David FitzGerald's (Mental Health Criminal Justice Review Committee Member, Mental Health Committee Co-Chair, Community Services Board Member, CSB Executive Committee Member), comments and questions to Arlington County's "Application for Behavioral Health Docket Draft" version released 7-10-2019.

First, I'd like to congratulate all staff and other contributors on drafting a well written, and professionally presented draft Application. I know a lot of hard work went into creating the application, and it shows. Questions and comments below will refer to the page and paragraph number of the document for easy reference.

Page 5, only paragraph, last sentence: "Regular supervision with a team of dedicated professionals to monitor the defendant's treatment, rapid application of sanctions to modify behavior, and an opportunity to provide immediate access to MH/SUD treatment tailored to each defendant's specific needs, would assist with recidivism and assist the defendant toward illness management and recovery."

- Comment: "rapid" application of sanctions should be changed to "appropriate". Nothing about SMI treatment is "rapid" and there is no rapid modification of behavior as a result of application of sanctions. Figuring out the right combination of effective psychotropic and other medications is not rapid. Even when a patient has an already identified effective medication treatment regimen, re-starting the medications following long periods of decompensation does not generally work rapidly, and commonly takes many months before having an ameliorative effect. Cognitive behavioral training does not become effective rapidly. Therefore, what would make anybody think that a "rapid application of sanctions" will be an effective behavior modifier for SMI patients? The use of the term belies a more punitive than therapeutic approach to the application.
- Comment: "an opportunity to provide immediate access to MH/SUD treatment" should be an overarching goal of standing up a BHD. However, a post-plea only BHD approach will almost always result in a request for discovery by the patient's defense counsel. The time required for proper discovery will then be added to the timeline of the process discussed further below, making a post-plea only approach much less immediate than a mixed approach that allows for pre-plea agreements where appropriate.

Page 6, Goals and Objectives: I think this type of re-ordering would show a more therapeutic approach to the BHD:

1) To serve the therapeutic need of SMI/DD justice involved individuals through a court supervised and mandated outpatient treatment program provided by the Department of Human Services.
2) To avoid treating SMI/DD patients for their mental health needs in jail wherever possible.
3) To reduce an individual's long-term risk of medical non-compliance and justice involved recidivism by creating a sustainable path for treatment by improving mental health services linkage and clinical outcomes for those accepted for participation in the BHD.
4) Increasing the capability of individuals to successfully address their personal, family and societal responsibilities.
5) To reduce the length of incarceration of SMI/DD individuals charged with misdemeanor offenses and certain low-level felony offenses reduced to a misdemeanor or avoiding incarceration altogether.

6) Promoting effective communication, planning and use of resources among criminal justice partners and other community agencies.

Page 8 Terms of Participation, first sentence: “The BHD is a post plea docket….”

- Comment: The application might not be the place to explain the reasoning behind applying for one type of docket over the other. However, during the public meeting participants will want to know:
    - What is the rationale for applying for a post-plea versus pre-plea or even a mixed docket?
    - How would you describe the costs and benefits comparison between a post-plea and a pre-plea docket?
    - What has research about the two different approaches shown? If there is insufficient research, what previous experience of other BHDs in Virginia or in other parts of the country has the County relied on to fortify its case for a post-plea docket?
    - Given Arlington’s previously stated desire for a therapeutic BHD, how is a post-plea docket considered more therapeutic than a pre-plea one?
    - There are reasons why specific individuals and cases would be better served by a pre-plea approach, and there are reasons why others would be better served by a post-plea approach. Why shouldn’t a BHD have a flexible approach and use the most appropriate plea approach depending on the individual case? Is there anything in the Code that specifically forbids a hybrid plea approach? Is there precedence elsewhere for a hybrid plea approach BHD?

Page 17 Referral Process: Post Plea: This is not required for the application, but it will be asked about at the public meeting => Given the previously stated desire “to provide immediate access to MH/SUD treatment tailored to each defendant’s specific needs”, describe an expected timeline comparison between a pre-plea and post-plea docket. The post-plea docket must add expected average time for discovery that would not be routinely required in a pre-plea docket. How does adding the extra time square with the stated desire to provide “immediate access” to treatment? Given this, why hasn’t the County made a hybrid plea application?