



SCHOOL *of* PUBLIC AFFAIRS
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**Seven Common Challenges Drug Courts are
Encountering: Lessons from Technical Assistance**

Seven Common Challenges Drug Courts Are Encountering: Lessons from Technical Assistance

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BJA Drug Court Technical Assistance Project



OVERRIDING CHALLENGE: SERVING ALL HIGH RISK/HIGH NEED OFFENDERS WHO NEED DRUG COURT SERVICES

- Ensuring all High Risk /High Needs drug offenders in the jurisdiction receive drug court services
- Expanding existing drug courts if/as needed to ensure:
 - Adequate services for High Risk/High Need offenders
 - Multiple tracks to also serve lower risk/low-high need offenders
- WHAT DOES THIS MEAN?
 - Clearly articulated eligibility criteria focused on *inclusion*
 - Eligibility criteria that are consistently and transparently applied
 - Full Continuum of treatment and other services



CHALLENGE ONE: ENSURING IDENTIFICATION OF ALL ELIGIBLE PARTICIPANTS AND THEIR ENTRY INTO THE DRUG COURT

KEY COMPONENT 3: ELIGIBLE PARTICIPANTS ARE IDENTIFIED EARLY AND PROMPTLY PLACED IN THE DRUG COURT PROGRAM

PROBLEMS:

- Eligibility criteria not clear, specific, and are sometimes subjective
- No clear locus of responsibility for screening/identifying eligible defendants
- Criteria are not broadly disseminated
- No systematic process for objectively screening all arrestees
- Even defendants who are “eligible” still not accepted:
 - prosecutorial veto
 - team “voting”

RESULT:

- Denial of “equal protection” (no equal access to programs/treatment)
- Disparate impact on certain populations
- Jailed population if often not reflective of the enrolled drug court population
- Many programs not serving the “high risk/high need” populations that need their services
- Participants in drug courts have not grown significantly over the years

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CHALLENGE ONE: ENSURING IDENTIFICATION OF ALL ELIGIBLE PARTICIPANTS AND THEIR ENTRY INTO THE DRUG COURT

(Continued)

KEY COMPONENT 3: ELIGIBLE PARTICIPANTS ARE IDENTIFIED EARLY AND PROMPTLY PLACED IN THE DRUG COURT PROGRAM

ACTION NEEDED:

- Clearly stated eligibility criteria and consistent application
- Review criteria for disparate impact
- Transparent procedure for objectively identifying all eligible participants
- Mechanisms to ensure prompt entry into the drug court program
- Examine and routinely review disparities between jailed population and enrolled drug court population

PERFORMANCE BENCHMARKS:

- Clearly articulated eligibility criteria consistently and transparently applied
- Early screening of all arrestees and/or probation violators for eligibility
- Prompt identification of eligible participants
- Prompt entry into the program
- Comparison of Demographics of Drug Court Population with Demographics of Arrestee Population and prompt action to address disparities



CHALLENGE TWO: ENSURING EARLY ENTRY INTO THE PROGRAM

KEY COMPONENT 3: ELIGIBLE PARTICIPANTS ARE IDENTIFIED EARLY AND PROMPTLY PLACED IN THE DRUG COURT PROGRAM

PROBLEM:

- Long delays in identifying eligible participants
- Long delays in “approving” eligible participants
- Long delays in eligible participants entering the program
- Many programs don’t even track this information

RESULT:

- Persons diagnosed with substance disorders are not receiving prompt treatment
- Persons known to commit crime associated with their substance dependency potentially continue to commit crime
 - danger to public safety
 - may commit crimes that then make them ineligible for the drug court
- Cases are proceeding through the traditional case process before identified for and/or diverted to drug court so losing the potential efficiency of drug court tracking assignment (Differentiated Case Management)

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CHALLENGE TWO: ENSURING EARLY ENTRY INTO THE PROGRAM

(Continued)

KEY COMPONENT 3: ELIGIBLE PARTICIPANTS ARE IDENTIFIED EARLY AND PROMPTLY PLACED IN THE DRUG COURT PROGRAM

ACTION NEEDED:

- Mechanisms in place for systematically screening all arrestees at/near time of arrest for potential drug court program eligibility
- Mechanisms in place for assigning all drug court eligible defendants to a Drug Court track (differentiated case management)
- Procedures providing for expedited – but fair – disposition of cases in the drug court track to promote early drug court entry
- Procedures to provide interim supervision and treatment initiation prior to case disposition (drug testing, self-help program attendance requirements, etc.)

PERFORMANCE BENCHMARKS:

- Systems in place for systematic screening and identifying eligible defendants at time of arrest based on written criteria
- Criminal justice officials or others (e.g., pretrial services, probation, TASC) are designated to screen cases and identify potential drug court participants.
- Mechanisms for expediting the court's handling of cases involving drug court eligible defendants are in place with initial appearance before the drug court judge as soon as possible to ensure program participation
- Close working relationship with treatment provider to begin services promptly

CHALLENGE THREE: ENSURING CONSTITUTIONAL RIGHTS ARE PROTECTED AND PARTICIPANTS UNDERSTAND PROGRAM PROCEDURES AND REQUIREMENTS

KEY COMPONENT 2: USING A NON-ADVERSARIAL APPROACH, PROSECUTION AND DEFENSE COUNSEL PROMOTE PUBLIC SAFETY WHILE PROTECTING PARTICIPANTS' DUE PROCESS RIGHTS

KEY COMPONENT 6: A COORDINATED STRATEGY GOVERNS DRUG COURT RESPONSES TO PARTICIPANTS' COMPLIANCE

PROBLEM:

- Defendants have been required to waive a wide array of constitutional rights (to be present at court hearings, to have the assistance of counsel, to contest court orders, etc.)
- Defendants have entered pleas with referral to drug court with no sentence indicated and, when terminated, are then subject to significantly greater sentences than would have been imposed if they negotiated a plea and never entered the drug court
- Defense attorneys are not consistently representing drug court defendants during the drug court process
- Program policies and procedures are not clearly articulated
- Defendants don't always understand program requirements (not included in participant information)
- Judges don't consistently explain deviations from published "sanctions/incentives" grids or such grids don't exist
- Fees (unanticipated) are imposed by ancillary agencies that are not described in program materials

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CHALLENGE THREE: ENSURING CONSTITUTIONAL RIGHTS ARE PROTECTED AND PARTICIPANTS UNDERSTAND PROGRAM PROCEDURES AND REQUIREMENTS

(Continued)

KEY COMPONENT 2: USING A NON-ADVERSARIAL APPROACH, PROSECUTION AND DEFENSE COUNSEL PROMOTE PUBLIC SAFETY WHILE PROTECTING PARTICIPANTS' DUE PROCESS RIGHTS

KEY COMPONENT 6: A COORDINATED STRATEGY GOVERNS DRUG COURT RESPONSES TO PARTICIPANTS' COMPLIANCE

RESULT:

- Participation in some drug court programs may require defendants to surrender constitutional and other rights to which they are entitled
- Some drug court programs may not be operating with clearly defined policies and procedures which are required for cases that are otherwise subject to court rules

ACTION NEEDED:

- Immediate review of participant agreements regarding:
 - required waivers of constitutional and other rights
 - description of program requirements to ensure they are clear and specific
- Review/revise program policies/practices re responses to participant progress or lack of progress for consistency and conformity to evidence based practices (proximal vs. distal goals)
- Ensure that drug court defendants are represented by counsel throughout the drug court process

CHALLENGE THREE: ENSURING CONSTITUTIONAL RIGHTS ARE PROTECTED AND PARTICIPANTS UNDERSTAND PROGRAM PROCEDURES AND REQUIREMENTS

(Continued)

KEY COMPONENT 2: USING A NON-ADVERSARIAL APPROACH, PROSECUTION AND DEFENSE COUNSEL PROMOTE PUBLIC SAFETY WHILE PROTECTING PARTICIPANTS' DUE PROCESS RIGHTS

KEY COMPONENT 6: A COORDINATED STRATEGY GOVERNS DRUG COURT RESPONSES TO PARTICIPANTS' COMPLIANCE

PERFORMANCE BENCHMARKS:

- Member of defense bar (and prosecutor) are active members of the team staffing, and hearing
- Defendants are fully advised of their legal rights before committing to the program
- Participant information is “user-friendly”
- Requirement for defendants to waive rights are limited to those rights that directly relate to the program operation (e.g., right to a speedy trial)



CHALLENGE FOUR: ENSURING THERAPEUTIC RESPONSES TO PROGRESS OR LACK OF PROGRESS

KEY COMPONENT 6: A COORDINATED STRATEGY GOVERNS DRUG COURT RESPONSES TO PARTICIPANTS' COMPLIANCE

PROBLEM:

- Many drug courts are:
 - Requiring automatic jail sanctions for continued/new drug use
 - Using jail excessively as a sanction
 - Front-loading participants with unrealistic requirements during early stages considering the effects of years of drug use they are suffering from
- Many drug courts reflect inconsistent application of “sanctions” and incentives”
- Program responses may not be connected to reasonable expectations of what participants can accomplish (proximal vs. distal behaviors)

RESULT:

- Some drug courts reflect a mix of continued punitive approaches to drug use without providing the therapeutic response/services needed
- Frequent termination of drug court participants early in the program without adequate opportunity for needed treatment services
- Substantial Sentences of Incarceration Imposed on Terminated Offenders

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CHALLENGE FOUR: ENSURING THERAPEUTIC RESPONSES TO PROGRESS OR LACK OF PROGRESS

(Continued)

KEY COMPONENT 6: A COORDINATED STRATEGY GOVERNS DRUG COURT RESPONSES TO PARTICIPANTS' COMPLIANCE

ACTION NEEDED:

- Review program policies and practices relating to new or continued drug use to ensure that responses are therapeutic – e.g., determine circumstances for the continued or new drug use and readjust treatment and other services to address these
- Review program policies and practices relating to participant progress to ensure they promote continued progress and support recovery

PERFORMANCE BENCHMARKS:

- Program policies reflect recognition of the chronic nature of addiction and the complexity of treatment strategies needed to address continued/new drug use
- A “sanctions/incentives” grid is developed that provides for:
 - A range of non-incarceration, therapeutic responses for participant noncompliance
 - Expectations regarding participant performance that are realistic (proximal vs. distal) considering the participant’s stage in the program
 - A range of potential responses to a participant’s progress (or lack thereof) for which the defendant has notice



CHALLENGE FIVE: PROVIDING A CONTINUUM OF EVIDENCE BASED TREATMENT SERVICES

KEY COMPONENT 4: DRUG COURTS PROVIDE ACCESS TO A CONTINUUM OF ALCOHOL, DRUG AND OTHER RELATED TREATMENT AND REHABILITATION SERVICES

PROBLEM:

- Many drug courts use a “one size fits all” rather than an individualized treatment planning approach for drug court participants
- Many drug courts are not conducting adequate assessment of treatment and other needs of participants and incorporating these results in their treatment plans
- Treatment services do not necessarily reflect evidence based practices –for example, the use of (and fidelity to) nationally accepted curriculums

RESULT:

- Program services may not be responsive to individual participant needs resulting in terminations (or worse) rather than readjustments in treatment approaches
- Certain segments of the drug court eligible population are not engaging – young African American Males, for example

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CHALLENGE FIVE: PROVIDING A CONTINUUM OF EVIDENCE BASED TREATMENT SERVICES

(Continued)

KEY COMPONENT 4: DRUG COURTS PROVIDE ACCESS TO A CONTINUUM OF ALCOHOL, DRUG AND OTHER RELATED TREATMENT AND REHABILITATION SERVICES

ACTION NEEDED:

- Review plan and structure for treatment services to ensure capability - and practice - for tailoring services – and expected milestones - to individual needs
- Review screening and assessment process to ensure it provides for identification of differentiated treatment and other needs of participants and required assessment instruments are being used (e.g., for gender, trauma, mental health, physical health, etc.)

PERFORMANCE BENCHMARKS

- Individuals are initially screened and thereafter periodically assessed by both court and treatment personnel to ensure that treatment services and individuals are suitably matched
- A range of treatment and other support services are available and accessible to drug court participants
- Specialized services are available for participants with co-occurring AOD problems and mental health disorders.

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CHALLENGE FIVE: PROVIDING A CONTINUUM OF EVIDENCE BASED TREATMENT SERVICES (Continued)

KEY COMPONENT 4: DRUG COURTS PROVIDE ACCESS TO A CONTINUUM OF ALCOHOL, DRUG AND OTHER RELATED TREATMENT AND REHABILITATION SERVICES

PERFORMANCE BENCHMARKS (Continued)

- Treatment programs or program components are designed to address the particular treatment issues of women and other special populations
- Treatment is available in a number of settings, including detoxification, acute residential, day treatment, outpatient, and sober living residences
- Treatment services are accessible, including by public transportation, when possible
- Treatment agencies give the court accurate and timely information about a participant's progress
- Treatment designs and delivery systems are sensitive and relevant to issues of race, culture, religion, gender, age, ethnicity, and sexual orientation
- Treatment services conform with recommended evidence based models
- Quality assurance mechanisms are in place to ensure fidelity to treatment models being used



CHALLENGE SIX: DATA, PROGRAM ASSESSMENT AND DISSEMINATION OF INFORMATION TO STAKEHOLDERS AND THE COMMUNITY ON WHAT THE PROGRAM IS DOING, IMPACTS IT IS ACHIEVING, AND HOW IT SHOULD BE FURTHERING COMMUNITY INTERESTS

KEY COMPONENT 8: MONITORING AND EVALUATION MEASURE THE ACHIEVEMENT OF PROGRAM GOALS AND GAUGE EFFECTIVENESS

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

PROBLEM:

- Programs have little, if any, data to describe what they are doing and what they are accomplishing
- Programs have little, if any, data to use to assess progress in achieving goals, anticipated outcomes, day to day operational components, identify problems, and make midcourse corrections, as needed

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CHALLENGE SIX: DATA, PROGRAM ASSESSMENT AND DISSEMINATION OF INFORMATION TO STAKEHOLDERS AND THE COMMUNITY ON WHAT THE PROGRAM IS DOING, IMPACTS IT IS ACHIEVING, AND HOW IT SHOULD BE FURTHERING COMMUNITY INTERESTS (Continued)

KEY COMPONENT 8: MONITORING AND EVALUATION MEASURE THE ACHIEVEMENT OF PROGRAM GOALS AND GAUGE EFFECTIVENESS

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

ACTION NEEDED:

- Programs should articulate the data and other information needed to determine (and ensure its compilation):
 - Whether the program’s mission and goals are being achieved and, if not, areas warranting attention
 - Whether the demographics and volume of participants served reflects the demographics and volume of eligible arrestees and, if not, areas warranting attention
 - Factors associated with “successful” participation in the program and factors associated with premature termination and actions the program needs to promote greater participant success
 - Outcomes the program is achieving (number of drug free days per participant; recidivism, employment status, custody retention, etc.)

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CHALLENGE SIX: DATA, PROGRAM ASSESSMENT AND DISSEMINATION OF INFORMATION TO STAKEHOLDERS AND THE COMMUNITY ON WHAT THE PROGRAM IS DOING, IMPACTS IT IS ACHIEVING, AND HOW IT SHOULD BE FURTHERING COMMUNITY INTERESTS (Continued)

KEY COMPONENT 8: MONITORING AND EVALUATION MEASURE THE ACHIEVEMENT OF PROGRAM GOALS AND GAUGE EFFECTIVENESS

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ACTION NEEDED: (Continued)

- Programs should also ensure that adequate data/information is compiled to describe for the court, prosecution, defense, law enforcement and other justice agencies as well as those in the community:
 - The services it is providing
 - The impacts it is achieving
 - Gaps in services/resources needed, if/as appropriate

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CHALLENGE SIX: DATA, PROGRAM ASSESSMENT AND DISSEMINATION OF INFORMATION TO STAKEHOLDERS AND THE COMMUNITY ON WHAT THE PROGRAM IS DOING, IMPACTS IT IS ACHIEVING, AND HOW IT SHOULD BE FURTHERING COMMUNITY INTERESTS

(Continued)

KEY COMPONENT 8: MONITORING AND EVALUATION MEASURE THE ACHIEVEMENT OF PROGRAM GOALS AND GAUGE EFFECTIVENESS

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

PERFORMANCE BENCHMARKS:

- On-going availability of data describing:
 - demographics, treatment and related needs of drug court eligible arrestee population
 - the demographic, treatment and related needs of drug court participants and any discrepancies with those of the arrestee population
 - impacts program is achieving (recidivism and other)
 - outcomes for several years (including education, employment, recidivism)
 - lessons learned
 - program services and impacts
- On-going distribution of data to court, local prosecutor, defense, bar, county government, and others regarding what the drug court is doing, who it is serving, impact it is achieving, and resources/partnerships that are needed to support/sustain the program

CHALLENGE SEVEN: JUDICIAL LEADERSHIP OUTSIDE OF THE COURTROOM

KEY COMPONENT 4: DRUG COURTS PROVIDE ACCESS TO A CONTINUUM OF ALCOHOL, DRUG AND OTHER RELATED TREATMENT AND REHABILITATION SERVICES

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

PROBLEM:

- Most judges focus their role in the courtroom but are not assuming a role outside of the courtroom - outside of the courthouse, as needed – to identify agencies and other local resources needed to provide services to the drug court and build relationships, commitments, and partnerships to sustain the program over time
- Many programs lack the judicial leadership to move the programs forward to ensure that they reach the high needs and high risk population they need to be serving
- Nationally, as well as for many individual programs, the number of offenders drug courts are reaching has not substantially increased as it should have over the years

ACTION NEEDED:

- Drug Court Programs need to reexamine their mission and obligation to reach out to all eligible offenders, tailoring services to reflect their diverse treatment, supervision and other needs
- Judges need to ensure the program is operating as envisioned, that evidence based services are being provided by each entity involved and that constitutional and other rights of participants are being protected

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Judicial Leadership Initiative



BJA DRUG Court Technical Assistance Project

JUDICIAL LEADERSHIP INITIATIVE: OVER-RIDING PRINCIPLES

[DRAFT: 4/22/14]

While the role of the judge in initiating the formation of a Drug Treatment Court may be readily acknowledged, as these programs have become part of the mainstream, we often lose sight of the importance that continued judicial leadership must play in sustaining these programs, keeping the many “moving parts” working together and moving coherently forward. A few – but by no means all – aspects of the continued judicial leadership role needed – identified by a committee of drug court judges and others who have been working over the years to implement, expand, and sustain drug court programs in a wide range of jurisdictional environments – are described below:

LEADERSHIP OF THE DRUG COURT TEAM

- I. The judge needs to continue to renew the team’s commitment to the mission of the drug court and to assure adherence to the Key Components. As procedures become routine, people often start to lose that sense of mission that was important in the initial decision to take this path.
- II. The judge must promote the team’s understanding of the therapeutic principles underlying the drug court model and their application in a drug treatment court, particularly when the roles of the team members can become blurred as people or personnel change. In that leadership role the judge must reinforce with program personnel and team members the nature of their role and that of the judge. The judge should also ensure that the team receives cross-discipline training, updates regarding best practices, effective responses to behaviors, and training regarding other relevant topics to enhance the program.
- III. The Judge and team should develop a working knowledge of all relevant issues, including “addiction”, “mental illness” and other “co-occurring disorders”, “pharmacology” and “drug testing”. This knowledge is particularly relevant to responses to the behavior of participants and interpretation of that behavior within the context of the recovery process, and appropriate therapeutic responses.
- IV. The judge must provide the leadership to ensure that the Drug Court follows evidence based practices and National Standards and protects participants’ constitutional rights. The judge must lead the team in frank discussions about court operations and improvements, as needed. It requires the judge to create an atmosphere inviting opinions from the team and valuing constructive ideas. While the Judge should foster a team concept he/she must not abdicate his/her role as the ultimate “decision maker”



CHALLENGE SEVEN: JUDICIAL LEADERSHIP OUTSIDE OF THE COURTROOM

(Continued)

KEY COMPONENT 4: DRUG COURTS PROVIDE ACCESS TO A CONTINUUM OF ALCOHOL, DRUG AND OTHER RELATED TREATMENT AND REHABILITATION SERVICES

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

PERFORMANCE BENCHMARKS:

- Judge(s) are spokespersons and advocates for the program with the court, other justice stakeholders, supporting agencies and the community regarding the services it is providing, accomplishments being achieved, and interagency support needed
- Continuous Judicial oversight of treatment and other services to ensure they are being appropriately provided, consistent with national standards and evidence based practice
- Continuous judicial monitoring of program activity to ensure program is achieving its mission and meeting targeted goals

[Additional Benchmarks: Key Components. 1997]

1. Representatives from the court, community organizations, law enforcement, corrections, prosecution, defense counsel, supervisory agencies, treatment and rehabilitation providers, educators, health and social service agencies, and the faith community meet regularly to provide guidance and direction to the drug court program

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CHALLENGE SEVEN: JUDICIAL LEADERSHIP OUTSIDE OF THE COURTROOM

(Continued)

KEY COMPONENT 4: DRUG COURTS PROVIDE ACCESS TO A CONTINUUM OF ALCOHOL, DRUG AND OTHER RELATED TREATMENT AND REHABILITATION SERVICES

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

PERFORMANCE BENCHMARKS:

[Additional Benchmarks: Key Components. 1997]

2. The drug court plays a pivotal role in forming linkages between community groups and the criminal justice system. The linkages are a conduit of information to the public about the drug court, and conversely, from the community to the court about available community services and local problems
3. Partnerships between drug courts and law enforcement and/or community policing programs build effective links between the court and offenders in the community
4. Participation of public and private agencies, as well as community-based organizations, is formalized through a steering committee. The steering committee aids in the acquisition and distribution of resources
5. Drug court programs and services are sensitive to and demonstrate awareness of the populations they serve and the communities in which they operate. Drug courts provide opportunities for community involvement through forums, informational meetings, and other community outreach efforts

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Questions?



Thank You!!!

