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Congress of the United States
House of Representatives
Washington, DC 20515-5401

November 12, 2009

The Honorable David W. Ogden
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Mr. Ogden:

I am pleased to have this opportunity to provide my thoughts to the U.S. Department of Justice's Sentencing Working Group on the role that drug court-type programs can play at the federal level.

As you know, federal and state governments provide drug treatment services to offenders during all stages of an offender's criminal case—from pre-trial to incarceration to supervised release. A particularly successful model at the state level has been the "drug court." Instead of simply providing treatment during an offender's period of incarceration, these courts divert substance-abusing offenders from prison into treatment. Although the specifics of the courts vary by jurisdiction, in general, the judges that preside over drug court proceedings monitor defendants' progress with mandatory drug testing and prescribe sanctions and rewards in consultation with prosecutors, defense counsel, and treatment providers. According to a study conducted by the Office of National Drug Control Policy (ONDCP), "[a] decade of research indicates that drug court reduces crime by lowering rearrest and conviction rates, improving substance abuse treatment outcomes, and reuniting families, and also produces measurable cost benefits."¹ For example, participants in Puerto Rico's program have a recidivism rate of only 5%.²

At the federal level, drug court-type programs are limited to approximately 20 re-entry courts in operation in certain federal districts and to drug treatment services provided by the U.S. Probation and Pretrial Services System to those offenders released into its custody. In light of the success of state drug court programs, the Department should give full consideration to instituting at the federal level as many aspects of these programs as may be feasible. The recommendations that follow are based on my consultation with those who have worked with

¹ Office of National Drug Control Policy, Drug Courts, <http://www.whitehousedrugpolicy.gov/enforce/DrugCourt.html> (last visited Nov. 12, 2009).

² Letter from Antonio M. Sagardía De Jesús, Attorney General, Puerto Rico, to Pedro R. Pierluisi, Member of Congress (Sept. 14, 2009) (on file with the Office of Rep. Pedro R. Pierluisi).

drug court-type programs, as well as my experience addressing drug-related issues during my tenure as the Attorney General of Puerto Rico.

1. Consider broadly the type of offender who may be suitable for a drug court-type program.

Although the federal offender population is not identical to those incarcerated at the state level, a significant number of federal offenders have substance abuse problems. A recent study estimates that up to 83% of the federal corrections population has used drugs at some point. One out of three jailed inmates committed his or her offense under the influence of drugs, and two out of three report using drugs on a regular basis.³ These statistics indicate that a sizeable percentage of those charged or convicted of a federal crime—including those who were not charged with a drug crime—may benefit from participation in a drug court-type program or, at a minimum, drug treatment services.

2. Make full use of existing pre-trial services.

The U.S. Probation and Pretrial Services System provides nearly 100 different drug treatment services to offenders released into its custody, including individual and group counseling and cognitive behavioral therapy. These treatment services have the potential to provide enormous benefit to offenders with substance abuse problems and to reduce their rate of recidivism. According to studies compiled by ONDCP, the average cost of providing treatment to an offender is one-eighth of the cost to incarcerate the individual.⁴ By diverting drug abusing offenders to a drug treatment program, the government can avoid the costs of incarceration and reduce the long-term costs of recidivism.

Because the services provided by the Probation System are available only to those defendants released into its custody, the federal prosecutor effectively decides which offenders are eligible to receive these services. I understand that, in many instances, prosecutors will release into drug treatment programs only the most low-level drug using offenders. Although not every offender with a substance abuse problem will be an appropriate candidate for probation, the Department should encourage prosecutors to utilize the services provided by the Probation System for as many defendants as feasible, including those with more serious drug dependency.

3. Support and expand supervised release programs that address drug dependency.

Over the past ten years, an increasing number of federal district courts have established supervised release programs that focus on rehabilitating offenders with significant drug dependency. These programs provide intensive supervision of participants, whose progress is monitored on a monthly, or even bi-weekly, basis. Participants are required to attend drug or alcohol counseling, seek or maintain employment, and obey the law. When participants violate the terms of their release, they receive small, swift, and certain punishment.

³ WHITE HOUSE OFFICE OF NATIONAL DRUG CONTROL POLICY, DRUG TREATMENT IN THE CRIMINAL JUSTICE SYSTEM 2 (2001), <http://www.whitehousedrugpolicy.gov/publications/pdf/94406.pdf>.

⁴ *Id.* at 2,4 (reporting that the average cost per year to incarcerate an inmate in the federal system is \$23,542; the average cost per treatment episode for an addicted offender is \$2,941).

Model supervised release programs have reported enormous successes in reducing recidivism and reintegrating prisoners into society. For example, the program instituted in the Eastern District of Missouri has a failure rate of only 3.2% over the program's nine-year life.⁵ The Department should support existing programs and encourage the expansion of new programs by instructing prosecutors to work with district and magistrate judges to create programs in their jurisdictions. The Department should also catalog the best practices evidenced by these programs to assist in the creation of new programs.

* * *

Drug court-type programs have found success in a variety of settings at the federal and state level. By addressing the root cause of an offender's conduct, these programs stop the cycle of recidivism and reduce the long-term costs of incarceration. I hope the Department gives full consideration to the ways in which these programs can be more fully implemented at the federal level.

Sincerely,



Pedro R. Pierluisi
Member of Congress

cc: The Honorable R. Gil Kerlikowske, Director, Office of National Drug Control Policy

⁵ *The First Line of Defense: Reducing Recidivism at the Local Level: Hearing Before the Sen. Comm. on the Judiciary, Subcomm. on Crime and Drugs, 111th Cong. 4 (2009)* (statement of Doug Burris, Chief United States Probation Officer, Eastern District of Missouri).