offenses are fueled by substance addiction. Through a team-based, interdisciplinary approach that emphasizes treatment over punishment and provides accountability through regular drug testing and court appearances, drug courts help participants overcome addiction and break comorbid cycles of crime, incarceration, and recidivism. Participants who successfully complete such programs are often eligible to have their charges dismissed or to receive a non-custodial sentence. Judge Charles B. Simmons, who runs a state drug court in Greenville, South Carolina, and has served as the chairman of the board for the National Association of Drug Court Professionals, described the drug court model as follows:

Drug courts strike the balance between protecting public safety and improving public health. Participants receive the treatment they need, are regularly tested for drug use and appear frequently before a judge to review their progress. They receive rewards for doing well and sanctions for not living up to their obligations, including lengthy prison terms for those unwilling to make the necessary changes.²

Common rewards “include praise and small tokens such as sweets and gift tokens,” while “[s]anctions can range from chastisement to a brief stay in jail.”³

The first drug court began in Florida in 1989 when the Dade County Circuit Court “developed an intensive, community-based, treatment, rehabilitation, and supervision program for felony drug defendants to address rapidly increasing recidivism rates.”⁴ By May of 2014, there were over 2,800 similar programs operating in jurisdictions throughout the United States.⁵ The State of South Carolina has used drug courts since at least 1998.⁶

² Charles B. Simmons, Jr. “Drug Courts Save Lives, Money, Reduce Crime.” THE STATE, August 10, 2008.

³ *Drug Courts: Stay Out of Jail Clean*, THE ECONOMIST, February 24, 2011.

⁴ Office of National Drug Control Policy: Drug Courts *available at* <http://www.whitehousedrugpolicy.gov/enforce/drugcourt.html>.

⁵ *Drug Courts*, National Criminal Justice Reference Service, <https://www.ncjrs.gov/pdffiles1/nij/238527.pdf>

⁶ Simmons, *supra* note 2.

Drug courts developed against a backdrop of growing incarceration rates in the United States. In 1972, the United States imprisonment rate, which stood at 93 per 100,000,⁷ began a period of prolonged and steep growth, increasing annually by six to eight percent through 2000.⁸ When the rate peaked in 2007, it was 506 per 100,000.⁹ The 2012 rate of 471 per 100,000 is “4.3 times the historical average of 110 per 100,000.”¹⁰ As a result, the United States is unparalleled in the proportion of its population that it incarcerates, making up 25% of the world’s prisoners, but only 5% of its population.¹¹ Increased incarceration has come at a substantial cost to taxpayers. The \$68 billion spent on corrections in 2010 represents a 300% increase over 25 years.¹²

Despite substantial spending on corrections, approximately two-thirds (67.8%) of inmates are rearrested for a new crime within three years of their release, and three-quarters (76.6%) of them are arrested within five years of release.¹³ The recidivism numbers are even worse for those imprisoned for property and drug crimes, the population typically eligible for drug court. Within a single year of release, 50.3% of inmates incarcerated for property offenses and 42.3% of those incarcerated for drug offenses will be rearrested.¹⁴ The five-year rates are 82.1% for property offenders and 76.9% for drug offenders. Drug courts seek to break this cycle by treating the addictions that drive it.

⁷ CHET BOWIE, U.S. DEPT. OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS, 1925-81 2 (1982).

⁸ NATIONAL RESEARCH COUNCIL, THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES 34 (Jeremy Travis et al. eds. 2014).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Jeffrey Rosen, *Could Keeping Convicts from Violating Probation or Their Terms of Release be the Answer to Prison Overcrowding*, THE NEW YORK TIMES MAGAZINE, Jan. 10, 2010, at 38.

¹² Newt Gingrich and Pat Nolan, Op-Ed., *Prison Reform: A Smart Way for States to Save Money and Lives*, Wash. Post, Jan. 7, 2011.

¹³ MATTHEW R. DUROSE, ALEXIA D. COOPER & HOWARD N. SNYDER, U.S. DEPT. OF JUSTICE, BUREAU OF JUSTICE STATISTICS, RECIDIVISM OF PRISONERS RELEASED IN 30 STATES IN 2005: PATTERNS FROM 2005 TO 2010 14 (2014).

¹⁴ *Id.* at 8.

II. THE EVIDENCE FOR THE DRUG COURT MODEL

In the 25 years since their development, scholars have had significant opportunities to study the effectiveness of drug courts, and the evidence they have gathered indicates that drug courts significantly reduce both substance abuse and recidivism and save taxpayers money. “A statewide study in Georgia found the two-year recidivism rate among drug-court participants was 7%, compared with 15% for those on probation alone and 29% for drug-users who served time in state prison.”¹⁵ “The consensus reflected in three recent reviews of more than 60 recidivism studies is that adult drug courts reduce recidivism by an average of 8 to 13 percentage points.”¹⁶ *See also, United States v. Baccam*, 414 F.3d 885 (8th Cir. 2005) (Lay, J., concurring) (“Evidence shows that the flexible and pro-active approach of drug courts reduces recidivism rates to less than half of the recidivism rate of those offenders who are simply imprisoned for their drug crimes.”). Proponents argue that the best programs have “reduced crime by as much as 45 percent over other dispositions.”¹⁷

The positive impact of drug courts has been shown to be significant even where researchers have controlled for a range of variables including enrollment in drug treatment programs. In 2011, the National Institute of Justice (NIJ) and researchers from the Urban Institute, RTI International, and the Center for Court Innovation concluded a five-year longitudinal study of adult drug courts entitled the Multisite Adult Drug Court Evaluation (MADCE). The study examined outcomes for 1,157 participants in 23 drug court programs and compared them to outcomes for 627 offenders at six comparison sites that operated a range of other programs for

¹⁵ THE ECONOMIST, *supra* note 3.

¹⁶ Michael Rempel, et al., *Multi-Site Evaluation Demonstrates Effectiveness of Adult Drug Courts*, 95 JUDICATURE, No. 4, at 154 (January/February 2012).

¹⁷ WEST HUDDLESTON & DOUGLAS B. MARLOWE, NATIONAL DRUG COURT INSTITUTE, PAINTING THE CURRENT PICTURE: A NATIONAL REPORT ON DRUG COURTS AND OTHER PROBLEM-SOLVING COURT PROGRAMS IN THE UNITED STATES 9 (2011).

drug-involved offenders.¹⁸ The comparison offenders were “carefully matched to the Drug Court participants on a range of variables that influenced outcomes.” Drug court participants reported less criminal activity (40% vs. 53%), were arrested less frequently (52% vs. 62%), reported less drug use (56% vs. 76%) and were less likely to test positive for drugs (26% vs. 46%).¹⁹ The study also found that 18 months after the program, drug court participants were significantly more likely to be employed and reported less family conflict than the comparison offenders.

The use of drug courts also results in substantial savings for taxpayers and increased productivity for society. A three-year study in New York estimated that the state court system saved \$254 million by diverting 18,000 non-violent drug offenders from prison to drug court.²⁰ “In Georgia, a drug-court sentence costs over \$10,000 less than a prison sentence—no small number in a state that operates the fifth-largest prison system in the country, spending one in every 17 of its budgetary dollars on incarceration and parole.”²¹ A meta-analysis conducted by The Urban Institute found that drug courts produced an average of \$2.21 in direct benefits to the criminal justice system for every \$1 invested.²² When community savings are added (such as a reduction in emergency room episodes, reduction in the number of victims, and reduction in dependence on foster care), the savings increased up to \$27 for every \$1 invested.²³

In summary, the evidence from 25 years of experience shows that drug courts reduce drug use, reduce recidivism, and save taxpayers money. A matched study shows that drug courts are more effective than other types of criminal interventions even when coupled with drug treatment.

¹⁸ SHELLI B. ROSSMAN & JANINE M. ZWEIG, *THE MULTISTATE ADULT DRUG COURT EVALUATION 1* (2012).

¹⁹ SHELLI B. ROSSMAN, JOHN K. ROMAN, JANINE M. ZWEIG, MICHAEL REMPEL, CHRISTINE H. LINDQUIST, *THE MULTI-SITE ADULT DRUG COURT EVALUATION: EXECUTIVE SUMMARY 5* (2011) [hereinafter *MADCE EXECUTIVE SUMMARY*].

²⁰ HUDDLESTON & MARLOWE, *supra* note 17, at 17.

²¹ *THE ECONOMIST*, *supra* note 3.

²² HUDDLESTON & MARLOWE, *supra* note 17, at 10. *See also* Rempel, et al., *supra* note 16 at 156. (A cost benefit analysis conducted as part of the MADCE estimated that, on average, drug courts saved \$5,680 to \$6,208 per participant.).

²³ HUDDLESTON & MARLOWE, *supra* note 17, at 10.

While not every drug-dependent defendant is a candidate for drug court, and while not every drug court participant will complete their programs, 75% of those who do graduate “will never see another set of handcuffs.”²⁴ In short, drug courts work where other interventions have failed.

III. THE CASE FOR DRUG COURT’S IN THE FEDERAL SYSTEM

At its inception, the Bridge Program mainly treated addicted defendants who had committed property crimes that fell under the jurisdiction of federal authorities, for example, theft and receipt of stolen mail, counterfeiting, conspiracy to defraud the United States, and other types of fraud. As the Program experienced success with these participants, it expanded its eligibility criteria to accept non-violent drug offenders who were dealing drugs to support addiction. The Bridge Program not only found that it could effectively treat such offenders, but that in doing so, there was a substantial opportunity to save resources and improve the lives of the participants, their families, and the community.

Our experience with the Bridge Program combined with basic facts about the federal criminal justice system leads us to believe that drug courts are a feasible and sensible alternative to incarceration for some federal defendants. As in the state system, the growth of federal prisons has created a serious financial and logistical problem. Making drug courts available to federal defendants has the potential to ease some of the burden on the Bureau of Prisons (BOP) and produce relative efficiencies beyond those achieved at the state level. Finally, despite claims to the contrary, a significant number of federal defendants are suitable candidates for drug court.

A. Growth of Federal Prisons has Created a Financial and Logistical Burden

In 2013, there were 215,900 people serving time in federal prisons,²⁵ representing nearly a tenfold increase in the number of federal inmates incarcerated in 1980.²⁶ As a result of this growth,

²⁴ West Huddleston, Interview on C-SPAN, August 6, 2011.

²⁵ E. ANN CARSON, U.S. DEPT. OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2013 2 (2014).

federal prisons are operating at 35-40% above their rated capacity, and without new policy changes, are estimated to be operating at 55% above their rated capacity by 2023.²⁷ A BOP study has concluded that there is “a significant positive relationship” between overcrowded prisons and inmate misconduct.²⁸ The growth of federal prisons has resulted in increasing costs (35.6% from FY2000 to FY2013) such that the BOP now consumes more than 25% of DOJ’s budget.²⁹

Drug convictions have driven the growth of federal prisons. Between 1998 and 2010, the number of convicted offenders serving time in federal prison increased 77% from 104,413 to 184,809. An analysis by the Urban Institute Justice and Policy Center found that the increased time to be served by drug offenders was “the single greatest contributor” to growth of the federal prison populations during that period.”³⁰ “There were 34,043 more prisoners serving time for drug offenses in 2010 than in 1998,” which “account[s] for 42% of the total growth in the prison population and represents a 57% increase over the number of drug offenders in 1998.”³¹ As of 2010, a majority of those in federal prison (52%) were there for a drug conviction.³²

The Program is under no illusions that introducing drug courts in the federal system will magically reverse mass incarceration or relieve overcrowded prisons. However, in conjunction with other policy changes, the adoption of federal drug courts could make a significant difference over time. Furthermore, it is possible that introducing drug courts in the federal system will result in an even higher payoff than observed in the states.

²⁶ NANCY LA VIGNE & JULIE SAMUELS, URBAN INSTITUTE JUSTICE POLICY CENTER, THE GROWTH & INCREASING COST OF THE FEDERAL PRISON SYSTEM: DRIVERS AND POTENTIAL SOLUTIONS 1 (2012).

²⁷ JULIE SAMUELS, NANCY LA VIGNE & SAMUEL TAXY URBAN INSTITUTE JUSTICE, STEMMING THE TIDE: STRATEGIES TO REDUCE THE GROWTH AND CUT THE COST OF THE FEDERAL PRISON SYSTEM 1 (2013).

²⁸ NATHAN JAMES, CONGRESSIONAL RESEARCH SERVICE, THE FEDERAL PRISON POPULATION BUILDUP: OVERVIEW, POLICY CHANGES, ISSUES, AND OPTIONS 23 (2014).

²⁹ LA VIGNE & SAMUELS, *supra* note 26, at 2.

³⁰ KAMALA MALLIK-KANE, BARBARA PARTHASARATHY & WILLIAM ADAMS, URBAN INSTITUTE JUSTICE POLICY CENTER, EXAMINING GROWTH IN THE FEDERAL PRISON POPULATION 1998 TO 2010 3 (2012).

³¹ *Id.* at 4.

³² MARK MOTIVANS, U.S. DEPT. OF JUSTICE, BUREAU OF JUSTICE STATISTICS, FEDERAL JUSTICE STATISTICS, 2010 23 (2013).

B. Drug Courts May Have a Relatively Higher Payoff in the Federal System

While the savings and benefits obtained through the use of drug courts in state systems have been significant, the potential to maximize these benefits lies in the federal system for several reasons. First, drug convictions account for a much larger portion of the federal prison population than they do in state systems. Second, federal sentences are, on average, much longer than comparable state sentences, and a much higher percentage of federal defendants receive custodial sentences. Finally, at least in some jurisdictions, federal incarceration is more expensive than it is in the corresponding state system.

The state prison systems dwarf the federal system in terms of the total number of people incarcerated. As of December 31, 2013, there were 1,321,781 sentenced prisoners under the jurisdiction of state authorities compared to only 195,098 sentenced prisoners under the control of federal authorities.³³ However, only 16% (210,200) of the inmates in state prison are serving sentences for drug convictions.³⁴ By contrast, 51% (98,200) of federal inmates are serving sentences for drug offenses.³⁵ In other words, although federal inmates make up less than 13% of the sentenced prison population in the United States, they make up almost a third (31.82%) of those serving time for drug crimes.

The potential savings are increased by not only the number of drug offenders who enter the federal system, but also by the type and length of the sentences they receive. As an initial matter, federal drug defendants are far more likely to receive a custodial sentence than state drug defendants. Of the 25,416 drug convictions secured by U.S. Attorneys' Offices in 2010, 91% of them resulted in custodial sentences.³⁶ The rates in state systems are much lower. As would be

³³ CARSON, *supra* note 25, at 4.

³⁴ *Id.* at 15.

³⁵ *Id.* at 16.

³⁶ MOTIVANS, *supra* note 32, at 22.

expected, the median federal sentence (30 months as of 2010)³⁷ is substantially longer than the median state sentence (17 months as of 2006). However, this difference is even more pronounced with regard to those convicted for drug offenses. The median term of incarceration imposed on those convicted of drug offenses in federal court was 60 months,³⁸ whereas the median time served by those convicted of felony drug offenders in state court was 13-14 months.³⁹ Assuming that all federal convicts received “good time” and served only 87% of their sentences, the median time served by federal drug offenders would still be over three times the length of the median time served by drug offenders in the state systems.

In some instances, the cost of incarceration in federal prison is higher than it is in state prisons. For example, in 2014, the average cost of incarcerating an inmate in South Carolina was \$19,137,⁴⁰ approximately \$10,000 less than the cost of incarcerating a federal inmate. It should be noted, however, that this is not true of all jurisdictions.

C. A Significant Number of Federal Defendants are Suitable Candidates for Drug Court

None of the figures discussed above are meaningful if federal defendants generally, and federal drug defendants in particular, are categorically ill-suited for drug court programs. This was one of the conclusions reached by the Department of Justice in a 2006 memo that argued against the need for drug courts in the federal system.⁴¹ The memo argued that (1) substantial programs already exist to help federal defendants with drug problems, (2) most federal drug offenders have committed serious drug offenses and are not good candidates for drug courts, and (3) the resources

³⁷ *Id.* at 2.

³⁸ *Id.* at 22.

³⁹ CARSON, *supra* note 25, at 18.

⁴⁰ SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, COST PER INMATE FISCAL YEARS 1988-2014 (2014) *available at* <http://www.doc.sc.gov/pubweb/research/BudgetAndExpenditures/PerInmateCost1988-2014.pdf>.

⁴¹ U.S. DEPT. OF JUSTICE, REPORT TO CONGRESS ON THE FEASIBILITY OF FEDERAL DRUG COURTS 4 (2006) [hereinafter, 2006 DOJ Memo].

required to run drug courts in the federal system would divert funds from state drug courts and federal drug enforcement initiatives.⁴²

Under the leadership of Attorney General Eric Holder, DOJ altered its position and concluded that the time had come to give (pre-trial⁴³) drug courts a chance in the federal system. Since 2010, drug courts have been started in several federal districts. In March of 2014, Attorney General Holder visited Charleston to observe a session of the Bridge Program. In his remarks following the visit, the Attorney General praised the Program as one that he would like to see replicated.⁴⁴ While the reasons provided in opposition to federal drug courts in the 2006 DOJ Memo no longer represent DOJ policy, they warrant some discussion because they represent intuitive questions or objections that are commonly raised in discussions of expanding drug courts to the federal system.

1. Substantial programs already exist to help federal defendants with drug problems.

Federal defendants are provided access to drug counseling, both within the Bureau of Prisons and as a component of supervision by the United States Probation Office. We are certainly not opposed to these programs and believe that they are beneficial and necessary. However, the fact that these programs exist does not mean that they are an affordable or effective way to treat all federal defendants or that drug courts are redundant or unnecessary in the federal system. It is inefficient to incarcerate low-level defendants if an addiction is motivating their offenses and can be

⁴² *Id.*

⁴³ It should be noted that reentry courts, which are based on the drug court model, have existed in the federal system for some time. The primary difference between the Bridge Program and these reentry courts is that the Bridge Program is principally a pre-trial program that focuses on participants who are eligible to have their charges dismissed or receive a non-custodial sentence if they successfully complete the program. Reentry courts, on the other hand, provide similar accountability for federal offenders who have already served a custodial sentence. These released inmates may be offered a reduction in their term of supervision in return for successful completion of the program. The District of South Carolina has recently developed its own Reentry Court (REAL Court), which is separate from the Bridge Program.

⁴⁴ Ryan J. Reilly, *America's Top Cop Wages a Long Battle to Dial Back the Drug War*, HUFFINGTON POST, May 20, 2014.

effectively treated through a legally supervised process that is less expensive than incarceration and less harmful to the defendant and his or her family and community.

Additionally, the growth of the federal prison population has overburdened BOP's drug treatments programs. A 2012 USA Today report regarding the availability of drug treatment in federal prisons had this to say: "Waiting lists were so long for the bureau's Residential Drug Abuse Program, which provides sentence reductions of one year for inmates who complete it, that only 25% of graduates gained entry with at least a year left on their prison terms to fully benefit from the reduced sentence."⁴⁵ A 2012 Government Accountability Office (GAO) report entitled, "Bureau of Prisons: Growing Inmate Crowding Negatively Affects Inmates, Staff, and Infrastructure," provides details regarding the number of federal inmates waiting for drug treatment. The report showed long waiting periods for drug education programs, nonresidential drug treatment programs, and residential drug treatment programs across every security level. For example, in 2011, the average waiting period for residential drug treatment for a medium security inmate was 92.8 days, down from 242.3 days in 2006.⁴⁶ These numbers are typical across program types and security levels.⁴⁷ While waiting periods have been reduced somewhat in recent years, as of 2011 there were far more federal inmates on waiting lists for basic drug education programs (over 51,000) than were enrolled (31,803).

Aspects that are unique to the drug court model are significant in helping participants to succeed. The central feature of drug court is the combination of evidence-based treatment and regular judicial accountability. The scholars who conducted the MADCE concluded that "the primary mechanism by which drug courts reduce substance use and crime is through the judge."⁴⁸

⁴⁵ Kevin Johnson, *Prisoners Face Long Wait For Drug-Rehab Services*, USA TODAY, Dec. 4, 2012.

⁴⁶ UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, BUREAU OF PRISONS: GROWING INMATE CROWDING NEGATIVELY AFFECTS INMATES, STAFF, AND INFRASTRUCTURE 71-73 (2012).

⁴⁷ *Id.*

⁴⁸ MADCE EXECUTIVE SUMMARY, *supra* note 19, at 7.

The researchers found that “[d]rug [c]ourt offenders believe that their judge treated them more fairly than the comparison group, including demonstrating greater respect and interest in them as individuals” and affording them greater opportunities to express themselves during the proceedings.⁴⁹ Such perceptions of the judge are correlated with better outcomes across all offender subgroups, including “demographics, drug use history, criminality, and mental health.”⁵⁰ A separate analysis of structured observations by the research team found that drug courts whose judges were observed to have a positive judicial demeanor produced the most positive outcomes.⁵¹ The central role of judicial accountability in making drug courts work is consistent with evidence suggesting that small sanctions immediately and consistently applied have a stronger deterrent effect than the threat of larger sanctions that are delayed or uncertain.⁵² A final advantage of the drug court model is that it allows participants to battle and overcome their addictions in the real world setting to which they would ultimately return were they incarcerated. Thus, while the drug treatment programs provided by the Bureau of Prisons and United States Probation are important components of the federal correctional system, they do not render drug courts superfluous or unnecessary.

2. Federal defendants are not good candidates for drug courts.

Another argument that is sometimes raised against the use of drug courts in the federal system is the belief that most federal drug offenders have committed serious drug offenses and are not good candidates for drug courts. It should be emphasized that drug offenders are not the only category of federal defendants who are served by federal drug courts.⁵³ Nevertheless, the inclusion

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Rosen, *supra* note 11, at 38 (describing Hawaii’s HOPE program, which reduced positive drug tests by 93% by implementing small but immediate sanctions for violations).

⁵³ Indeed, a substantial number of the Bridge Program’s participants have been defendants who have committed fraud, counterfeiting, and other similar offenses to obtain money to feed an addiction. As the Huffington Post wrote of the Bridge Program following Attorney General Holder’s visit, “Not all the participants that day in April had even been charged in drug cases. One was recruited by a pawn shop owner to steal a Dyson vacuum cleaner from Lowe’s store and was charged in a federal conspiracy case. Another was facing federal charges because he tried to pay of liquor store

of federal drug offenders does increase the cost-effectiveness of such programs. The argument that such offenders are not good candidates for drug courts is based on questionable assumptions about the motivations of those charged with drug trafficking, as illustrated in the 2006 DOJ Memo:

There is a dramatic difference between the behavior and motivations of a simple substance abuser and a drug trafficker, whether violent or nonviolent. The abuser commits crimes in support of, or because of, his or her drug habit. The trafficker, on the other hand, is motivated by the desire for financial gain or the desire for power. Drug court programs are only designed to change the attitudes and behavior of the substance abuser. They are not designed or equipped to change the quite different attitudes and behavior of the drug trafficker or violent felon. . . . Given the completely different motivations and behaviors of drug traffickers it is highly unlikely that a drug-court-type program would have any success in reducing recidivism.⁵⁴

Our experience suggests that drug offenders cannot be so easily divided into these categories. One of the prerequisites for entry into the Bridge Program is a finding that addiction is a substantial motivator or contributor to the individual's criminal conduct, and observing this requirement has not left the Program without eligible participants. We have found that drug addicts are rarely as discriminating in what they will or will not do to feed a drug habit as the argument above suggests.⁵⁵

Moreover, the perception that all or even most federal drug defendants are hardened or violent criminals is simply inaccurate. Half of those sentenced for drug offenses in FY2010 were in the lowest criminal history category.⁵⁶ Additionally, 84% of sentenced drug offenders had “no weapon involvement.”⁵⁷ Citing similar figures, Judge John Gleeson, who helps to run a drug court program in the Eastern District of New York, concluded, “anyone who believes that the federal

with a counterfeit \$20 bill his friends had made using printer-scanner-copier.” Reilly, *supra* note 44. While the guidelines range for such offenders are often low, as discussed elsewhere, offenders who commit property offenses tend to recidivate at the highest levels, placing a strain on law enforcement and courts if not the prisons.

⁵⁴ 2006 DOJ MEMO *supra* note 41, at 4.

⁵⁵ Bridge Program participants have given harrowing accounts of the lengths to which they have gone to obtain drugs. One participant, who subsequently graduated from the program, explained to the Court how he would dig through dumpsters looking for discarded medications, and would take virtually anything he found regardless of whether it would get him high or not. Other defendants have been so desperate that they have committed offenses that are so obvious that there is no way they could expect that they would not be caught.

⁵⁶ LA VIGNE & SAMUELS, *supra* note 26, at 4.

⁵⁷ SAMUELS, LA VIGNE & TAXY, *supra* note 27, at 11.

system deals only with ‘the most serious drug and violent’ offenders isn’t familiar with the federal criminal docket.”⁵⁸

Most of the drug offenders enrolled in the Bridge Program are poor, non-violent defendants who sold or transported drugs to feed an addiction and were charged as part of a larger conspiracy.⁵⁹ As the Huffington Post observed, “Participants in the Bridge Program are far from drug kingpins. Most, if not all, of them don’t have the financial resources to afford their own lawyers and are represented by federal public defenders or court-appointed counselors.”⁶⁰

Furthermore, the research that has been conducted on drug courts suggests that more serious offenders may actually do better in drug courts than those who have committed minor offenses. The MADCE researchers found “that high-risk offenders—those who initially pose the greatest risk of criminal re-offending as well as the greatest need for treatment—are especially likely to benefit from drug court participation.”⁶¹ While there were very few subgroups within the MADCE study that “experienced a differential effect,” a notable exception was that “[o]ffenders with violent histories showed a greater reduction in crime than others at follow-up.”⁶² The MADCE researchers also found that participants who “perceive more severe consequences of program failure . . . perform better.”⁶³

Our experience with the Bridge Program supports the perception that defendants with more serious charges often seem more motivated to complete the Program and change their lives. Conversely, several former Bridge participants who have elected to drop out of the program have explained that the Program’s stringent requirements and restrictions were not worth the effort they

⁵⁸ *United States v. Leitch*, No. 11-CR-00039 JG, 2013 WL 753445, at *10 (E.D.N.Y. Feb. 28, 2013).

⁵⁹ As Judge Gleeson has noted, many of the long sentences imposed in the federal system are “triggered . . . by drug type and quantity” rather than by the defendant’s role in a drug trafficking organization or conspiracy. *United States v. Diaz*, No. 11-CR-00821-2 JG, 2013 WL 322243, at *12 (E.D.N.Y. Jan. 28, 2013).

⁶⁰ Reilly, *supra* note 44.

⁶¹ Rempel, et al., *supra* note 16, at 156.

⁶² MADCE EXECUTIVE SUMMARY, *supra* note 19, at 7.

⁶³ Michael Rempel, et al., *supra* note 16, at 156.

required given the light sentences that some of the participants were likely to receive even after dropping out of the Program. If anything, this Court has struggled with participants whose offenses were too minor, not too serious.

Another related argument against federal drug courts is the claim that federal prosecutors should simply decline to charge the type of offenders who would qualify for drug courts. Of course, in some instances, such offenders are an important component of the government's case. Furthermore, the facts simply do not support the conclusion that federal prosecutors are routinely dismissing drug matters that they open after concluding that the offense is not sufficiently serious. To the contrary, drug cases have the highest prosecution rate of all federal matters, surpassing weapons charges, sex offenses, violent offenses, and other crimes as the federal felony matters that prosecutors are least likely to decline to prosecute.⁶⁴

3. There are concerns about the costs of drug courts.

A final argument against adopting drug courts in the federal system involves concerns over cost. As the analysis in Part IV will show, drug courts can be successful on a limited budget, particularly if the program forges effective partnerships with the community. While the Bridge Program could certainly benefit from additional resources – for example, a dedicated drug court coordinator for the district – the Program has been successful with minimal expenditures. Our analysis, discussed in more detail *infra*, shows that the Program has paid for itself and saved taxpayers money in addition to the positive intangible results it has produced.

In summary, the perception that federal defendants are categorically ill-suited for drug courts is based on assumptions that are not supported by the facts. The evidence from state court and our own experience suggests that defendants facing relatively more serious charges often succeed in drug

⁶⁴ MOTIVANS, *supra* note 32, at 13.

courts, and as the following analysis will show, it is the success of such defendants that results in the greatest savings for the taxpayer.

IV. A COST ANALYSIS OF THE BRIDGE PROGRAM

Measuring the cost effectiveness of the Bridge Program is complicated by the fact that both the Bridge Program and the alternative to which it is compared – incarceration followed by a period of supervised release – rely heavily on resources that are fixed costs. The additional expense to the taxpayer for the Bureau of Prisons to incarcerate one additional inmate (the “marginal cost”) is, on average, only \$10,363;⁶⁵ however, when fixed costs are factored in, that figure jumps to \$29,027.⁶⁶ Likewise, the Bridge Program operates primarily by using resources that are fixed. All of the court staff and many of the attorneys involved in the program are paid an annual salary, which is unaffected by their participation or non-participation in the Bridge Program. Consequently, the cost to the taxpayer to run the Bridge Program is very small.⁶⁷ However, an analysis would be incomplete if it did not at least attempt to account for the increased labor required to operate the Bridge Program.

To evaluate the costs and savings associated with the Bridge Program, we therefore believe that at least two comparisons are needed. The first calculation seeks to measure the cost and savings for the taxpayer, comparing actual Bridge expenditures for each participant with the marginal cost of incarceration and supervision based on the participant’s guideline range. The second comparison

⁶⁵ SAMUELS, LA VIGNE & TAXY, *supra* note 27, at 2.

⁶⁶ JAMES, *supra* note 28, at 15. The average per capita costs actually increased to \$29,291 in fiscal year 2013; however, the 2012 figure is used because it corresponds with the marginal cost calculation.

⁶⁷ The Bridge Program began at a time when federal agencies were experiencing tremendous financial pressure. Budgets were frozen and there was virtually no money for new programs. As a result, the Bridge Program was forced to operate using existing resources and to reject any proposal that would meaningfully increase its costs. The program is proud of what has been accomplished using these limited resources and is grateful to the federal employees and members of the local community who have given their time, talents, and resources to start and maintain the Program. That being said, the Program would unquestionably benefit from additional resources.

seeks to measure total savings by adding a measure of fixed costs to both the Bridge Program and the alternative custodial sentences.

A. Taxpayer Savings

In performing these calculations, we include in our actual expenditures any money that the program spends for treatment or any service provided to participants. To calculate the marginal cost of incarceration, we assume that each participant would receive a sentence that is the average of the high and low range under the applicable Federal Sentencing Guidelines and the average of the high and low recommended term of supervision. We further assume that Bridge participants who fail to complete the Program will receive the same sentence (guidelines average) that they would have received had they not participated in the program. Any money that the Program spends on services for the participant is recorded as an expense associated with the Program, regardless of whether the participant benefitted from the services or would have received similar services as a part of pre-trial supervision by United States Probation. Additionally, no effort is made to account for money that the Program may save United States Probation in reduced pre-trial services for Program participants. It is important to note that this omission may result in a substantial underestimation of the savings the Bridge Program has produced.

We also assume that participants who successfully complete the Program and graduate will not receive a custodial sentence.⁶⁸ Where a term of supervision is imposed following completion of the Bridge Program, the cost of the supervision is subtracted from the savings associated with that participant. It is also important to note that this measure may not account for savings that could be realized if programs such as the Bridge Program were to become widespread. This is because long-term marginal costs tend to be higher than short-term marginal costs. If the use of federal drug

⁶⁸ This assumption is supported by the Court's practice. To date, all graduates have received non-custodial outcomes, either a sentence of time served or complete dismissal of their charges.

courts were to meaningfully reduce the number of defendants being sentenced to prison, BOP could, over time, adjust its expectations of future incarceration, leading to larger savings.

To demonstrate how this calculation is performed, consider the case of Kelly Shea. Prior to entering the Bridge Program, Ms. Shea pled guilty to conspiring to possess with intent to distribute a quantity of cocaine and cocaine base (21 U.S.C. § 841(a) and § 841(b)(1)(C) and 846). For this offense, Ms. Shea faced a guideline range of 18-24 months followed by a term of supervised release. The cost to the taxpayer to impose this sentence upon Ms. Shea would include between \$15,544.44 and \$20,725.92 (for an average cost of \$18,135.18) for her incarceration and \$10,300.11 for her supervision. Thus, the total cost to the taxpayer, assuming that Ms. Shea received the average period of incarceration, would be \$28,435.29. The Program spent \$6,811.85 on expenses for Ms. Shea, and when she graduated after 12 months in the Bridge Program, her charges were dismissed. Consequently, the total savings for the taxpayer on her case was **\$21,623.44**. Using this same process to calculate all the taxpayer savings for the 38 graduates counted in this analysis and then subtracting the costs the Program paid for participants who failed to graduate and are no longer in the Program yields a total taxpayer savings of **\$1,455,602.61**, for an average taxpayer savings of **\$14,132.06** per *participant* (not per graduate).

B. Total Savings

The second comparison adds to the calculations above a measure of the fixed costs associated with participation in drug court or a custodial sentence followed by a term of supervised release. The same assumptions are made regarding the length of sentences and supervision and the expenditures on participants who fail to graduate as are made above in the taxpayer savings calculation. The total cost of drug court is estimated by adding to the actual expenditures an estimation of the time spent by essential drug court personnel expressed as a portion of their salaries. The Bridge Program is assumed to meet every other week for a staff meeting and a court

session. “Essential drug court personnel” are assumed to include a judge with an estimated yearly salary of \$200,000; an AUSA with an estimated yearly salary of \$110,000; a public defender with an estimated yearly salary of \$110,000; a probation officer with an estimated yearly salary of \$70,000; and a courtroom deputy with an estimated yearly salary of \$50,000.⁶⁹ We believe that a qualified, substance abuse counselor is also an indispensable member of the team, and we have been fortunate to secure a commitment from the Center for Behavioral Health, which provides treatment for many of our participants, to send their counselor to court at no additional cost to the Program.⁷⁰ Over the long term, this savings will be significant and will ensure that more of the funds expended by the Program go directly towards treatment.

The calculations assume that the judge spends an average of six (6) hours for each hearing, that the AUSA and FPD each spend an average of three (3) hours for each hearing, that the courtroom deputy spends an average of two (2) hours for each hearing, and that the United States Probation Officer assigned to the program spends 85% of her time on the Program.⁷¹ Assuming a forty (40) hour workweek, we then calculate the percentage of each person’s work time that the Program consumes and multiply that number by the person’s salary. The total yearly cost of by this measure is estimated to be around \$80,000.

It should be noted that a much larger team of people have volunteered their time and expertise to help develop the Program, to provide advice and assistance to the presiding judge, and to encourage the participants both in and out of court.⁷² Without these volunteers, the Program

⁶⁹ These estimates may be higher or lower than the salaries of the actual individuals involved, but represent a reasonable estimation of the salary that would be received by a an employee with a similar level of experience.

⁷⁰ In addition, the rates charged by Center for Behavioral Health are lower than rates charged by other vendors previously used.

⁷¹ These estimates may overstate the additional time that the Program costs the USAO, FPD, and the Court because no attempt is made to account for the possibility that some Bridge Program participants would have elected to go to trial had they not been given the opportunity to enter the Program.

⁷² Participants’ attorneys have appeared in court even though they are not typically required (or paid) to be present, experts from the Medical University of South Carolina and other institutions have given presentations and consulted with the court, other federal judges have encouraged their law clerks to volunteer time with the Program and have made

would not be what it is. However, our measure of essential personnel assumes a program that is up and running and calculates costs for those whose presence in the courtroom and at staffing meetings is absolutely required for a session of court to occur.

No attempt is made to divide the cost of essential personnel among the various participants. Rather, the estimates are multiplied by the time the program has been in existence (approximately 68 months) and subtracted from the savings gained by graduates who have avoided custodial sentences. The total cost of a custodial sentence is estimated by multiplying the average guidelines range sentence by the average monthly cost of incarceration, which is drawn from 2012 BOP figures (\$29,027.00 annually or \$2,418.92 monthly). When fixed resources are accounted for, the total savings for the Program is **\$3,428,429.14**, for an average total savings of **\$33,285.71** per participant.

There are several facts that are important to keep in mind with regard to these figures. First, these estimates are conservative. As noted, many of the costs attributed to the Program may have been incurred by United States Probation in providing pre-trial drug treatment to the participants had they not been enrolled in drug court. Some of the participants may have elected to go to trial had they not enrolled in the Program, which would have created additional work for the prosecutor and defense attorney. These calculations do not account for such possibilities. Second, when the Program started, there were only seven (7) participants, and the first participant did not graduate from the Program until January of 2012. Thus the rate at which the Program is saving money is likely to be higher now that the program is up and running full scale. Finally, the savings calculated here do not measure the significant future financial benefits that are associated with breaking the cycle of addiction, crime, and recidivism. Evaluation of such costs would likely require a larger sample size than is currently available and assistance from professional researchers. Still there are

themselves available to speak at graduations and encourage the participants, the Federal Bar Association has developed a mentoring program that helps participants make professional and community contacts, and a wide range of people from local religious and community leaders to family and friends have showed up to provide support and accountability for the participants.

substantial reasons to expect that these benefits will be significant. With a few minor exceptions, most of those who have graduated from the Program have not only avoided subsequent problems with the law, but many are gainfully employed and giving back to their communities. We expect that in most instances, a participant's graduation from the Program marks the beginning of the real savings, not the end.

C. Intangible and Indirect Savings

While this memorandum has attempted to measure some of the financial savings that result from the Bridge Program, many of the benefits are not easily reduced to a dollar figure. As noted previously, researchers have estimated that the direct-cost savings of \$2.21 for every \$1 invested in drug courts increase to \$27 for every \$1 invested in drug courts when indirect cost-offsets are accounted for, although it is ultimately impossible to accurately measure such costs.

As longtime drug court judge Peggy Fulton Hora explained in a recent law review article:

The defendant is not the sole beneficiary of the drug treatment court process. A recent California study estimated that drug courts save taxpayers ninety million dollars annually. Additionally, the community experiences a reduction in crime, with an estimated monetary value of as much as twenty-four thousand dollars per drug court participant due to reduced future court costs and victim impact costs. This value may actually underestimate the financial benefit to society because it does not take into account the ability of the newly sober drug treatment court graduate to work, effectively parent, pay taxes, participate in commerce, and perhaps lead a healthier lifestyle, all of which would result in savings of future medical costs, including the costs of substance-exposed infants.⁷³

A few examples from the Bridge Program serve to illustrate the nature of the benefits realized. When graduate Katherine ("Katie") Swiatocha joined the Program, she was a young, single mother who had serious issues with substance abuse. Although she had no record aside from a motor vehicle violation, Ms. Swiatocha faced federal charges for conspiracy and possession with intent to distribute and distribution of oxycodone and cocaine. She worked in a bar, lacked coping

⁷³ The Honorable Peggy Fulton Hora & Theodore Stalcup, *Drug Treatment Courts in the Twenty-First Century: The Evolution of the Revolution in Problem-Solving Courts*, 42 GA. L. REV. 717, 802 (2008).

skills and a sober support network, and could not identify any of her own strengths. On the first day she reported for drug court, she tested positive for marijuana and was enrolled in drug treatment. As she committed herself to the Bridge Program, her life began to turn around. She married her boyfriend and began to settle into a family routine. As required by the Program, she left her bar job and took a job at a retail store, where she continues to work today. She developed coping skills and self-confidence, learned to manage her time and keep her commitments, and completed her GED. She is pursuing a college education and recently gave birth to healthy baby. Katie easily could have delivered a drug-dependent baby that would have required extensive medical treatment and lost custody of both of her children.⁷⁴ Instead she delivered a healthy, drug-free baby and has developed into an attentive and capable mother. The likely intangible/indirect savings with respect to Katie include decreased medical costs, decreased costs for foster care, and a host of other benefits that emerge from the development of a more self-sufficient family unit.

Ryan Stumpf graduated from Cane Bay High School in May of 2011. Both Ryan and his mother stated that they believed that he would not have completed his senior year without the support of the Bridge Program. Ryan's successful completion of the Program earned him more than simply the opportunity to graduate from high school: he has received a second chance for a future without a felony record, a benefit that, if maintained, will afford him better educational and job opportunities over the course of his entire life. For Jaison Hrobar, the Program gave him the opportunity to be reunited with his family and have the chance to "be a dad again." Jaison not only graduated from the Program, but is now looking for ways to give back to others suffering with

⁷⁴ "Various sources estimate that babies born prematurely due to poor maternal health . . . require care which costs between \$2,500 to \$5,000 per day." The Honorable Peggy Fulton Hora et. al., *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America*, 74 NOTRE DAME L. REV. 439, 503 (1999).

addiction through a non-profit he formed with a friend. At his graduation on January 3, 2012, Jaison said that before he walked into this Program he was a “dead man” and that now he has his life back.

A final example is Shaun Dubis, whose story was described in a May 2014 Huffington Post Article that covered Attorney General Holder’s visit to the Bridge Program (a copy of the article is attached as Exhibit A). In his early thirties, Shaun had been addicted to heroin for more than half of his life. He had been in and out of drug treatment for over a decade without success and had failed out time and time again. He was quite literally dragged from the edge of death – having been resuscitated after overdosing. The consensus among several of the professionals who work with the Program was that Shaun was the worst heroin addict they had ever seen. His father choked with emotion as he described how he and Shaun’s mother lived dreading the knock at the door that would bring them the inevitable news that Shaun was dead.

Instead, Shaun was arrested on federal drug charges and referred to the Bridge Program. With the accountability provided by the Program, Shaun completed a residential drug treatment program, got a job installing custom shutters with his brother, and began to fight for the life he had come so close to losing. When he broke his hand, he continued to work without pain medication so as not to compromise his recovery. He developed into a role model for younger participants in the Program and began to encourage others on the path to sobriety. When he stood before the Court in November of 2014 for his graduation, he was barely recognizable as the man who had been brought in on drug charges more than two years earlier. Never one to waste words, Shaun’s message was simple and heartfelt – “thank you, thank you for giving me this chance.”

V. CONCLUSION

Although less than four years old, the Bridge Program has already been efficient to significant result. The research conducted on drug courts in the state systems indicates that these

programs save money and improve outcomes for participants. There are good reasons to believe that these results could be replicated and even improved were such courts encouraged in the federal system. Despite arguments to the contrary, many federal defendants are excellent candidates for drug courts. While we believe the research supporting drug courts is persuasive and our financial analysis is encouraging, there is no stronger endorsement for drug courts than the accounts of our graduates who have avoided incarceration and begun the important process of recovering from their addictions and rebuilding their lives.