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COURTS COMMISSION

FIFTH REPORT

DRUG COURTS

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Publications of the Working Group on a Courts Commission

First Report

Management and Financing of the Courts, April, 1996
Summary

Second Report

Case Management and Court Management, July, 1996
Summary

Third Report

Towards the Courts Service, November, 1996
Summary

Fourth Report

The Chief Executive of the Courts Service, March, 1997.

A Working Paper

Conference on Case Management, May, 1997.

A Working Paper:

A Working Paper on Information and the Courts, November, 1997.

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CHAPTER 1

Introduction

1.1. DRUG ABUSE

Drug abuse is a cancer in our society. It destroys individuals, families and communities. In order to feed their habit many drug addicts commit crime. A recent survey¹ found that two-thirds of all detected crime in Dublin is committed by drug addicts. It was stated:

"19,046 indictable crimes were detected in the Dublin Metropolitan Area during the time under review. 7,757 individuals were apprehended for these crimes. Of the individual offenders apprehended 3,365 or 43% were identified as known hard drug users. These drug users were responsible for 12,583 crimes or 66% of all detected crime in the Dublin Metropolitan Area. Based on detections, drug users commit approximately three crimes for each one committed by non drug users."

The high rate of crime by drug abusers is apparent. This results in convictions, prison sentences, prison life and then a continuing cycle of drug abuse and crime. Court lists are full of drug related crime. Prisons are full of drug abusing inmates. A cycle of life and death has been established around drug abuse.

1.2 REQUEST FROM THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

The Minister for Justice, Equality and Law Reform, John O'Donoghue, T.D., requested the Working Group on a Courts Commission to advise on the establishment of a Drug Courts System. The Minister pointed out that it would be most important to consider the types of offences which could be dealt with by a Drug Courts System and the target group for

¹ Illicit Drug Use and Related Criminal Activity in the Dublin Metropolitan Area. Eamonn Keogh, Garda Research Unit, Published 1997.

such a system. He referred to the estimated high proportion of offences motivated by drug addictions and queried whether it would be feasible to deal with all such offences by a Drug Courts System. He asked the Working Group to look at the resource implications of the development of a Drug Courts System both in the courts and in the support services. The Minister also requested that in addressing the issue the Working Group would address the training implications for the judiciary and the courts staff.

1.3 PROCESS

The Working Group commenced studying the concept of a Drug Courts System in October, 1997. Meetings were held, submissions were received and the issue was considered and analysed in detail. A Conference with experts from the United States of America was held in Dublin on 31st January, 1998. This Report is the response to the Minister's request.

1.4 DEFINITION OF A "DRUG COURT"

The term "Drug Court" is used, especially in the United States of America, to describe a revolutionary new type of court process. The first Drug Courts were developed in the United States of America in the 1980s, they do not follow the traditional system of justice. They are treatment orientated courts where the judge dispenses justice with the help of an integrated team of professionals who provide treatment to the defendant.

1.5 JUSTICE THROUGH TREATMENT

The philosophy which underpins Drug Courts is radically new. It involves a fundamental alteration in the approach of society and the courts. In our courts the adversarial system operates. Thus in the criminal courts the parties present their opposing views. The prosecutor prosecutes, the defence defends and the court makes a decision of guilt or innocence. The sanctions for the guilty include imprisonment and or a fine. However, in a Drug Court the role of the judge and other court personnel is transformed. The judge becomes a central figure in a court centred treatment programme.

1.6 DRUG COURTS ISSUES

Drug Courts envisages two issues. First, the concept of a new courts process addressed solely to the issue of the drug abusing accused and

or convicted persons. Secondly, the development within the courts system of a new philosophy as to the role of the court and the justice therein to be dispensed.

1.7 NOT A PANACEA

Drug Courts are not a panacea, they are not a universal remedy for the drug problem. However, they have the potential to be an effective part of a pattern of projects and activities to heal the drug problem and the social evils it creates in society.

Drug Courts in the United States of America

2.1 History

The Drug Court movement is most advanced in the United States of America. Thus it is

instructive to consider the experience of that Nation. The first Drug Court was set up in 1989 in Miami (Dade County). Between 1985 and 1989 arrests for drug possession in Dade County had risen by 93%. Drug related crime comprised the majority of cases in the criminal justice system. An estimated 73% of felony defendants tested positive for cocaine and at least 83% had either tested positive for drugs, were charged with drug offences, or had prior records for drug offences.²

As a result prisons were overcrowded with drug addicted offenders, most of whom were non-violent and were likely to return to drugs and crime upon release from prison. In the criminal courts of Dade County the same defendants were reappearing again and again. There was a "revolving door" approach. In light of this situation it was decided in 1989 to instigate a court-supervised drug treatment programme and to operate a diversionary programme for non-violent offenders charged with minor drug related offences. This first "Drug Court" was greeted with considerable scepticism in the legal community. However, Dade County Drug Court is still operating and growing. The success of that Drug Court was the start of such courts in the United States of America. There are currently approximately 238 Drug Courts in operation in the United States, 2 about to start and 147 being planned.³

² Goldkamp, J.S., Gottfredson, M.R., & Weiland, D. 1990; "Pre-trial drug testing and defendant risk", *Journal of Criminal Law and Criminology*, 81(3), 585.

³ Summary of Drug Court Activity by State Court, February 1, 1998, American University, Drug Courts: Clearinghouse and Technical Assistance Project.

2.2 Target Groups

Drug Courts reserve participation to, for example, non-violent offenders charged with drug possession for personal use who have few or no previous convictions and, increasingly, persons who may have committed offences, such as minor larcenies, to support their habit. These are courts for drug addicts, not drug dealers.

2.3 Drug Court Models

Drug Courts have been developed locally to meet local requirements. There are thus many different models. However, in general, Drug Courts in the United States tend to operate in one of four ways.

2.3 (i) The Deferred Prosecution Model

Admission

Participation is usually reserved to persons charged with drug possession for personal use who have few or no previous convictions. Occasionally persons with ancillary charges such as larceny, which often accompany a drug habit, may also be included.

Procedure

1. The defendant is arrested and charged.
2. An office such as that of the Director of Public Prosecutions screens a list of those charged with drug possession offences and, using criteria established by law, draws up a list of candidates who are eligible for the Drug Court diversion programme.
3. This list is sent to the Drug Court Management Clerk who notifies the defendants, their attorneys and the treatment provider employed by the Court.
4. If the defendant opts to seek entry into the programme, he/she attends a substance abuse assessment at the treatment centre. The treatment provider prepares a preliminary report which is distributed to the Drug Court judge and to the lawyers prior to the defendant's appearance before the judge.
5. Before the hearing at which the defendant requests admission to the programme, the court liaison or the defendant's lawyer will have explained the programme to the defendant. Some jurisdictions have published specific participants' handbooks for this purpose. The defendant and prosecutor sign a *deferred*

prosecution agreement which is subject to the subsequent approval of the judge. As part of the agreement, prosecution of the offences is deferred for the duration of the treatment programme. A sample agreement from one of Florida's Drug Courts is set out in Appendix A.

6. The defendant appears before the Drug Court judge seeking approval of the agreement. The Drug Court is usually held in a normal courtroom. At this stage the defendant and his or her attorney stand and address the judge. The attorney outlines the defendant's history and confirms that he/she is seeking a place in the diversion programme. The judge then addresses the defendant directly, asking a series of questions covering the defendant's age, education, employment, and living environment. The judge will also confirm that the defendant understands the requirements of the programme, fees payable, the consequences of failure and the constitutional rights which he/she is waiving.
7. If satisfied that the candidate is suitable, the judge approves the agreement and schedules a status hearing at which the judge, treatment provider and defendant will review the defendant's progress. These hearings are usually on a weekly, biweekly or monthly basis. Before leaving the courtroom, the defendant signs a notice to appear at that date. Failure to appear results in the issue of a warrant for the defendant's arrest.
8. The defendant is taken from the courtroom to the treatment centre. Treatment usually comprises three stages: detoxification, stabilisation and aftercare. During treatment the defendant generally lives at home and is employed or enrolled in some vocational training course. He/she may also be assigned a probation officer. Treatment is usually daily at first and includes random urinalysis.
9. The results of this urinalysis and a report from the treatment provider are furnished to the Drug Court judge some hours before each status hearing. (Some jurisdictions employ specific MIS technology to transfer this information). At the status hearing the treatment provider and the defendant address the judge directly. There is no role for lawyers at a status hearing. The judge will encourage progress where appropriate and consider, in consultation with the treatment provider, whether to move the defendant to a more advanced stage of treatment. If the defendant

has failed to attend treatment or urinalysis sessions, or has tested positive, the judge takes this up with the defendant and may issue a warning, alter the treatment programme (again in consultation with the treatment provider), impose a brief period of "shock incarceration" or terminate the defendant's place in the programme.

10. If the defendant declines a place in the programme, is not accepted into the treatment programme by the judge, or is "terminated" from the programme, he/she is tried in the normal way.
11. If the defendant "graduates" from the programme, the charges against him/her are dropped.

2.3 (ii) The Guilty Plea Model

Admission criteria are as set out in the deferred prosecution model.

Procedure.

Once the defendant is admitted into the programme, the procedure is similar to that outlined under the deferred prosecution heading. However, one crucial difference is that in order to enter the programme, the defendant must first enter a guilty plea which may subsequently be stricken upon successful completion of the programme, at which point the charges are dropped. This distinguishes this model from one in which the charges are deferred.

2.3 (iii) The Stipulated Trial Model

Admission is as per for the foregoing models.

Procedure.

Rather than plead guilty, the accused signs a statement of facts akin to a confession and agrees that if he fails to complete the programme he will be tried solely on the basis of this statement of facts. This is a prerequisite for entry into the Drug Court diversion programme, successful completion of which results in a dismissal of charges. After waiving several constitutional rights, the accused agrees to a "stipulated trial" if he is terminated from the treatment programme. In this stipulated trial, the Drug Court judge simply decides whether the statement of facts matches the offences set out in the indictment. If so, the accused is

convicted and sentenced. A stipulated trial agreement is set out in Appendix B.

2.3 (iv) The Post-Adjudication Model

Admission is reserved to those who have been convicted of the drug offence in question.

Procedure.

Treatment and status hearings are provided in a way similar to all other drug courts. In some cases, involvement in the treatment programme is a condition of probation. In others, sentencing has been put back to give the accused the opportunity of successfully completing the programme and thereby obtaining a suspended or reduced sentence. (This type of Drug Court is akin to the procedure already provided for in Ireland under s. 28 of the Misuse of Drugs Act, 1977).

2.4 KEY COMPONENTS

The key components of Drug Courts have been defined.⁴ The key components were analysed by a diverse group of Drug Court practitioners and other experts from across the United States of America, brought together by the National Association of Drug Court Professionals⁵ It was intended that the benchmarks presented would be inspirational.

The ten key components found were:

- (i) Drug Courts integrate alcohol and other drug treatment services with justice system case processing.
- (ii) Using a non-adversarial approach, prosecution and defence counsel promote public safety while protecting participant's due process rights.
- (iii) Eligible participants are identified early and promptly placed in the Drug Court programme.
- (iv) Drug Courts provide access to a continuum of alcohol, drug and other related treatment and rehabilitation services.
- (v) Abstinence is monitored by frequent alcohol and other drug testing.

⁴ Defining Drug Courts: The Key Components, January, 1997. U.S. Department of Justice, Office of Justice Programs, Drug Courts Program Office.

⁵ *Ibid* p.3.

- (vi) A co-ordinated strategy governs Drug Court responses to participant's compliance.
- (vii) Ongoing judicial interaction with each Drug Court participant is essential.
- (viii) Monitoring and evaluation measure the achievement of programme goals and gauge effectiveness.
- (ix) Continuing interdisciplinary education promotes effective Drug Court planning, implementation, and other operations.
- (x) Forging partnerships among Drug Courts, public agencies, and community-based organisations generates local support and enhances Drug Court programme effectiveness.

2.5 THE CONNECTICUT EXPERIENCE

The State of Connecticut has established Drug Courts⁶. They are referred to as special Drug Session dockets. Common characteristics are:—

- (a) All combine judicial supervision and oversight with a programme of intensive treatment that covers a full continuum of substance abuse treatment and supportive care. This requires that efficient working relationships are built up between judges and treatment providers and that each develops an appreciation and knowledge of the goals of these separate systems.
- (b) The basic goal of the special dockets are similar — the programmes have a mission to reduce substance abuse and recidivism among non violent adult and young adult substance abuse offenders and offer them a chance to live drug and crime free lives. The sanctions and treatment programmes serve to achieve this goal by offering adult offenders an alternative to incarceration and juvenile clients an opportunity for intervention in an effort to prevent their continuing addiction and criminal behaviour.
- (c) To achieve their goals court personnel involved in special dockets have to develop efficient and non adversarial relationships between the various court functions, especially prosecution and defence.

⁶ The Working Group would like to thank Judge Aaron Ment, Chief Court Administrator, Hartford, Connecticut, for providing this information.

- (d) All the special docket courts are organised along a line of "vertical prosecution". The same judge, prosecutor and defence attorney are assigned to these sessions for a specified period of time so that offenders come to know (and be known by) them. Offenders are also back in court for regular appearances while they are in the programme. This allows for court personnel (especially the judge) to become very familiar with offenders and their progress. The judge can offer encouragement and/or sanctions as appropriate from the bench during these regular appearances.

Although eligibility criteria vary from court to court, all offenders who participate in the special dockets do so voluntarily and agree to the following commitments:

- (a) to undergo one year of substances abuse treatment with random urinalysis; in the juvenile drug session the programme will be from six to nine months;
- (b) to comply with bi weekly, regular court ordered appearances that allow the judge to monitor their progress;
- (c) agreement to keep all treatment and other reasonably required appointments and release information for court monitoring purposes;
- (d) to understand that failure to comply with court and treatment programme requirements may result in termination from the programme or court imposed sanctions which may include increased court appearances, increased intensity of treatment or urinalysis testing, incarceration, residential programming, electronic monitoring and community service.

Summary descriptions of each of the special dockets as they are now operating or are planned, which highlight the differences that exist between the various models, are set out in Appendix C. These are the dockets (Drug Courts) at New Haven, Bridgeport, Waterbury and Hartford.

2.6 CONFERENCE IN DUBLIN

On 31st January, 1998 a Conference was held in Dublin. Experts from the United States addressed the meeting. Ms Caroline Cooper, Associate Director, Justice Programs Office, School of Public Affairs, The American University, spoke of the development of Drug Courts in

the United States⁷. Ms. Marilyn Roberts, Director, OJP Drug Courts Program Office, U.S. Department of Justice, Washington D.C., analysed the importance of infrastructure to, and the financial implications of, Drug Courts. Ms. Roberts sent a Report to the Working Group after the Conference on the Infrastructure to Drug Courts.⁸ Judge Patrick Morris, San Bernardino Superior Court, San Bernardino, California, spoke of his experience as a judge in a Drug Court. He subsequently wrote to the Working Group expressing observations on implementing a Drug Court in Ireland.⁹

2.7 REVIEW OF U.S.A. DRUG COURTS

It is clear that Drug Courts are a developing success in the United States of America. There is no single model; each court has been developed in accordance with local needs and infrastructure. It is an evolving experiment as described by the Honorable Sheila M. Murphy¹⁰

"Although the concept of drug courts is still evolving, early statistics are encouraging. Research shows that criminal activity for drug-related crimes (e.g., drug dealing, burglary, theft and prostitution) decreases or is eliminated as a result of treatment. A 1994 study conducted by the University of Chicago for the California Department of Alcohol and Drug Programmes showed that one year after substance abuse treatment, the use of weapons/force was down 92.9 per cent, drug dealing was down by 74.6 per cent, prostitution was down by 50.8 per cent, and burglary was down by 33.3 per cent.

The United States Justice Department estimates that 32,500 people have enrolled in drug court programmes nationwide. The 50 oldest drug courts are experiencing a 70 per cent retention rate in drug court programmes, even though their target population often includes risky participants. Five reporting Drug Court programmes have been in existence for at least four years. The recidivism rates for these five programmes range from 4 to 28 per cent for graduates. The oldest continuing drug court in existence, in Miami, experienced a 33 per cent reduction in recidivism. The recidivism

⁷ See Appendix D, Summary Paper of the presentation by Ms. Cooper.

⁸ See Appendix E, Report to Working Group on a Courts Commission by Ms. Marilyn Roberts, Director, Drug Courts Program Office, Office of Justice Programs, U.S. Department of Justice.

⁹ See Appendix F, letter from Judge Patrick Morris to Chairwoman of the Working Group.

¹⁰ Hon. Sheila M. Murphy, Presiding Judge, State of Illinois, Circuit Court of Cook County, Sixth Municipal District, "Drug Courts: An effective, efficient weapon in the War on Drugs", *Illinois Bar Journal*, October, 1997, Volume 85, p.474 at p. 479.—

rate for first-time Dade County offenders was 60 per cent, but only 7 per cent for those who successfully completed the Dade County Drug Court treatment programme”.

CHAPTER 3

Drug Courts Elsewhere

The issues relating to Courts and the problems of drug abuse have been considered in other countries. The Working Group considered strategies being planned or used in Germany, Sweden, the United Kingdom and noted the situation in Australia.

3.1 GERMANY

The German Criminal Code (*Strafgesetzbuch*) incorporates a system akin to a Drug Court. Section 56 of the Criminal Code enables the prosecutor, with the Court's consent, to refrain from charging a defendant if he can show that he has been undergoing treatment for drug addiction with a view to rehabilitation for at least three months provided the expected sentence is not more than two years' imprisonment. The proceedings are themselves terminated after four years provided that treatment has been completed, the defendant has not re-offended and there is no fresh evidence indicating a more severe sentence for the initial offence.

In the case of imprisonment for up to one year (exceptionally two) the court will suspend the sentence on probation for two to five years if it expects that the defendant will be deterred from future offending merely by the fact of conviction, even without the impact of a prison sentence. The court may impose conditions and directions, such as the direction (with the defendant's consent) to undergo curative treatment or a residential requirement. If the defendant fails to comply the suspension of the sentence is revoked; if he does comply the sentence is remitted at the expiration of the probation period. Section 57 provides for the suspension of the remaining part of a prison sentence after two-thirds (exceptionally one half) has been served if the Court is satisfied that the defendant will not re-offend. This is usually applied where the defendant has a good prognosis and displays a willingness to undergo treatment.

Sections 35 and 36 of the Narcotics Act allow the prosecutor, with the Court's consent, to *postpone execution of a sentence* for up to two years where the defendant's offence was connected to his drug addiction and he is either undergoing or about to undergo treatment for the purposes of rehabilitation. The duration of the treatment counts towards the sentence and successful therapy may result in suspension and finally remission of the sentence. Failure to complete the therapy may result in revocation of the sentence postponement and continued execution of the sentence, although renewed postponement is a possibility.

Section 64 of the Criminal Code allows a Court to order as part of sentencing that an addicted offender be admitted to an institution for drug addicts if the prognosis is that he may commit serious offences in the future because of his addiction.¹¹

3.2 SWEDEN

Under Sweden's Penal Law on Narcotics of 1968 it is an offence to:

- unlawfully transfer narcotics;
- manufacture narcotics intended for abusers;
- acquire narcotics for the purpose of transfer;
- procure, process, package, transport, keep or convey payment for narcotics, mediate contacts between seller and purchaser or take any other such measure, if the procedure is designed to promote narcotics traffic; or
- possess narcotics, if you have acted wilfully.

Since 1988 the consumption of narcotics is also an offence, although *personal use of narcotics is free of punishment if the perpetrator seeks treatment*.

A strong preference for treatment pervades Sweden's response to drug addicted offenders. Treatment is available both within and outside the criminal justice system.

¹¹ This summary is based on excerpts from *Drug Offenders and Sentencing Policy* by Ralph Henham [1996] 2 Web JCL 59 at pp. 69-70.

3.2.1 Treatment within the criminal justice system:

Remand Centres and Treatment in Prison

There are specific remand centres designed to detoxify inmates and encourage them to become drug free. This process can be continued in prison, where a high priority is given to the provision of treatment. An inmate may request placement in drug-free 'motivation' wings designed to facilitate detoxification and treatment. Regular urine tests are administered to guarantee that the motivation wings are genuinely drug free. In addition, under the Act on Correctional Treatment in Institutions, *drug dependent inmates are eligible to serve part of their sentence outside the prison*, e.g in a care institution for drug addicts. A prisoner who fails to remain drug free while in one of these rehabilitative institutions is returned to prison.

3.2.2 Treatment outside the criminal justice system:

Voluntary Care

There are local authority outpatient centres for drug abusers across the county. There is also provision under Swedish law for residential centres which admit both alcohol and drug abusers. Under the Social Services Act which took effect in 1982, drug addicts may be admitted to outpatient or residential treatment, but only on a voluntary basis.

Compulsory Care

As a supplement to voluntary treatment, compulsory care may be imposed in certain circumstances. Under the Care of Young Persons (Special Provisions) Act, 1990, non-voluntary care can be given to a person under the age of 18 (in some cases 20) if he or she exposes his or her health or development to a palpable risk of injury through the abuse of addictive substances. The decision to impose care is made by the County Administrative Court upon an application by the Social Welfare Committee of the local municipality.

Under the Care of Alcoholics, Drug Abusers and Abusers of Volatile Solvents (Special Provisions) Act, 1988, adults can be subjected to compulsory care under certain conditions.

The local Social Welfare Committee may apply to the County Administrative Court for a compulsory care order. The Court is required to hear the application within one week of the date the application is received unless there are special circumstances justifying an adjournment. The court will grant an order "if any person, as a result of

ongoing abuse of alcohol, narcotics or volatile solvents, is in need of care in order to discontinue his abuse and the necessary care cannot be provided under the Social Services Act or in any other way, and, as a result of the abuse, he

- (i) is seriously endangering his physical or mental health;
- (ii) runs an obvious risk of ruining his life; or
- (iii) is liable to inflict serious harm on himself or some person closely related to him."

The Act stipulates that compulsory care is to be terminated as soon as the purpose of the care has been achieved and in any event shall not last for more than six months. Care ordered under this Act is provided through designated residential institutions run by the county councils or municipalities ("LVM institutions"). Decisions concerning admission, transfer and discharge from an LVM institution are made by the person or body in charge of care of the institution. Except for decisions concerning transfer between institutions, rejection of a patient's request for discharge, or destruction or sale of the patient's property (which may be appealed to the County Administrative Court) decisions of the person or body in charge of an LVM institution are final.

Prosecutorial discretion

Section 46 of the Act provides for the non-prosecution of minor offences committed by drug addicts who are either currently undergoing, or have undergone, compulsory care. It states:

"Where a person who has received care under this Act is suspected of a criminal offence for which the maximum penalty does not exceed one year's imprisonment and which comes within the ambit of common prosecution, and if the crime was committed before the commencement of care or during the caring period, the prosecutor shall consider whether it is appropriate to prosecute. The governing body of the institution where the suspect is receiving care or, if the care has been terminated, the Municipal Social Welfare Committee shall be consulted in this connection, except where this is unnecessary."

In some cases, as an alternative to custodial sentencing, the courts can refer convicted persons to care within the social services. Another alternative to prison is probation combined with therapeutic measures. Courts can make **contract care orders** in cases where a criminal

offence was significantly due to drug abuse, if the convicted person is willing to undergo treatment in accordance with a special plan drawn up by the court.¹²

3.3 ENGLAND AND WALES

England and Wales have also responded to the problem of drug abuse in the community. They too are seeking to take steps toward "Breaking the Vicious Circle". The Home Office has produced a discussion paper entitled "Drug Treatment and Testing Orders": It discusses what is, in effect, a Drug Court. It states:—¹³

"Relatively little use has been made of the existing arrangements under Schedule 1A(6) of the Powers of Criminal Courts Act, 1973 (as inserted by the Criminal Justice Act, 1991) to impose treatment as part of a sentence".

The reasons for this are discussed in the paper which then reflects on the planned scheme:—

"The aim of the new Order will be to solve these problems by strengthening the court's power to make an Order, with the offender's consent, requiring the offender to undergo treatment for their drug problem either as part of or in association with an existing community sentence. It will be targeted through screening of serious drug misusers with a view to reducing the amount of crime committed to fund a drug habit. Two crucial differences between this new Order and the present treatment requirements are that the court will have regularly to review the offender's progress on the Order and that drug testing will be mandatory.

The success of any new legislation will depend on the availability of treatment and the resolution of cultural differences between the criminal justice system and treatment providers, underpinned by strong interagency arrangements. It is proposed that the probation service should be funded to purchase treatment directly."

The paper then turned to the issue of the eligibility for the treatment order. It stated:—

¹² This summary is based upon *A Restrictive Drug Policy: The Swedish Experience* (1993), The Swedish National Institute of Public Health, and *Alcohol and Narcotics in Sweden* (1995), The Swedish Institute.

¹³ See Appendix G Drug Treatment and Testing Order: Background and issues for Consultation, 1997. Home Office Publications. (England and Wales).

"We believe that any offender who is dependent on or has a propensity to misuse controlled drugs, and whose dependency is such as requires and may be susceptible to treatment, should be eligible for the Order on the recommendation of the probation service; it will not therefore be possible to make the Order without a Pre-Sentence Report (PSR). The court would not be required to make any judicial finding as to the offender's misuse of drugs, much less specifying which drugs. The issue is the offender's criminality and the court, having received a PSR assessment from a probation officer and, if it is so proposed, obtained the consent of the treatment provider, will decide whether the offender in question is suitable for the Order."

The paper discusses further important related issues in the development of such a court: the issues of the defendant's consent, drug testing, the probation service and court powers.

Legislation in England and Wales

Prior legislation in England and Wales has been little used. Section 2(1) Powers of Criminal Courts Act, 1973 states:

"Where a court by or before which a person of or over the age of sixteen years is convicted of an offence not being an offence for which the sentence is fixed by law or falls to be imposed under Section 2(2), 3(2) or 4(2) of the Crime (Sentences) Act, 1997 is of the opinion that the supervision of the offender by a probation officer is desirable in the interests of—

- (a) securing the rehabilitation of the offender; or
- (b) protecting the public from harm from him or preventing the commission by him of further offences,

the court may make a probation order, that is to say, an order requiring him to be under the supervision of a probation officer for a period specified in the order of not less than six months nor more than three years."

Section 3(1) of the Act states that:

"a probation order may in addition require the offender to comply during the whole or any part of the probation period with such requirements as the court, having regard to the circumstances of the case, considers desirable in the interests of —

- (a) securing the rehabilitation of the offender; or
- (b) protecting the public from harm from him or preventing the commission by him of further offences.”

Section 3(3) states that:

“Without prejudice to the generality of subsection (1) above, the additional requirements which may be included in a probation order shall include the requirements authorised by Schedule 1A to this Act.”

Schedule 1A(6) to the Act prescribes requirements as to treatment for drug or alcohol dependency. It states that:

“6(1) This paragraph applies where a court proposing to make a probation order is satisfied—

- (a) that the offender is dependent on drugs or alcohol;
- (b) that his dependency caused or contributed to the offence in respect of which the order is proposed to be made; and
- (c) that his dependency is such as requires and may be susceptible to treatment.

(2) The probation order may include a requirement that the offender shall submit, during the whole of the probation period or during such part of that period as may be specified in the order, to treatment by or under the direction of a person having the necessary qualifications or experience with a view to the reduction or elimination of the offender’s dependency on drugs or alcohol.

(3) The treatment required by any such order shall be such one of the following kinds of treatment as may be specified in the order, that is to say—

- (a) treatment as a resident in such institution or place as may be specified in the order;
- (b) treatment as a non-resident in or at such institution or place as may be so specified; and
- (c) treatment by or under the direction of such person having the necessary qualifications or experience as may be so specified; but the nature of the treatment shall not be specified in the order except as mentioned in paragraph (a), (b) or (c) above.

(4) A court shall not by virtue of this paragraph include in a probation order a requirement that the offender shall submit to treatment for his dependency on drugs or alcohol unless —

- (a) it is satisfied that arrangements have been made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is required to submit to treatment as a resident patient); and
- (b) the offender has expressed his willingness to comply with such a requirement.

(5) While the offender is under treatment as a resident in pursuance of a requirement of the probation order, the probation officer responsible for his supervision shall carry out the supervision to such extent only as may be necessary for the purpose of the revocation or amendment of the order.

(6) Where the person by whom or under whose direction an offender is being treated for dependency on drugs or alcohol in pursuance of a probation order is of the opinion that part of the treatment can be better or more conveniently given in or at an institution or place which—

- (a) is not specified in the order, and
- (b) is one in or at which the treatment of the offender will be given by or under the direction of a person having the necessary qualifications or experience; he may, with the consent of the offender, make arrangements for him to be treated accordingly.

(7) Such arrangements as are mentioned in sub-paragraph (6) above may provide for the offender to receive part of his treatment as a resident in an institution or place notwithstanding that the institution or place is not one which could have been specified for that purpose in the probation order.

(8) Where any such arrangements as are mentioned in sub-paragraph (6) above are made for the treatment of an offender —

- (a) the person by whom the arrangements are made shall give notice in writing to the probation officer responsible for the supervision of the offender, specifying the institution or place in or at which the treatment is to be carried out; and

- (b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the probation order.

(9) In this paragraph the reference to the offender being dependent on drugs or alcohol includes a reference to his having a propensity towards the misuse of drugs or alcohol, and references to his dependency on drugs or alcohol shall be construed accordingly".

Crime and Disorder Bill

The **Crime and Disorder Bill**, as introduced in the House of Lords on 2nd December, 1997 seeks to introduce a drug testing and treatment order which will differ in two important respects from the treatment arrangements set out in the 1973 Act. First, the court will have to review the offender's progress on a regular basis. Secondly, drug testing will be mandatory. The full text of Section 48 to Section 50 of the Bill are set out in Appendix H.

This new approach to criminal justice is being studied and considered in England and Wales¹⁴ The proposed legislation has many similarities to the Drug Courts of the United States of America.

3.4 AUSTRALIA

Australia has not established Drug Courts. The Australian Royal Commission of Inquiry into Drugs, 1980¹⁵ recommended that States and Territories should legislate to set up diversionary programmes for illegal drug users.

"... this Commission believes that a drug diversion scheme should be developed for illegal drug users throughout Australia. It believes that it will be essential for any scheme to have legislative backing and the ready assistance for an independent referral agency ... The concept of a drug diversionary scheme is consistent with the Commission's view that imprisonment of drug offenders should be seen only as a last resort as detention with hardened criminal is undesirable. On the other hand, real criminal activity, even though it is drug-related, must be treated as criminal activity. It is important that persons sentenced to prison for criminal activity should have

¹⁴ See, for example, Current Topic, *America's Drug Courts: A New Development in Criminal Justice* by Philip Bean, Professor, Midlands Centre for Criminology, University of Loughborough, [1996] Crim. L.R. 718.

¹⁵ Report of the Australian Royal Commission of Inquiry into Drugs, Australian Government Publishing Service (1980), Book C, Parts X-XIII, pp. C66-C67.

proper treatment available for the period of their detention. The diversionary program takes advantage of the coercion which the appearance before the court provides to the drug dependent person to enter a treatment program."

However, no Australian State or Territory has legislated to set up diversionary programmes for illegal drug users.

CHAPTER 4

The Current Irish System

Cases relating to drug offences or offenders who are abusing drugs are very evident in the court lists in all the criminal courts. This is obvious especially in the District Court and the Circuit Court.

4.1 Adversarial System

In all courts the procedure is that of the adversarial system. An alleged crime is prosecuted before the relevant court against an accused. On conviction the defendant may be punished by imprisonment, fine, forfeiture and/or community service.

4.2 Crime

A crime is "an act which is forbidden, or the omission to perform an act which is commanded by the Common Law, by statute or by regulations made by a subordinate authority, the remedy for which is the punishment of the offender at the instance of the State".¹⁶ It is a harm which the State determines to prevent and which is prosecuted by the State. A fundamental concept of crime traditionally has been that on conviction the offender is punished.

4.3 Punishment

The concept of punishment is at the core of criminal law. However, the philosophy behind the development of Drug Courts is that successful completion of the treatment programme replaces punishment.

4.4 District Court

The District Court is a court of first instance presided over by a District Judge. The criminal jurisdiction of the District Court includes: (a)

¹⁶ Mozley & Whiteley's Law Dictionary, 11th Edition, E.R. Hardy Ivamy.

Summary offences e.g. road traffic offences such as drink driving, tax, insurance, etc., and (b) indictable offences triable summarily e.g. larceny, criminal damage, fraud, assault, drugs, etc.. In the Chancery Street District Courts in Dublin from 1992 to 1997 (inclusive) the number of charge sheets dealt with were:

1992	23,400
1993	26,660
1994	29,520
1995	27,400
1996	29,200
1997	33,400

The 33,400 charge sheets in 1997 related to approximately 3,340 defendants. Most of the defendants were young and from the inner city. A very large portion of the crime was carried out to feed a drug habit. The penalty the District Court can impose is a fine or imprisonment to a maximum of 12 months or community service in lieu.

In fact most offenders are referred to the Probation Service for a report and guidance. In the District Court judges are already operating a court where they order treatment and support for offenders i.e a quasi Drug Court system. However, it has neither defined objectives, nor adequate support personnel, nor the necessary infrastructure.

4.5 Circuit Criminal Court

The Circuit Criminal Court is both a court of first instance and a court of appeal from the District Court. The Circuit Court may try any criminal offence on indictment with the exception of treason, murder, attempted murder, conspiracy to commit murder, piracy, rape, aggravated sexual assault and attempted aggravated sexual assault. This jurisdiction is exercisable by the judge (sitting with a jury) of the Circuit where the offence has been committed or where the accused person has been arrested or resides. The effect of this is that subject to these limited number of offences, the Circuit Court has the same criminal jurisdiction as the Central Criminal Court.¹⁷ The Circuit Court has appellate jurisdiction from all criminal cases in the District Court. A decision of the Circuit Court on appeal is final.¹⁸

¹⁷ S.25 Courts (Supplemental Provisions) Act, 1961.

¹⁸ S. 18, Courts of Justice Act, 1928 as amended by s.58, Courts of Justice Act, 1936. (However, the decision may be subject to judicial review.)

4.6 Nucleus of a Drug Courts Programme

There is the nucleus of a Drug Courts Programme in the Irish Courts today. For a number of years certain courts have taken the view that, depending on the nature of the offence committed, there are better methods of dealing with drug related offences than simply incarcerating an offender. The judiciary have attempted to incorporate into their sentencing policy what limited rehabilitation services are available for drug addicts. In large part due to the initiative of a number of judges working in the criminal courts a system of custodial sentences, supervised probation, urinalysis and drug treatment has been running successfully for some time.

Thus, for example, cases may be adjourned from time to time, usually for a year, to allow the accused to complete such courses as are advised and monitored by the Probation and Welfare Service. In addition, the accused is required to enter into a bond which requires him to follow the direction of the Probation and Welfare Services over a given time, usually two years but seldom less than one year. The Probation and Welfare Service and the Garda Síochána have the power, and use it, to bring people back to court who have not adhered to their probation bonds. However, the Probation Service is not sufficiently funded to enable this procedure to be developed at present. Nor are there adequate programmes for an accused.

A sentencing structure adopted by a judge of the Circuit Court in Dublin also shows elements similar to the Drug Courts of the United States of America. The system is that upon a plea of guilty, the court will remand the defendant either on continuing bail or in custody. The judge will request a Probation and Welfare Report. While this report is being prepared the defendant is given an opportunity to begin to address his or her addiction by attending the Probation and Welfare Service and undergoing urinalysis. Under-staffing in the Probation and Welfare Service is such that at present a period of roughly three months elapses before any report is complete. If at any time during this period the defendant re-offends or fails to comply with conditions specified by the court, the matter may be re-entered by the Probation and Welfare Service. At the return date set for sentence, assisted by the Report, the judge may impose a severe sentence but grant a right to apply for a review of sentence on a specified date in 3 or 4 years' time. The sentencing judge makes it clear to the defendant that at this review, the judge will consider suspending the remainder of the sentence if it is shown that:

- (i) the defendant has been of good behaviour in prison;
- (ii) he or she has undergone whatever treatment is considered appropriate for his or her addiction and in particular that he or she has been drug free for six months immediately prior to the review date;
- (iii) he or she has submitted regular drug testing by urinalysis; and that
- (iv) he or she has pursued some form of educational activity.

If at the review hearing the judge is satisfied that the defendant has met these conditions he or she is released from custody and placed under the supervision of the Probation and Welfare Service. Thereafter the matter is reviewed by way of a progress report at intervals generally suggested by the Probation Officer. In the event of failure to comply with the specified conditions one and one only further review is granted. If there is further non-compliance the suspension is removed and the balance of the sentence is served. At all times the Probation Officer may re-enter the matter if there is any difficulty experienced or if there has been re-offending.

This sentencing policy is generally regarded as having been very successful in that:

- (i) it facilitates keeping criminal trials up to date;
- (ii) the behaviour of prisoners has improved in prison;
- (iii) drug addicts are making serious efforts to address their addiction; and
- (iv) the rate of re-offending has declined.

4.7 Legislation

Part of the legislative framework for a Drug Courts System is already in place. For example Section 28 Misuse of Drugs Act, 1977 as amended by the Misuse of Drugs Act, 1984, Section 14 provides:—

- “28. (1) (a) Where a person is convicted of an offence under Section 3 of this Act, other than a first or second offence in relation to which a penalty may be imposed under Section 27 (1)(a) of this Act, or an offence under Section 15 or 16 of this Act, or of attempting to commit any such offence, if having regard to the circumstances of the case, the court considers it appropriate so to do, the

court may remand the person for such period as it considers necessary for the purposes of this section (being a period not exceeding eight days in the case of a remand in custody), and request a health board, probation and welfare officer or other body or person, considered by the court to be appropriate, to—

- (i) cause to be furnished to the court a medical report in writing on the convicted person together with such recommendations (if any) as to medical treatment which the person making the report considers appropriate to the needs, arising because of his being dependent on drugs, of the convicted person, and
 - (ii) furnish to the court a report in writing as to the vocational and educational circumstances and social background of the convicted person together with such recommendations (if any) as to care which the body or person making the report considers appropriate to the said needs.
- (b) Where a person is convicted of a first or second offence under Section 3 of this Act in relation to which a penalty may be imposed under the said Section 27 (1)(a) or an offence under Section 17 or 18 of this Act, or of attempting to commit any such offence, and the court, having regard to the circumstances of the case, considers it appropriate so to do, the court may remand the person on bail or, unless a penalty falls to be imposed on the person under paragraph (a) of Section 27(1) of this Act, in custody for such period as it considers necessary for the purposes of this section, and request a health board, probation and welfare officer or other body or person, considered by the court to be appropriate, to—
- (i) cause to be furnished to the court a medical report in writing on the convicted person together with such recommendations (if any) as to medical treatment which the person making the report considers appropriate to the needs, arising because of his being dependent on drugs, of the convicted person, and

- (ii) furnish to the court a report in writing as to the vocational and educational circumstances and social background of the convicted person together with such recommendations (if any) as to care which the body or person making the report considers appropriate to the said needs.

(2) Having considered the reports furnished pursuant to subsection (1) of this section, the court shall, if in its opinion the welfare of the convicted person warrants its so doing, *instead of imposing a penalty* under Section 27 of this Act, but subject to subsection (8) of this section either—

- (a) permit the person concerned to enter into recognisance containing such of the following conditions as the court considers appropriate having regard to the circumstances of the case and the welfare of the person, namely—
 - (i) a condition that the person concerned be placed under the supervision of such body (including a health board) or person as may be named in the order and during a period specified in the order,
 - (ia) in case the person concerned is placed under such supervision, a condition requiring such person, at the place at which he normally resides or at such other place as may be specified in the order and during such period and at such intervals as shall be so specified, to receive visits from and permit visits by—
 - (I) in case such person is placed under the supervision of a body, an officer of that body,
 - (II) in case such person is placed under the supervision of a person, that person,
 - (ii) a condition requiring such person to undergo medical treatment recommended in the report,
 - (iii) a condition requiring such person for such treatment to attend or remain in a hospital, clinic or other place specified in the order for a period so specified,
 - (iv) a condition requiring the person to attend a specified course of education, instruction or training, being a course which, if undergone by such person, would, in the opinion of the court,

improve his vocational opportunities or social circumstances; facilitate his social rehabilitation or reduce the likelihood of his committing a further offence under this Act, or

- (b) order that the person be detained in custody in a designated custodial treatment centre for a period not exceeding the maximum period of imprisonment which the court may impose in respect of the offence to which the conviction relates, or one year, whichever is the shorter."

The effect of this legislation is that having considered the probation and welfare reports, if the court is of the opinion that the welfare of the convicted person warrants it so doing, instead of ordering a fine or imprisonment it may permit the defendant to enter into a recognisance requiring drug treatment and vocational training. Alternatively, the court may order that the person be detained in a designated custodial treatment centre for a period not exceeding the maximum period of imprisonment which the court may impose in respect of the offence to which the conviction relates, or one year, whichever is the shorter.

4.8 Custodial Treatment Centre

Under Section 28(10) the Minister for Health is given the authority to designate an appropriate institution to be the custodial treatment centre for the purposes of Section 28. This was done through the Misuse of Drugs (Custodial Treatment Centre) Order, 1980¹⁹ which designated the Central Mental Hospital at Dundrum, Dublin. However, the picture emerging from the Working Group's research is that while such a centre for custodial treatment exists in the statute books, it does not exist in any real or appreciable sense. During the period of 1980 to 1989, the Hospital was unable to receive patients in its capacity as a custodial treatment centre. Since then, the number of addicts admitted for treatment under Section 28 has been negligible, and may be as low as two.²⁰

Thus, both in practice and to a limited sense in the statute book, there is growing already in Ireland the concept of treatment for convicted drug abusers as opposed to the traditional punishment options.

¹⁹ S.I. No. 30 of 1980

²⁰ See Charleton, *Drugs and Crime — Making the Connection: A Discussion Paper*, 5 (1995) I.C.L.J. 220 at 236.

4.9 Mandatory Sentencing

A mandatory sentence is one fixed by law. In most cases a mandatory sentence prescribes a minimum term of imprisonment which must be served upon conviction for certain offences. The judge is given no discretion in the sentencing of the convicted person. Mandatory sentencing is the antithesis of the philosophy behind the Drug Court process. Mandatory sentencing of an offence gives to the court no discretion but mandates a punishment of imprisonment. Drug Courts envisage a process whereby the Drug Court judge supervises a treatment orientated process.

Under Irish law mandatory minimum sentences are currently confined to a limited number of grave offences such as murder, murder or attempted murder contrary to s.3 of the Criminal Justice Act, 1990 (formerly referred to as capital murder), or treason.

There is provision in the Criminal Justice (No.2) Bill, 1997 for the application of mandatory sentencing where a person is found guilty of possession of drugs with a market value of £10,000 or more for the purposes of sale or supply.

The proposed legislation would not preclude the operation of Drug Courts in Ireland because the class of offenders covered by the 1997 Bill would not overlap with that targeted by the projected Drug Courts. Drug Courts are not designed for drug dealers, but for drug addicts. Also, it should be noted that the 1997 Bill would permit a court to impose a lesser sentence where it would otherwise be unjust in all the circumstances to impose the minimum 10 year sentence.

The Supporting Infrastructure

A Drug Court cannot exist in a vacuum. A Judge ordering treatment, as opposed to punishment for an individual, must have the infrastructure available to enable that treatment to be carried out. This infrastructure should include, for example, residential centres, day centres, hostels, support groups, training and education.

5.1 EXISTING INFRASTRUCTURE IN THE COMMUNITY

There is already in our community some infrastructure relevant to drug treatment orders by courts. These institutions are both residential and non-residential, state and private. They exist both in the community and in prisons. It would be impossible to describe all the relevant bodies. The following are examples of the type of infrastructure which exists and which needs to be expanded.

(a) Coolmine Therapeutic Community

Coolmine has a long established history of co-operation with the courts. Coolmine provides a number of day and residential drug recovery programmes. Among these are its residential programmes where treatment lasts approximately twelve months, with a return to society and work stage lasting a further six months, followed by aftercare. The male unit caters for approximately fifty residents and the female unit caters for approximately twenty residents.

There is a waiting list for entry to the residential programmes and, while waiting, clients would normally be counselled at the Induction Centre at Lord Edward Street. This Induction Centre provides counselling and drug treatment services to approximately 50 to 60 drug users and their families each day.

In addition, Coolmine has initiated a Day Programme for drug users who are considered sufficiently stable as not to require residential

treatment. The Day Programme operates five days a week from 9 to 5 and lasts about fourteen months with a year long aftercare programme.

Finally, the Coolmine Family Association seeks to help its members come to terms with having an addict in the family. This Association meets once a week at Coolmine House in Lord Edward Street.

The Coolmine philosophy demands a total abstinence from all drugs.

(b) Merchant's Quay Project

The Merchant's Quay Project runs a drug crisis centre which caters for up to 200 active drug users on a daily basis. This centre offers one to one counselling, needle exchange and basic health care.

In addition, Merchant's Quay operates a 1-2 year stabilising programme at Wine Tavern Street which provides daily skills training in conjunction with FÁS for up to 30 clients on methadone maintenance.

Since 1989, Merchant's Quay has provided a three month residential drug free therapeutic community which is currently situated in Drumcondra. This facility, which can cater for up to twelve persons, accepts both male and female clients. There is currently a substantial waiting list for access to the residential therapeutic community.

Finally, Merchant's Quay has recently opened a drug free farm training programme in Tullow which will take young drug users for a year of residential treatment, during which they can acquire tradable skills which are essential to their efforts to remain drug free. It is hoped that, with sufficient funding, this facility will accommodate up to forty participants.²¹

(c) Private Residential Centres

There are a number of private residential centres which offer a residential programme with follow up aftercare. However, they usually charge substantial fees which effectively preclude their availability to the majority of clients who appear before the courts.

(d) Health Board Services

The following is an overview of the main drug treatment services provided by the Eastern Health Board.²²

²¹ Information supplied by the Merchant's Quay Project.

²² Information supplied by Mr. Pat McLoughlin, Programme Manager, Eastern Health Board.

Detoxification Beds: There are three residential detoxification units;

- (1) Drug Treatment Centre Board, Beaumont Hospital;
- (2) Cuan Dara Detoxification Unit, Cherry Orchard Hospital; and
- (3) High Park — Merchant's Quay Project.

A downstream detoxification unit which will enable more effective use of these detoxification beds is being planned for St. Mary's Hospital, Phoenix Park.

The Eastern Health Board also operates addiction centres, satellite clinics and a mobile clinic.

Addiction Centres: The existing addiction centres are located in the following areas:

- (1) Baggot Street (Attached to Baggot Street Hospital)
- (2) Aisling Clinic — Ballyfermot
- (3) City Clinic — Amiens Street
- (4) Domville House — Ballymun
- (5) Trinity Court — Pearse Street
- (6) Patrick Street — Dun Laoghaire
- (7) Fortune House — Ballyfermot

A further seven addiction centres are being planned by the Eastern Health Board.

Emergency Services and Assessments: An emergency assessment service was introduced in most of the aforementioned addiction centres during 1997 and will be extended to Dun Laoghaire and other addiction centres established in 1998. The assessment, which will be carried out by medical and professional staff, is designed to eliminate the waiting list for assessments and provide an emergency response mechanism where required.

Satellite clinics: There are currently 17 satellite clinics in the Dublin area. Whereas addiction centres are run by consultants, satellite clinics are managed by family doctors and are often based in local community health centres. There are plans to increase the number of satellite clinics to over 30.

Mobile clinic: A mobile clinic serves the North Inner City (Empress Place), the South Inner City (Dr. Steevens' Hospital) and Ballymun.

General Practitioner Participation: Three G.P. Co-ordinators were appointed in 1997 by the Eastern Health Board to encourage increased involvement in treatment. At 31st December, 1997 there were 81 General Practitioners prescribing methadone. In addition, three Pharmacy Liaison Officers were appointed by the Eastern Health Board with a view to increasing the involvement of pharmacists in dispensing methadone. The number of pharmacists participating stood at 70 at the end of 1997.

Stabilisation Unit: An in-patient stabilisation unit for opiate addicts is also planned for Cherry Orchard Hospital.

Helpline: In July, 1997 the Health Board established a freephone telephone helpline which operates from 10.00 a.m. to 5 p.m., Monday to Friday. The helpline provides information, support, guidance and referral for those concerned with any aspect of drug misuse.

Young Persons Programme: The Health Board has developed programmes for young persons who are smoking heroin. These are currently operating in City Clinic, Baggot Street, and Aisling Clinic. A further programme is due to commence in Ballymun during March, 1998.

Aftercare: The Health Board operates a drug rehabilitation programme at Soilse in Henrietta Place and supports the SAOL Project in Amiens Street. Both projects are being expanded in 1998 to enable a greater number of participants to benefit from aftercare and rehabilitation. A building is being acquired in the Inner City to develop further aftercare and rehabilitation and a new aftercare/rehabilitation unit will be provided at Domville House in Ballymun during 1998.

Education: There are six Education Officers in the Eastern Health Board, and a further four Officers will soon be appointed bringing the total to ten. These Officers organise drug awareness/education initiatives and consult with various voluntary, statutory and community organisations.

Methadone Treatment List: This list is a record of those on treatment in the Drug Treatment Centre at Trinity Court, the Eastern Health Board services and those on treatment by general practitioners by way of the

methadone prescribing protocol and general practitioners who are treating drug misusers in a public or private capacity.

The number of treatment places increased in 1997 from 1,861 at the end of 1996 to 2,859 at 31st December, 1997. This represents a net increase of 998. The total numbers treated in 1997 at addiction centres, satellite clinics and by general practitioners was 3,661. At 30th November, 1997 the number of persons on the waiting list for treatment was 385, compared to 560 at the end of 1996.

The following is a breakdown of the 2,859 treatment places available at 31st December, 1997:

City Clinic:	237	Aisling Clinic:	187
Baggot Street:	51	Trinity Court (Third floor):	106
Domville:	164	Mobile Clinic:	48
Kilbarrack:	28	Merchant's Quay:	22
Rialto Project:	45	St. Aengus Project:	23
Sean McDermott Project:	12	Young Person's Project:	33
Brookfield:	23	Jobstown:	28
Mountjoy Street:	63	Dun Laoghaire:	45
Darndale:	14	Crumlin:	3
Cuan Dara:	9	Fortune House:	12
Ballywaltrim:	17	Deansrath:	12
Mount town:	7		

Eastern Health Board total:	1,182
Drug Treatment Centre (Trinity Court):	207
General Practitioners:	1,470
Total:	2,859

(e) National Drug Treatment Centre — Trinity Court, Pearse Street.

Trinity Court is the National Treatment Centre and provides the urinalysis screening for most other centres and is widely used by the courts. It provides the full range of medical and counselling services.

(f) Counselling Services

Individual and group counselling and training programmes are provided by a number of organisations. Some are local initiatives established in response to local drug problems. Examples include:

Anna — Liffey Project (Abbey Street).

Coolmine Induction Centre (Lord Edward Street).

Merchants Quay Project (Merchants Quay).

Soilse (Henrietta Place).

Ballymun Youth Action Project.

Talbot Day Centre.

Mater Dei Counselling Centre.

(g) Self Help Groups

Narcotics Anonymous²³

Narcotics Anonymous is an important resource for Drug Courts in the United States of America. It is based on the Alcoholics Anonymous Model. It is a community based association of recovering addicts. Narcotics Anonymous started in 1953 in Los Angeles and is now a world wide organisation. Narcotics Anonymous members learn from one another how to live drug free and recover from the effects of addiction in their lives. There have been N.A. meetings in Ireland since the 1970s. There are now more than 80 N.A. meetings held every week throughout Ireland.

Membership is open to any drug addict who wants to stop using drugs. The basic premise of anonymity supports an atmosphere of equality.

N.A. "encourages its members to observe complete abstinence from all drugs, including alcohol, even substances other than the individual's drug of choice", though N.A.'s only stated membership requirement is "a desire to stop using drugs".

(h) The Probation and Welfare Service

The work of the Service falls into the following categories:

- The Courts;
- Prisons and Places of Detention; and
- Special schools and community based facilities.

²³ See leaflet from N.A., "Narcotics Anonymous — A Resource in the Community", provided by N.A., Phone number, Dublin 8300944, Address, P.O. Box 1368, Cardiff Lane Dublin 2.

This report is primarily concerned with the relationship between the Probation and Welfare Service and the Courts. Currently there are four distinct ways by which Courts may involve the Service in the disposal of criminal cases without recourse to custody.

1. The Probation of Offenders Act, 1907, enables Courts to discharge offenders conditionally on entering into a Recognizance to be of good behaviour while under the supervision of a Probation Officer for a fixed period not exceeding three years. The Court has discretion to insert whatever additional conditions it considers necessary to prevent a repetition of the same offence or the commission of other offences. Typical examples are residence in a hostel, periodic attendance at a specific therapeutic programme, or payment of compensation. As well as advising, assisting, and befriending the offender the supervising Officer is obliged to ensure that the conditions are observed.
2. Following conviction for certain specified offences under the Misuse of Drugs Acts, 1977 and 1984, the offender may be permitted by the Court to enter a Recognizance as an alternative to either detention in a designated custodial treatment centre or to the imposition of a monetary penalty and/or penal sentence. The Recognizance contains particular conditions. As with the Probation Act, failure to observe the conditions can lead to a return to Court and possible sentence for the original offence.

It has been found that Court appearances can be a major crisis for drug offenders and are opportunities when change can be most effectively brought about or hastened. The incentive offered by Court based supervision frequently provides both the initial motivation to seek treatment and the support and direction necessary to maintain such efforts. The Service has established good working rapport with all the significant treatment centres.

3. Supervision during adjournment is a Court innovation in the absence of statutory authority. In these cases evidence has been heard and charges proved, but instead of proceeding to sentence immediately the Court orders an extended deferment of penalty and requests the offender to respond to and co-operate with a Probation and Welfare Officer during the interim period.

On the adjourned date a progress report is presented to the Court and the matter is again reviewed. These cases differ from the Probation Order in that Recognizances are not entered and the final decision has simply been deferred.

4. The Criminal Justice [Community Service] Act, 1983, makes an alternative sanction available to Court when determining penalty for an offender who was convicted of an offence for which he would but for the Act receive a custodial sentence. If he consents to the making of a Community Service Order, he is then obliged to perform, under the overall supervision of a Probation and Welfare Officer, a certain number of hours [between 40 and 240 as the Courts directs] of unpaid work for the benefit of the community that would otherwise be left undone. Where the order is not complied with the offender is brought back before the Court and may be fined for the breach without prejudice to the continuance of the order, or the prison sentence specified when the order was made may then be imposed. This Act was brought into effect on the 5th December, 1984 after detailed planning and preparation.

Survey of Compliance with Supervision Orders referred by Dublin Circuit Court, January — December, 1996

A recent survey of compliance with supervision orders referred by Dublin Circuit Court, January — December, 1996, has been completed within the Probation and Welfare Service. See Appendix I. As can be seen of the total 127 cases surveyed there was a compliance rate of 68%. In all cases of non-compliance, the cases were re-entered.

This system of supervision Orders by the court with the co-operation of the Probation and Welfare Service is an initial step towards a Drug Court treatment programme. It operates the same philosophy of treatment as opposed to punishment, and it has developed through a close working relationship between the Judiciary and the Probation and Welfare Service.

(i) Intensive Probation Supervision Programme: Bridge Project

In looking at the work of the Probation and Welfare Service the practices within the Bridge Project, an intensive probation supervision programme, are of interest. The central aim of the project is "to organise a community based intensive probation supervision programme for young adult offenders that will prove to be an effective alternative to custody, will reduce the incidence of criminal behaviour among participants and that will help them to become reintegrated into their communities in a more productive and pro-social way".²¹ The project, which was established in 1991, is designed to respond to Irish needs

²¹ Bridge Project Information Sheet.

but its development and methodology was influenced by international practices and research in the field of criminal resocialisation. Reviews of outcome research in Britain and Canada have demonstrated that an offence related approach to work with offenders which is delivered through carefully constructed and systematically applied programmes of supervision can contribute to reducing rates of re-offending.

Intensive supervision demands that the offender accept a three-pronged engagement with an interdisciplinary staff group comprising Probation and Welfare Officers, VEC workers, and staff employed by the Bridge Management Board. This work involves individual assessment and counselling, intensive group work and a fusion of both of these approaches aimed directly at reintegrating the offender into the community through the medium of training/employment.

Participants of the programme have been young adult male offenders from the greater Dublin area between the ages of 17 and 26. They have been serious offenders with a history of recidivism.

In the case of referrals from the Courts the typical method of referral has been a process of supervision on deferment of penalty. Following conviction the offender has been assessed through the medium of a pre-sentence report. Following a recommendation in relation to suitability the offender is placed, with his consent, under the supervision of the Probation and Welfare Service with a condition of attendance at the Bridge Project. Progress reports are presented to the Court at specified times. Failure to co-operate with the requirements of the programme leads to re-entry of the case and the imposition of a custodial sentence.

80% of participants have a serious history of drug abuse. Bridge demands a level of clarity and motivation from such participants as well as engagement with an appropriate regime. In view of the nature of addiction relapse, its prevention and management must be an integral part of any interaction with drug users. Effective management of this process in addiction forms such an important part of the work of the Bridge Project that easy and immediate access to appropriate treatment and support facilities is vital.

Indicators of success

The programme demands and positively reinforces the observance by participants of all the conditions in their Court orders. To date there is a 70% completion rate for the Group work phase of the programme. Of these participants who completed the programme, 50% progressed to education, training, or employment. Figures for 1997 show that of 123

offenders who completed a range of programmes in that year 32% are in employment and 17% have moved into the area of education and training.²⁵

5.2 The existing infrastructure in prisons

There are services in prisons for the drug dependent prisoner. It is impossible in a report such as this to describe the whole service. Nor is it as relevant if the philosophy of a Drug Court programme initially is for treatment outside prison. However, as it may be that in the future a programme, involving more serious offenders in prison, may evolve spanning both treatment in prison and in the community, the existence of treatment infrastructure in prison is recognised. Examples of some of the infrastructure in one prison are given.

Mountjoy

There are weekly Narcotics Anonymous meetings and individual counselling is available on request from the Probation Service and voluntary organisations such as Anna Liffey, Coolmine and Merchant's Quay who visit the prison on regular basis.

The Probation Service currently co-ordinates an eight-week Drug Treatment Programme consisting of a two week "detox" followed by six weeks of group work. There are approximately 9 places in this programme. The participants are then either transferred to the drug free Training Unit or Coolmine. Those who relapse are returned to the main prison.

The course is available to those with two years of their sentence remaining or those who have a review date approaching. It is not available to remand prisoners or those with outstanding charges. Acceptance on the course is through interview/assessment and voluntary participation is considered essential. The drug treatment and detoxification unit which has been established has proved to be a success. There is a successful completion rate of 98%.²⁶ Amongst other matters this has enabled the procedure of review of sentencing in the Circuit Court. However, it cannot exist in isolation but needs the appropriate infrastructure so that the success rate can be supported by programmes of education, training etc., both inside and outside the prison.

²⁵ Information provided by the Probation and Welfare Service.

²⁶ See Appendix J, A Twelve Monthly Medical Review of the Drug Treatment and Detoxification Unit at Mountjoy Prison, compiled by Dr. Des Crowley, MB, MCGP, Medical Officer to the Drug Treatment Unit.

There is an education service in Mountjoy. The Prison Education Service is a partnership between the Department of Justice, a range of education agencies from the community (most notably V.E.C.s and public library services) and prison staff.²⁷ In the main Mountjoy men's prison maximum use is made of very restricted space. Only 70 prisoners can be catered for at any one time, but about 200 in all would be enrolled for education, giving a participation rate of just over 30% in relation to a total population of over 650. It is clear from the demand in Mountjoy and the experience elsewhere in the country that such participation could be at least doubled if adequate accommodation were available.

In Mountjoy women's prison there are many education programmes. In addition, over the years, the Education Unit has made extensive efforts in preparing women for release and in offering structured support in education and other programmes in the community after release, often with considerable success.

5.3 Review of Infrastructure

There exists in Ireland a nucleus of institutions which would aid the development of Drug Courts where treatment would be ordered and supervised by the court. However, the institutions need to be supported to enable them to grow and multiply. They illustrate the Irish structures which need to be developed.

For a Drug Courts process to succeed in Ireland new links and day to day working relationships would need to be established between the courts, the other arms of the criminal justice system and community services such as the health, social, educational, training and job placement agencies and voluntary agencies on whose services potential clients would depend for their treatment, rehabilitation and subsequent integration into society.

Specifically, this would require the development of an integrated cross-service strategic plan to bring these groups together, in a spirit of partnership dedicated to improving procedures for dealing with the problem of drug abuse as it interfaces with the criminal justice system. In particular, consideration would need to be given to:

1. the staffing needs of the Probation and Welfare Service and the Intensive Probation Supervision Programme which, presumably, would form the primary link between the criminal justice system and other community institutions;

²⁷Information provided by Mr. Kevin Warner, Co-ordinator of Education, Prison Education Service, Department of Justice, Equality and Law Reform

2. the number of courts sitting in criminal matters;
3. the number of residential and/or hostel places which might be required by patients requiring residential treatment;
4. the arrangements for urinalysis both in relation to testing and communication of results to treatment supervisors and the courts;
5. the level, quality and cost of support which would be required from the existing providers in the public service and voluntary agencies;
6. the number of places available within custody for treatment;
7. arrangements for assigning clients to education and/or job placement services.

It is clear that a Drug Court process requires an infrastructure and partnership in the community to enable the treatment of offenders. In the United States of America this partnership has been shown to be necessary. Key Component (X) (paragraph 2.4 above) envisages partnerships between Drug Courts, public agencies and community-based organisations. This itself generates local support and enhances the Drug Court programme effectiveness.

In order to forge the necessary new linkages and co-ordination with the community institutions and within the criminal justice system and to assess the adequacy of service provision available to support a successful Drug Courts Programme, it would be necessary to establish a project group to include, for example, the judiciary, Probation and Welfare Service, health authorities, prison authorities, Director of Public Prosecutions, gardai, representatives of the appropriate budget-holding Departments and representatives from the voluntary organisations already involved in this area of care and treatment.

CHAPTER 6

The Financial Implications

6.1 A court order for treatment as opposed to imprisonment has financial implications. It reduces the number of prison places required, and thus prison budgets. The cost of building a prison place in Ireland is approximately £100,000 per inmate.²⁸ The cost of maintaining a person in prison in 1996 was £46,140 per annum.²⁹ However, financing is needed for the treatment ordered by the court.

6.2 It has been the experience of the United States of America that the Drug Court Programmes have saved money for the State.

"Drug Courts save money. Savings vary due to program diversity, but even the most modest estimates are impressive. Estimated savings in jail costs are at least \$5,000 per participant. In Washington, D.C., a year of Drug Court cost \$1,800 to \$4,400 per participant. This compares to at least \$20,000 per year to jail the defendant. There are indirect savings as well. With fewer drug offenders incarcerated for drug law violations, jurisdictions are able to lock up more serious offenders without building new facilities. ... In Oakland, California, the 1,200 offenders entering Drug Court annually spend approximately 35 per cent fewer days in custody, freeing up jail space for rental to San Francisco and federal prison authorities.

Drug Court participants who would otherwise be incarcerated are instead able to work while they are in treatment. These recovering offenders can contribute to the cost of their own treatment as well

²⁸ Figure provided by the Prison Planning Section, Department of Justice.

²⁹ This figure has been rising steadily in recent years. The figure was £44,660 in 1995; £43,735 in 1994; and £39,475 in 1993. Figures provided by the Prison Finance Section, Department of Justice.

as help support families who might otherwise need public assistance.

An estimated 221,000 pregnant women use illicit drugs each year during pregnancy. By requiring pregnant offenders to participate in supervised treatment, Drug Courts reduce the number of babies born drug-addicted. Since 1989, more than 200 drug-free babies have been born to women enrolled in Drug Courts. Reduced health care costs are estimated at \$250,000 per baby, for a total savings of at least \$50 million".³⁰

The same cost benefit analysis was recorded by Judge Murphy:³¹

"The concept of Drug Courts is a success from simply a cost benefit view point. Treatment has proven much cheaper than incarceration. Treatment has the added benefit of relieving the pressures of jail overcrowding. With added prison space, more violent offenders can be held for longer, savings were also seen in reduced police overtime costs and grand jury expenses incurred through the indictment process, and in reduced unemployment and freedom from welfare for graduates of the programs. By expediting drug offender cases, court personnel have been freed from assignment to other divisions, thereby reducing the burgeoning court docket."

One particular Drug Court in Oregon has recently quantified the cost benefits accruing from its introduction of a Drug Court programme.³² The findings of the study are as follows.

The average criminal justice cost of processing one offender through the traditional adjudication process in Multnomah County is \$10,151. This includes police costs, adjudication costs, incarceration costs and supervision costs. By contrast, the average cost per participant in the Drug Court diversion program is \$4,522. This results in a criminal justice saving of \$5,629 per participant in the Drug Court.

The same study went on to say:

"In addition, we can estimate the avoided costs to the Oregon Taxpayers statewide. These are costs that would have to be assumed by government budgets if treatment had not occurred, or costs that would have been out of pocket for Oregon citizens as the result of criminal activity involving theft and victimisation."

³⁰ "Cutting Crime: Drug Courts in Action, at page 20, Drug Strategies 2445 M Street, N. W. Suite 480, Washington, D.C. 20037

³¹ Ibid Note 10.

³² *An Outcome Program Evaluation of the Multnomah County S.T.O.P. Drug Diversion Program*; Dr. Michael Finigan, State Justice Institute, 06 January, 1998.

(Victimisation costs are the probable personal costs to the victim including medical expenses, repairs of damaged property, days absent from work as a result of being a victim of crime; theft costs comprise the estimated values of property or money stolen during a crime, excluding any property damage or other victim losses.) "The costs include increased expenditures for police protection, court costs, supervision costs, jail and prison costs, increased medical assistance, food stamps, and other public assistance."

The study concluded that the total average cost of an offender adjudicated and sentenced in the normal way is \$38,279. On the other hand, the corresponding cost for an offender processed and treated through the Drug Court is \$15,044. **The result is a saving of \$23,235 per Drug Court participant.** With 440 clients in the program per year, the total savings per annual cohort is \$10,223,532.

A nation-wide study recently conducted by the National Center on Addiction and Substance Abuse at Columbia University³³ further underpins the argument that treatment is far more cost effective than the traditional criminal justice system.

Referring to the provision of treatment in prison for convicted inmates, the study states:

"Preventing drug and alcohol abuse and providing effective treatment for drug- and alcohol-abusing inmates hold the promise of significant savings to taxpayers and reduction in crime.

CASA estimates that it would take approximately \$6,500 per year, in addition to the usual incarceration costs, to provide an inmate with a year of residential treatment in prison and ancillary services, such as vocational and educational training, psychological counselling and aftercare case management.

However, if an addicted offender successfully completes the treatment program and returns to the community as a sober parolee with a job, then ... the total benefits that would accrue during the first year after release would total \$68,000 for each successful inmate. These estimated benefits do not include reductions in welfare, other state or federal entitlement costs, or foster care for the children of these inmates.

Given these substantial economic benefits, the success rate needed to break even on the \$6,500 per inmate investment in prison treatment is modest. If only 10% of the inmates who are

³³ *Behind Bars: Substance Abuse and America's Prison Population*, National Center on Addiction and Substance Abuse at Columbia University, January 1998.

given one year of residential treatment stay sober and work during the first year after release, there will be a positive return on the treatment investment."³⁴

(Emphasis added).

There is evidence to suggest that similar cost benefits could accrue in this jurisdiction. The Bridge Intensive Probation Supervision Programme has been operating since 1991. For the duration of the programme, participants address their criminal behaviour and gain valuable skills while remaining accountable to the Courts through the Probation and Welfare Service.

The unit cost of the Bridge Programme is £5,000 per participant per annum. This represents a criminal justice saving of over £40,000 per participant when compared to the corresponding cost of incarceration. Furthermore, this does not include the potentially far greater savings flowing from the production of graduates who are drug free, in employment and do not re-offend.

6.3 As indicated in paragraph 6.2 the experience of the United States to date suggests that Drug Courts Programmes, with community involvement, have been very cost-effective. The Bridge Intensive Probation Service Programme illustrates a much smaller but nevertheless relevant experience. Unit-cost measures suggest that, overall, budgetary savings are to be expected. It is likely that, initially, some investment will be needed to establish the necessary linkages, procedures and infrastructure to the required standards and volume but that over time savings reflected in a redistribution of resources within the programmes affected (particularly in prisons and in health service provision) would be likely to accrue. A project group should, therefore, be asked to work to a project plan which would also identify likely costs and savings and shifts in programme expenditures in the short, medium and longer terms.

³⁴ *Ibid.*, p.18.

CHAPTER 7

Recommendations

7.1 Drug Courts Planning Programme

The Working Group recommends that a Drug Courts Planning Programme be commenced.

7.2 The introduction of Drug Courts would involve the development of a court process which needs careful planning. The planning process is critical to the success of the programme.³⁵ It has been the experience in the United States that the people who will ultimately be involved in a Drug Courts Programme should be part of the planning process.³⁶ Judicial system officials have advised other jurisdictions who are contemplating the implementation of a Drug Court:

"In starting a Drug Court, it is absolutely essential to have all members of the criminal justice system participate in the planning process, ..." Los Angeles³⁷ California.

"Plan it for at least 12 months and observe Drug Courts in action", Santa Rosa³⁸, California.

"Involve all the needed partners in the initial planning process", Boston,³⁹ Massachusetts.

"Comprehensive planning. Involve all pertinent parties in the planning stages". Akron,⁴⁰ Ohio.

"Form a comprehensive steering committee including local law enforcement, prosecutors, defenders, government, community and other interested parties. Set out a goal for implementing and

³⁵ Treatment based Drug Courts. A Guide. (1994) Office of the State, Court Administrator, Florida Supreme Court, pp. 27-65.

³⁶ 1997 Drug Court Survey Report, Vol. I: Judicial Operations and Perspectives, American University Publications

³⁷ Ibid p.331

³⁸ Ibid p.332

³⁹ Ibid p.333

⁴⁰ Ibid p.334

just move forward — do not wait until it is all perfect" Lexington,⁴¹ South Carolina.

The appropriate trial judges, key agencies and organisations in Ireland need to share the planning process so that they have an opportunity to shape the programme.

- 7.3** The Working Group has consulted with and received submissions from many of the organisations who would be involved in any Drug Courts Programme. However, this has been at an information gathering and learning stage. The next step involves the actual planning of the programme — in which the appropriate institutions and organisations should be participants.

7.4 Drug Courts Planning Committee

The Working Group recommends that a Drug Courts Planning Committee should be formed to plan, establish and develop the Drug Courts Programme. This committee should consist of (or representatives from) the Presidents of the three trial court jurisdictions, judges who will be sitting on the Drug Courts, representatives from the Probation and Welfare Service, the Director of Public Prosecutions, the Attorney General, the Bar, the Law Society, the Prison Service, the Health Boards, voluntary agencies and other relevant bodies. Subcommittees may be established to deal with specific issues.

7.5 Drug Courts Co-ordinator

The Working Group recommends that a Drug Courts Co-ordinator be appointed. He or she would be a member of the Courts Service staff and would be a member of the Drug Courts Planning Committee.

Drug Courts depend for their success on their ability to unite and co-ordinate the services of agencies both within and outside the criminal justice system. These bodies include the Courts, the Gardaí, the Prison Service, the legal profession, the Director of Public Prosecutions, Health Boards and the Probation and Welfare Service, the Churches and other treatment providers, aftercare groups, employment agencies, training and education agencies, as well as housing authorities. The establishment of Irish Drug Courts will not only require that these supporting agencies be adequately resourced, but also that they become part of an integrated court-centred treatment regime which works towards a common goal.

⁴¹ *Ibid* p. 335

A lack of communication and co-ordination between all those involved would almost certainly lead to a breakdown and failure of the system. There can be no cracks in a programme designed to treat individuals who will often exploit any opportunity to evade obligations imposed by an authority.

A Drug Court Judge would lead, but cannot be expected to co-ordinate personally every aspect of a participant's progress through the programme. Numerous American Drug Courts have addressed this challenge by appointing specific Drug Court co-ordinators. Among other tasks a Drug Court co-ordinator:

- serves as assistant to the judge and provides clarification and direction to the remaining Drug Court team members;
- co-ordinates the daily interaction of the various agencies involved in the Drug Court;
- identifies resources to support the Drug Court programme;
- maintains statistics monitoring the effectiveness of the Drug Court programme; and
- reports on the progress of the programme to advisory boards and/or other appropriate groups.⁴²This is not an exhaustive list but does highlight the need for such an individual in a Drug Courts system.

7.6 Training and Education

Training and education are crucial to the success of a Drug Courts Programme. The Group advises that this commence as soon as possible with the relevant judges, the Drug Courts Co-ordinator, appropriate court staff and members of the Drug Courts Planning Committee. The training should be on two fronts. On the one hand it should cover the medical and social aspects of drug abuse and the nature of addiction. On the other hand it should relate to the legal issues and practice in running Drug Courts. For example, the relevant judges and the Drug Courts Co-ordinator could attend the Annual Conference of the National Association of Drug Court Professionals, which will be held from 4th to 6th June, 1998 in Washington, D.C.; specific training

⁴² Treatment-Based Drug Courts ... a Guide. (1994) Office of the State Court Administrator, Florida Supreme Court, p.43

programmes which are developed and operating in the United States, and visit and observe Drug Courts in operation.

7.7 Goals

The Drug Courts Planning Committee should endeavour to introduce a Pilot Drug Courts Programme as soon as practical. The goals of the Drug Courts would include:

- to reduce drug usage among defendants;
- to increase community functioning of the participants e.g., training, employment, birth of drug free babies, more effectively than the traditional adjudication process;
- to reduce recidivism;
- to reduce social disfunction;
- to reduce the overall cost to the State of the individuals;
- to reduce the cost to the State of the prison service.

7.8 Part of Courts Structure

Drug Courts should be introduced as part of the current court structure. The Working Group does not believe that a new stand-alone court system should be created. The relevant judges for a Drug Courts Programme are trial judges who have expressed an interest in and received training for this process.

7.9 District Court

The relevant courts within which to consider a Drug Courts Programme in the court structure are the District Court and the Circuit Court. Both have introduced procedures to aid drug abusers which contain elements of Drug Courts processes.

It is advisable in introducing a new programme to start simply and develop. Thus, it is advisable to start Drug Courts in one jurisdiction first as a pilot project.

The District Court is the point of first entry into the Court system for many drug abusers and so it is the logical place to start such a

programme. The District Court has developed experience in dealing with both drug offences and crimes committed by drug addicts. It has a less formal procedure than the Circuit Court and may thus be more amenable to this new process. During the Working Group's study of Drug Courts members of the District Court have been active participants in making submissions and partaking in the Drug Courts Conference. The judges and court staff involved in a Drug Court must have an interest in and a capacity to participate in this process. The skills and abilities required for this project are additional to those required in a traditional court. The Working Group recommends that a Drug Courts Programme commence in the District Court.

7.10 Circuit Court

As Drug Courts Planning develops consideration may be given to extending it into the Circuit Court. The Circuit Court already operates a quasi-Drug Courts process. In due course a Planning Programme Committee and judges of this Court may plan to extend the process. For example, as the offences tried before the Circuit Court are not minor it may be planned that the detoxification be in prison, as may be the initial stabilising steps. Thus the infrastructure described in Chapter 5 is of importance and any development of the programme would require an increase in the treatment infrastructure available. Further programmes may be developed to enable appropriate recovering drug abusers to move into supervised community life, the sanction of failure would be the return to prison.

7.11 Drug Court Judges

- (i) The judges who operate the scheme will pioneer a new dimension in criminal law jurisprudence in Ireland.
- (ii) The judges will be volunteers who have a special interest in the concept of justice through treatment and rehabilitation.
- (iii) Drug Courts will occupy part only of the judges' work load e.g. one half-day session per week.
- (iv) Not all District Courts will be Drug Courts. When the scheme is fully operational, it is envisaged that a sufficient number of Drug Courts will be designated to meet the needs of the whole community.

7.12 Court Staff

Whereas the programme initially is envisaged as operating in the District Court with District Court judges and District Court staff, as the project develops more court staff may become relevant to the programme. This may be so especially in provincial areas. In the provinces there may be a place for other court professionals to be part of a developing Drug Courts treatment process.

7.13 Target Offences

It would not be advisable for the Drug Courts to target only offences of possession of drugs. On the other hand a conservative approach is advised. Serious crimes of violence should not be included in the project.

7.14 Form of Entry

There are many forms of entry to Drug Courts elsewhere.⁴³ At the initial stage of this Drug Courts Programme it is advisable to start simply. Thus, at the commencement it is advisable to limit entry to the Drug Courts Programme to those persons who have either pleaded guilty or have been found guilty. This has the advantage that the individual is subject to the court for sentencing. Thus the necessary sanction, to keep a person successfully on the Drug Courts Programme, is available to the court. In addition the administration of justice is not delayed — treatment comes after a plea of guilty or trial.

7.15 Decision on entry

The decision as to who may enter the Drug Courts Programme would be for a judge. A judge would have a discretion to send the person to the Drug Courts Programme. A discretion would be exercised by the Drug Courts Judge after certain events have occurred, for example:

- (a) the consent of the convicted person;
- (b) a Drug Courts Report of a specially designated Probation and Welfare Officer;
- (c) the Director of Public Prosecutions or other prosecuting authority would have the right to make submissions but not to exercise a veto on entry into the programme.

⁴³ See Chapters 2 & 3

At a later stage the Drug Courts Programme may become available pre-trial. However, participation at that stage creates several problems which would have to be resolved, not the least of which is the question of the sanction procedure. Such availability could be at the discretion of the Drug Court judge after certain events including:

- (i) the consent of the accused;
- (ii) a report (pre-trial Drug Court report) from a specially designated Probation and Welfare Officer;
- (iii) the consent of the prosecuting authority.

However, this form of entry is not advised to the Drug Courts Planning Committee initially.

7.16 Drug Treatment Order

There is benefit in a clear order being available to the Drug Court judge. As the law stands he or she could adjourn sentence and order treatment on bail. However, a specific order has clarity. It is advised that the Government should consider legislating to provide for a treatment order process for a Drug Court. A similar order is proposed in England and Wales. (See chapter 3 herein). If there is a mandatory sentence for an offence such an offence may be excluded from the jurisdiction of the Drug Courts.

All the research shows that a key to the success of the Drug Courts process is that there be a treatment programme and a clear and fast sanction should the participant falter in the programme. Judge Patrick Morris (at the Conference in Dublin on 31st January, 1998) spoke of jailing a participant for 2 days (over a weekend) if they had faltered in the treatment programme, e.g., if they had failed a urinalysis test. He did not drop the offender from the programme, another chance was given, but there was a short sharp sanction. Having a specific statutory order in place such as a treatment order enables a clear and fast reaction to the situation of relapse. It is envisaged that a treatment order could be ordered together with, in the appropriate circumstances, other orders such as a community service order.

If there has been relapse such that the judge determines that the participant has failed the programme then the returning of the individual to the traditional court process is clearly defined. The treatment order is terminated and the sentence procedure in the traditional court is resumed.

7.17 Methadone Maintenance

In light of the specific type of drug abuse in Ireland, especially in Dublin, any Irish Drug Courts must be devised for the specific Irish situation. Consequently, whereas total abstinence is the optimal object of a drugs treatment programme the alternative system of methadone maintenance should not be excluded. The possibility of methadone treatment is also a factor in our advice to legislate for a drug treatment order.

7.18 Statistics

It is of fundamental importance that the success of this programme should be measurable. For that reason it should be the duty of the Drug Courts Planning Committee to obtain and report on statistics relating to the relevant traditional court process and the new Drug Courts procedures when they develop. The Drug Courts Co-ordinator could have responsibility for this aspect of the programme.

7.19 Three Year Program

The Drug Courts Planning Programme should be a three year project. Annual reports and statistics should be furnished to the Government and the Courts Service. This programme would then be reviewed at its conclusion.

7.20 Infrastructure

In tandem with the work of a Drug Courts Planning Committee the need for the infrastructure to enable such a programme would have to be addressed in other institutions too. Thus, further units for detoxification, stabilisation and after care would require to be developed. More after care units such as hostels with day activities such as training and education by committed staff will be essential. An environment which fosters the development of care agencies with highly motivated staff is required.

7.21 Resource Implications

The resource implications cannot be quantified at this time. The requirements for an optimum system could be vast. The Group is advising a conservative Drug Courts Programme with objectives related directly to problems of addiction in Ireland including the unique situation of opiate dependency in Dublin. Also it is being recommended that the

programme commence simply. Even with such an approach, there are important resource implications to be considered by Government before any programme could be launched. The Group recommends that an expert subcommittee of the Drug Court Planning Committee, with added representation from the major Departmental budget-holders, as required, be established to assess and report on all resource implications of the Committee's proposals, whether arising within the Courts Service, the criminal justice system otherwise or in any necessary supporting infrastructure. The scope for diverting resources arising from savings generated or likely to be generated in other programme areas would need to be identified in particular, given the prospect of lower unit-costs of maintaining clients in Drug Court Programmes than, say, in prisons.

7.22 Conclusion

The Group advises that a Drug Courts Planning Programme be commenced, that a Drug Courts Planning Committee and a Drug Courts Co-ordinator be appointed as soon as possible. A Drug Courts Programme should commence in the District Court. It has been the experience in the United States that Drug Courts succeed where they start simply and build as support and experience develops. This approach is advisable for Ireland. We believe that this programme can make a major contribution to reduce drug related crime in Ireland. The evidence from abroad is not merely persuasive: it is conclusive. All that is necessary is the determination to implement these measures.

The Group believes that a successful Drug Courts scheme will reinforce the development of similar projects in the interest of underprivileged young offenders who through deprivation gravitate into a spiral of serious offending at an early age from which for all too many there is little hope of escape.

APPENDICES

APPENDIX A

Deferred Prosecution Agreement For Okaloosa County⁴⁴

It being alleged that you, _____, have committed an offence against the State on or about the _____ day of _____, 199____, to wit: Docket# _____

and it further appearing after an investigation of the offence and into your background, that at this time the interest of the State of Florida, and your interest will best be served by the following procedures:

THEREFORE

On the authority of _____, State Attorney in and for the _____ Judicial Circuit, prosecution in this matter for said violation will be deferred for the period of 12 months from this date, provided you abide by the conditions hereafter specified in this contract and order. Your progress will be reviewed in accordance with F.S. 948.08 at the end of 90 and 180 days from this date to determine if prosecution can be permanently deferred.

The defendant agrees to refrain from violation of any law.

The defendant agrees that he/she will work regularly at a lawful occupation.

The defendant agrees that he/she will participate in and pay for programs established for him/her under the supervision of the Department of Corrections. (Mental health, drug, alcohol counselling, etc.).

⁴⁴ This document is reproduced from "Treatment Based Drug Courts, a Guide", (1994) OSCA, Florida Supreme Court, Appendix H.

The defendant agrees to immediately inform the drug court officer offering supervision and counselling of any change in address, residence, or employment.

The defendant agrees to make him/herself available for all the services of this program.

The defendant agrees to answer truthfully all inquiries by the drug court officer and allow visits at his/her home, employment, school, or elsewhere and carry out any instructions given.

The defendant agrees to report to his/her assigned drug court officer every month as scheduled by the drug court officer.

The defendant agrees not to leave the county of his/her residence without first procuring the consent of his/her officer.

The defendant agrees not to possess, carry or own any weapons.

The defendant agrees to refrain from use of any illegal substance.

The State Attorney may, during the period of deferred prosecution, revoke or modify the conditions of your deferred prosecution by:

- (1) Prosecuting you for this offence if you violate any of these conditions.
- (2) Voiding this agreement should it be determined that you have a significant prior record of adult criminal convictions for an offence not allowed within the program selection criteria.

If you comply with these conditions during the period of deferred prosecution, no criminal prosecution concerning this charge will be instituted in this county.

By signing this deferred prosecution agreement the defendant, _____, withdraws and/or waives his/her right to a speedy trial for the period of his/her diversion under the Constitution and laws of Florida and the United States of America in the cause for which prosecution is being deferred. Further, that he/she understands the contract and will abide by conditions in this contract.

Date:

Defendant's Signature

Date: _____

Assistant State Attorney's Signature

Date: _____

Judge

Date: _____

Status call date: _____

Drug Court Form (10/13/93)

APPENDIX B

Superior Court of the State of
Delaware
Expedited Drug Case
Management
Drug Diversion Petition,
Waiver & Agreement

Defendant/Petitioner: _____

Address: _____

Phone: _____ DOB: _____ Case No: _____

1. I voluntarily request entry into the Superior Court Diversion Program. I understand that, if I complete the program successfully, the criminal charges pending against me relating to the stipulated facts herein will be dismissed. Election of this program also requires the waiver of certain important rights as a condition of participation which are listed below.
2. I agree to submit to and complete a diagnostic evaluation and treatment program dealing with my substance abuse problem as ordered by the court. I further authorize release of all treatment information to the Court. Such information will not, however, be utilized by the Attorney General in any subsequent trial, if necessary, on the charges presently before the court.
3. If I successfully complete the diversion program and fulfill all terms and conditions of the agreement, prosecution for the offence which

is the subject of the stipulated facts will not proceed and the charges against me stemming from those facts will be dismissed.

4. If I do not successfully complete the diversion program or comply with the conditions of this agreement, a Failure to Comply Hearing will be scheduled and may result in (1) a modification of my treatment program or (2) revocation of my pre-trial release or (3) termination from the program resulting in a trial based only upon the facts stipulated to be accurate for the purposes of these proceedings and the trial. If a trial becomes necessary, the charges and case numbers are:

5. By signing this document I acknowledge that I have read and understand that the attached statement of facts is accurate for the purposes of these proceedings and any subsequent trial. I agree that those facts will be the sole basis to be considered in any trial which results from my breach of any of the terms of this agreement. (Defendant shall sign or initial each page.)
6. I further understand by agreeing to the stipulated trial referred to in paragraph 5 I am surrendering certain rights including:
- (a) my right to a speedy trial;
 - (b) my right to a jury trial;
 - (c) my right to call witnesses and cross-examine State witnesses;
 - (d) my right to testify and present evidence;
 - (e) my right to raise any legal or factual defences arising from our State and Federal constitutions, including but not limited to, the right of the police to stop and/or seize me and/or evidence and the legality of any statement obtained by the police;
 - (f) my right to appeal unless the sentence imposed exceeds the statutory maximum sentence prescribed by law.

7. I also agree:

- (a) not to violate any law (federal, state or local) and to immediately contact the treatment counsellor if arrested;
- (b) to attend school or work regularly at a lawful occupation or be otherwise engaged productively as approved by the Court;
- (c) to continue to reside at the address supplied to the Court and provider and to notify both if I change my address;
- (d) to report to the program to which I am referred, as required, cooperate fully, and abide by all of the program's conditions;
- (e) to appear in Court for status conferences or termination hearings as required;
- (f) that the Court may extend my treatment as the court determines appropriate to allow successful completion of the requirements;
- (g) to pay a civil drug education fund assessment to the Clerk of the Superior Court in the amount of \$150.00;
- (h) to pay a fee to the program to which I am assigned in the amount of \$50.00;
- (i) to stipulate to the following: _____

- (j) to the following additional requirements: _____

I have read and understand the above-noted statement and my obligations and the rights I am surrendering. I am knowingly and voluntarily entering into this statement and agreement understanding that the police report and/or accompanying statement of facts and/or stipulation will form the sole basis of the evidence in any trial that may occur.

DATE: _____

Petitioner

Petitioner's Attorney

Deputy Attorney General

APPENDIX C

The Connecticut Experience

Special Dockets at New Haven, Bridgeport, Waterbury and Hartford.

(i) New Haven

This docket has been in operation since 1996 and has processed approximately 100 clients in its first year. Sessions are held three afternoons per week. Current docket loads process approximately 30 cases per session. Court personnel committed to this docket include a judge, assistant state's attorney, assistant public defender, bail commissioner, probation officer and judicial clerk who devote up to three quarters time to the drug session. The police department has also assigned a full time police liaison officer to the court. Non court treatment personnel include a drug session program co-ordinator, treatment case manager and treatment clinician who work full time on this docket.

Treatment Resources

A private, community based, no profit treatment provider was selected through a competitive bidding process to provide services to the New Haven Drug Session clients as an alternative to incarceration. The program provides 48 weeks of intensive outpatient treatment (multiple weekly contacts for substance abuse counselling, relapse counselling, individual therapy, psycho education, random urinalysis) plus a continuum of support services which include conditional and educational skill building, training in parenting and basic living skills, stress and anger management. Detoxification and in patient residential services are also available. The treatment provider is responsible for facilitating access to treatment. Clinical evaluations are conducted by the court based evaluator; the treatment provider distributes regular progress reports for each client to the court based case manager. Where

possible, third party payments, government entitlements and sliding scale client fees are accessed to help defray costs. A representative of the State's Department of Social Services networks with drug session personnel.

Client Eligibility

New Haven Drug Session targets pre trial defendants who are drug dependent as defined by CT statute and charged with narcotics possession. All offences must be non violent (also as defined by statute). Defendants charged with sale of narcotics or more serious crimes (felonies, use of weapons or violence) will not be considered. Defendants must be 16 years of age or older (considered adult and young adult). Juveniles (16 and younger) are not eligible. At present, most referrals are made by the Public Defender's office. However, referrals also come from the state's attorney, the bail commissioner and private defence counsels.

Case Processing/Court Procedures

Application is made to the drug session by the offender. Initial screening is conducted by the assigned bail commissioner and drug session treatment personnel. Results are used to recommend a full clinical evaluation (with treatment planning) if appropriate, or to recommend that the applicant be returned to the regular docket. The evaluation is reviewed by the drug session team. Final decision to offer the program is made by the judge. The judge, state's attorney, defence counsel and defendant enter into a treatment contract if accepted where the defendant agrees to a plea agreement if drug session is completed successfully; a pre determined sentence is continued for the duration of the program. Non compliance (including relapse) may result in the imposition of court sanctions by the judge or termination from the program and imposition of the plea agreement. Completion results in graduation and a favourable case disposition (as outlined in the contract). Regular progress reports are reviewed by the drug session team at weekly meetings prior to the docket sessions and form the basis for judge ordered sanctions and/or encouragement. Offenders are ordered to reappear at regularly scheduled intervals (usually every two weeks but this can be longer or shorter depending on the progress being made in treatment). A feature of this drug session is that defendants are required to remain for the entire docket session and become aware of the progress of others in the program (which hopefully facilitates

learning from peer experiences). The drug session program co-ordinator and case manager are the primary contacts between the treatment providers and the court personnel and co-ordinate progress reports and data collection for evaluation purposes.

(ii) Bridgeport

This docket opened in late 1997 and is in session two afternoons per week. It is anticipated that approximately 125 offenders will be processed during the first year of operation. Personnel for this court consist of an assigned judge, assistant state's attorney, assistant public defender, bail commissioner, probation officer and judicial clerk. None of the court personnel are assigned full time to this drug session. Clinical evaluator, treatment providers and case management personnel are contracted from a community based agency. The police department provides support as appropriate on an "as needed" basis.

Treatment Resources

A full continuum of substance abuse treatment and support services is provided to Bridgeport drug session clients by a private, community based non profit treatment provider selected through a competitive bidding process. This is a 48 week program of intensive outpatient substance abuse treatment and support services with similar components as outlined for the New Haven drug session. Some services are subcontracted by the primary treatment provider to encourage collaboration and best use of existing community based resources. Detoxification and inpatient treatment are available to Bridgeport drug session clients as "in kind" services through agreements with other state agencies. The contracted provider is responsible for case management, clinical evaluations, treatment planning and co-ordination of access to all services by court clients. The drug session bail commissioner is the primary liaison between the treatment provider and the court will distribute progress reports and collect data for evaluation purposes as necessary. The treatment provider is also responsible for accessing other available sources of payment where possible to help defray costs.

Client Eligibility

Targeted population is limited to violators of probation (COPs) in this jurisdiction. All offenders must have a non violent criminal history. It is anticipated that most offenders will be in violation of their condition of

probation because of continued substance abuse. Defendants charged with sale of narcotics or more serious crimes involving weapons and violence will not be considered. Defendants must be 16 years or older. Juveniles 16 and younger are not eligible. Eligibility will also consider past history of substance abuse and treatment in an attempt to provide a "last chance" for offenders who are serious about ending their drug addiction.

Case Processing/Court Procedure

Applications are made to the Waterbury drug session by the state's attorney and public defender's office as violation of probation cases are flagged for and/or appear at arraignment. Private defence counsels may also make referrals. Initial screening for past criminal history and suitability for drug session will be made by the bail commissioner. Results of this screening will be considered by the drug session state's attorney, defence counsel and judge to recommend either a full clinical evaluation will be reviewed by the drug session team; the final decision to offer the program is made by the judge. The Bridgeport drug session will also use a treatment contract, court sanctions for non compliance and favourable disposition of charges for successful completion, regular court appearances, and team review of progress reports as is done in New Haven. The Bridgeport drug session bail commissioner will be the primary contact between the treatment provider and the court and will co-ordinate data collection for evaluation purposes.

(iii) Waterbury

This docket opened in January, 1998 and is in session one day per week. It is anticipated that approximately 90 to 100 offenders will be processed during the first year. Personnel for this court consist of an assigned judge, assistant state's attorney, assistant public defender, bail commissioner, probation officer and judicial clerk. None of the court personnel are full time. Clinical evaluator, treatment providers and case management personnel are contracted from the chosen community based agency. A collaborative relationship has been established with the police department.

Treatment Resources

Treatment for Waterbury drug session clients will be delivered by a private, community based non profit treatment agency selected through a competitive bidding process. The program of intensive outpatient

substance abuse treatment and support service (including detoxification and inpatient treatment) is patterned after the services provided in the other drug sessions, with the contracted provider either supplying the services directly or by sub contract with other existing community resources. Clinical evaluations, treatment planning, case management and co-ordination of access to services will also be the responsibility of this contracted provider. Alternative sources of payments will be accessed where possible by the contractor to help defray treatment costs.

Client Eligibility

These are being developed. Populations that are being considered include pre trial individuals who are drug dependent and charged with non violent crimes and who will likely be sentenced to alternatives to incarceration; individuals who are experiencing difficulty in accessing inpatient and residential treatment; and offenders who have committed low level crimes and who might benefit from immediate and early treatment intervention to prevent their addictions and criminal activities from getting worse.

All candidates must have a history of non violent criminal activity and be 16 years of age or older. It is anticipated that most referrals will be made by the public defender's office and/or state's attorney at the time of arraignment; however, these may also come from the bail commissioner, probation officer and private counsel.

Case Processing/Court Procedure

These have not yet been finalised for the Waterbury drug session but they will likely consist of an application process initial screening for criminal history conducted by the bail commissioner's office and then, if appropriate, referral to the contracted service provider for clinical evaluation and treatment planning. Plans call for the drug session judge, defence counsel, state's attorney and contracted treatment provider to review the application with the final decision to offer the program made by the judge. As in other drug session models, the Waterbury team will consider a treatment contract, plea agreement and pre determined sentence but these criteria have not yet been finalised. The model will also include court imposed sanctions for non compliance (including relapse) and regular reappearances and review of progress reports for drug session clients. The primary court based liaison personnel has not

yet been identified but this individual will also be responsible for evaluation data collection.

(iv) Hartford Juvenile Drug Session

The Hartford Juvenile Drug Session is planned to open in 1998. It is anticipated that the court will process approximately 150 clients during its pilot first year. The overarching goal of this court is to provide a positive intervention for juveniles who have criminal involvement and who are at risk for drug or alcohol dependency. It is hoped that graduated sanctions, intervention and education will reach these juveniles and address the root causes of their criminal behaviour to prevent further criminal justice involvement.

Client Eligibility

The juvenile drug session will be the first in Connecticut to deal primarily with juvenile offenders who either have a drug or alcohol dependency, have been found to engage in substance abuse in conjunction with adolescent adjustment problems, and/or are at risk for drug or alcohol dependency. Because the older eligible juvenile will be one who is arrested before age sixteen, it is anticipated that the majority of the court's participants will be drug users but may not be addicts.

Treatment Resources

The drug session treatment will be provided by a private non profit treatment agency selected through a competitive bidding process. The treatment plan will consist of substance counselling, psycho education, life skills training, relapse prevention. Support services will include awareness building programs, structured recreation, vocational training and community service. The contracted treatment provider is responsible also for individual, family and group therapy services and for networking with other community based providers to access existing resources. Case management will be handled jointly by the court assigned probation officer and the contracted substance abuse provider; clinical evaluations and treatment planning are the responsibility of the contractor.

Case Processing/Court Procedure:

The Juvenile Drug Session has three key components: the Drug Session Team, comprised of the Juvenile Prosecutor, the Public Defender, the Juvenile Probation Officer, the Substance Abuse

Counsellor and the Judge; the Juvenile Drug Session Contract; and mandatory family involvement. The Drug Session Team is integrally involved with each participating juvenile from application, design of the Contract's Court-ordered conditions to compliance monitoring and family accountability. The Juvenile Drug Session Contract includes Court-ordered conditions that are agreed to by the juvenile and his/her responsible family member and all team members. Conditions included in the contract are substance abuse counselling and education, community service and school and job attendance expectations. Responsible family members will co-sign the Contract and will be accountable to the Court for the juvenile's compliance. Sanctions available to the Court through the Juvenile Drug Session Contract including substance abuse counselling, life skills and vocational training, awareness-building and structured recreation.

APPENDIX D

Drug Courts in the U.S.: An Overview of their Development, Operational Features and Impact to Date

by Caroline S. Cooper, J.D.

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"Prepared for a Conference on Drug Courts organised by the Working Group on a Courts Commission and held in Dublin on 31st January, 1998".

WHAT ARE DRUG COURTS?

Drug Courts are special dockets within criminal divisions of general trial courts to which are assigned drug and drug-related cases involving defendants (1) whose contact with the criminal justice system is due primarily to their substance addiction; (2) for whom immediate and intensive treatment and other rehabilitation services are provided in an effort to promote their recovery; and (3) for whom the Drug Court judge provides continuous supervision, monitoring — and encouragement — in an effort to increase the likelihood of their rehabilitation and reduce the likelihood of their reoffending. Drug Court programs usually entail 12 — 15 months of intensive, generally outpatient treatment, frequent court "status" appearances; and other requirements for program graduation, including completing a high school education, obtaining employment, and related conditions. Each Drug Court docket is assigned to an individual judge to manage and supervise each case on a continuing basis. Defendants are assigned to the Drug Court as soon as possible after arrest (ideally, within a few days), on the assumption

that their motivation for treatment will be highest when they are still "traumatized" by the arrest process. Drug Court programs provide immediate and intensive treatment and rehabilitation services from providers with whom arrangements have already been made, so that there is no waiting time entailed before Drug Court treatment begins.

Prosecutors, Defenders, Treatment Providers and the Drug Court Judge work as a team to promote participant retention in treatment and ultimate recovery. Drug Court judges hold frequent "status" hearings (usually weekly at first) to monitor participant performance at treatment to both sanction non-compliance and/or relapse and praise progress.

The legal authorization for Drug Courts in the U.S. has generally been through the court's existing pretrial release and dispositional authority.

HOW DRUG COURTS DIFFER FROM THE TRADITIONAL ADJUDICATION PROCESS

The underlying *philosophy* of the Drug Court approach is that the leverage of the judicial process can be effectively used to address underlying substance abuse and related problems which contribute to the criminal behaviour of many defendants involved in drug and drug-related cases. The focus of Drug Courts is, therefore, upon attempting to address these problems as well as disposing of the case at issue. In terms of process, the primary differences between the Drug Court process and the traditional process for handling drug-involved defendants are the following:

- The defendant comes under the court's supervision as soon as possible after arrest;
- Treatment services are immediately available to the defendant; there are no waiting lists;
- The Drug Court judge provides continuous monitoring of both the defendant's performance in treatment and the services provided to each defendant;
- The Drug Court judge can take immediate action when a defendant does not comply with program conditions or relapses, thereby avoiding extended periods in which a defendant has returned to an old drug-involved (and usually crime-involved as well) lifestyle;

- The Drug Court judge can motivate defendants to recover by the interest, care, and help such a figure of authority and respect can provide to each participant's individual situation as well as the leverage of the criminal justice process which the judge can command;
- Relapse is addressed through additional treatment, short-term incarceration or other sanction in order to promote the defendant's retention in treatment, using program termination as a *last* (rather than *first*) resort.

WHY DRUG COURTS DEVELOPED IN THE U.S.

Drug Courts developed in the United States as a response to the frustration judges felt at the "revolving door" syndrome of drug cases. During the 1980's, the United States launched its "war on drugs" — a hardline policy of prosecuting all drug offences, minimising the use of the plea bargaining, and using incarceration as the major response to drug violations. Since most U.S. prosecutors at the state and local level are elected the "war on drugs" quickly became entangled with politics as well as judicial system processes. The result of the "war of drugs" was that, by the late 1980's, courts were inundated with drug cases and jails and prisons were overcrowded, unable to house drug violators as well as violent offenders for the full duration of their terms. For those courts that were slower to dispose of these cases, defendants had usually picked up three to four new offences while they were awaiting disposition of their first one. Many courts implemented vigorous "case delay reduction" initiatives, only to find that shortly after a defendant was adjudicated on one drug charge, he or she picked up a new one.

Among the delay reduction initiatives that were introduced during this period was the concept of "Differentiated Case Management", or DCM, which was premised upon the recognition that cases are not all alike and therefore should not all be processed according to the same events and procedures. Many courts developed DCM systems with multiple case processing tracks, each with difference timeframes and events, to which cases could be assigned as soon as possible following arrest, based on their management complexity. Drug possession cases were almost invariably assigned to an "expedited" track since their adjudication generally entailed primarily a ruling on the propriety of the "search"; a laboratory analysis of the substance seized; and, perhaps, testimony regarding the circumstances of the seizure. More serious cases such as rape or homicide, on the other hand, were assigned to a

"complex" track because they entailed forensic testimony and evidence; ruling on a variety of evidentiary motions, multiple witnesses; and generally were more likely to go to trial.

During the course of developing multiple "tracks" for processing criminal cases, it became quite apparent that a high percentage of drug cases involved defendants whose primary impetus for involvement with the justice system was their substance abuse. It was also becoming quickly apparent that, not only was the cost of incarceration bankrupting many jurisdictions as well as decreasing their capacity to incarcerate violent offenders and thereby protect the safety of the community, *but incarceration in and of itself* was having no effect on the volume of drug cases and that, within a very short period of release, a very high percentage (many estimate well over 50%) were rearrested for a drug or drug-related offence. Research findings were also showing that an investment in treatment — as opposed to incarceration — was by far more productive in reducing criminal justice, health, economic and social costs associated with illegal drug usage.

Within this context, was born the "Drug Court" — a special "track" for defendants who had committed drug or drug-related offences whose contact with the justice system was a direct result of their drug use and who, it could be predicted, would continue to reoffend unless they received treatment for their addiction.

WHO IS THE DRUG COURT "CLIENT"?

To date, we have had over 65,000 individuals enrolled in Drug Courts in the U.S., with approximately 70% having graduated or still participating. A "profile" of 256 Drug Court participants in the final phases of 52 different Drug Courts in 23 different states and other data reported by operating programs, indicates that:

- Most Drug Court participants have been using drugs for at least 15 years, and generally much longer. Most are using multiple illegal drugs at the time of program entry, and are also using alcohol.
- Approximately, one quarter of Drug Court participants have participated unsuccessfully in at least one — and often more — prior treatment programs. The remaining seventy-five percent have never received treatment despite their often extensive records of drug offences.

- Many Drug Court participants have served substantial time in prison for prior drug offences but (1) are still using drugs; and (2) want to become clean and sober.
- Many Drug Court participants are parents, many of minor children who were either living in foster at the time the parent entered the program or at home, exposed to their drug usage.

DRUG COURT DEVELOPMENT IN THE U.S.: 1989 TO DATE

Since the first Drug Court was established in Miami, Florida in 1989, there have been developed over 400 Drug Courts, two-thirds of which are now operating and the rest are being planned. The number of Drug Courts in the U.S. tripled in 1997 alone. Drug Court activity is underway in 47 of our 50 states plus the District of Columbia, Puerto Rico, Guam and two federal jurisdictions, including over 15 Native American Tribal Courts.

OPERATIONAL CHARACTERISTICS

- **Offenders Targeted**

Drug Courts in the U.S. are increasingly targeting the chronic recidivists as well as first *offenders* — who are usually by no means first-time *users*. Although most Drug Courts began focusing on first offenders, many have subsequently expanded their focus to target individuals with more extensive criminal histories who: (1) require the rigid supervision and monitoring of the Drug Court and (2) can benefit from the treatment and rehabilitation services provided.

- **Targeted offences**

All Drug Courts target drug possession charges. In addition, most Drug Courts target other drug-related offences as well, including prescription drug fraud; drug sales (small amounts); theft/property offences; driving under the influence; check/credit card forgeries; and prostitution.

- **Participant Eligibility Criteria**

Eligibility for Drug Court participation is determined through a two-stage screening process: (1) criminal justice screening and, if eligible, then (2) substance abuse screening. Almost 90% of the Drug Courts target defendants with records of prior criminal offences and with severe

substance abuse. Almost all of the programs accept defendants with any type of *illegal* drug dependency and almost all of the programs either prohibit or strongly discourage the use of alcohol (which is legal) by program participants. Most programs have expanded their eligibility criteria, both in terms of defendant qualifications and eligible offences, since their programs began.

- **Locus of Program in Judicial Process**

Although initially begun as pretrial programs, over 70% of Drug Courts in the U.S. are now either part or totally post-conviction programs.

- **Assignment of Cases to Drug Court Judge(s)**

In 80% of the Drug Courts, one judge is assigned to hear all of the Drug Court cases in addition to his or her caseload. This assignment generally entails an average of 10 hours of bench time per week. In ten percent of the Drug Courts (which have a high volume of cases), one judge is assigned fulltime to the Drug Court caseload. Two or more judges are assigned to Drug Court cases in the remaining ten percent of the programmes.

PROGRAM POLICIES AND PROCEDURES

- **Timeframe for Program Entry**

The timeframe for entering the Drug Court (e.g., imposition of active court supervision and treatment) is generally substantially accelerated from that of the traditional process. In pre-plea or post-plea programs, the defendant enters treatment within less than one week following arrest. In post-adjudication programs and programs for probation violators, the timeframe between commission of the offence and Drug Court entry is necessarily longer but still substantially reduced from that of the traditional process — less than 45 days in over half of the programs.

- **Nature and Frequency of Contact between Drug Court and Participant**

Most Drug Court participants are required to appear at court status hearings weekly or biweekly during the first two phases and then monthly as they progress. Most participants have at least three contacts

per week with treatment provider, and some as many as four to five. In addition, all participants are required to submit to frequent schedule of urinalysis — generally twice weekly initially, which is gradually reduced as they progress.

- **Politics Regarding Use of Medications**

Most Drug Courts permit defendants to take medications prescribed by physicians. Most, however, prohibit defendants to use pharmacotherapeutic interventions such as methadone, naltrexone, and antabuse or permit participants to use them for a very limited period until they can withdraw.

- **Responses to Participant Progress and Relapse**

A major premise of the Drug Court is that relapse may well occur as part of the recovery process *as long as the participant continues to attend treatment and court sessions*. Drug Courts are using a variety of measures to address participant relapse as well as progress. Among the measures used to address relapse are to: increase the frequency of court status hearings for the participant; order short-term incarceration (e.g., one to seven days); increase the frequency of the participant's urinalysis; and/or increase the frequency and/or intensity of treatment services for the participant. Among the measures used to recognise participants' progress include: praise from the judge; accolades from peers; promotion of participants to higher program phases; and reduced frequency of status hearings. The frequency of urinalysis is generally reduced only if the participant is progressing to a higher program phase.

- **Response to New Arrests**

Program responses to new arrests vary. Most programs permit defendants to remain in the Drug Court if arrested for a new drug offence, while the new charge is prosecuted. Arrests for violent offences generally result in program termination.

- **Response to Failure to Appear**

Bench warrants are issued by all programs for defendants who fail to appear in court. Over half of the programs have established expedited procedures for the defendant to be immediately picked up, incarcerated, and promptly brought to court. If the defendant fails to appear at

treatment, his/her absence is reported to the court for action on a case by case basis.

- **Response to Positive Urinalysis**

Most Drug Courts respond to positive urinalysis by increasing treatment contacts; imposing other judicial sanctions, including ordering more frequent urinalysis, short-term incarceration, and/or community service.

- **Unsuccessful Termination of Participants**

The most frequent reasons for unsuccessful termination of Drug Court participants are: (1) commission of a new offence that triggers automatic termination; (2) repeated positive urine tests; (3) chronic failure to attend treatment sessions; and (4) repeated failure to appear at court hearings. The judge is the final decision-maker regarding termination.

- **Successful Drug Court Program Completion and Graduation**

Most Drug Courts require a minimum period of participation (generally at least 12 months) for graduation, including a substantial period of sobriety (usually at least four to six consecutive months). Most programs also require defendants to comply with other conditions, including having a stable living situation, employment, payment of fees, and a mentor in the community. Most Drug Courts offer some incentives to defendants for successful participation. In two-thirds of the programs in the U.S., the charges are either dismissed or a plea is stricken; in the remaining 33%, the defendant receives a reduction in his/her sentence or applicable probation period.

- **Changes in Existing Criminal Case Process Required to Implement Drug Court Program**

Four principal changes in the existing criminal case process were required to implement most Drug Courts in the U.S.: (1) establishment of a special calendar for Drug Court cases; (2) assignment of Drug Court cases to one designated judge; (3) establishment of a schedule of extra hearings for judicial review of defendant progress; and (4) special procedures to immediately execute bench warrants for individuals who fail to appear at a Drug Court hearing. Special procedures for early screening of potentially eligible cases were also instituted.

SERVICES BEING PROVIDED

- **Agencies Providing Drug Treatment and Case Management Services**

Drug Courts in the U.S. use a range of agencies to provide treatment services. Slightly over half use private treatment organisations and 15% use local health departments. The remaining programs generally use staff of pretrial service agencies, probation departments or the court. Two-thirds of the Drug Courts use one primary treatment provider and an additional 20% use two to five treatment providers. A few programs use multiple existing treatment providers, particularly in jurisdictions where payment of such services is available through state public assistance programs.

A similar mix of providers is reflected in the range of agencies providing case management services.

In addition to treatment services, Drug Courts are providing a range of physical and mental health services to participants. Almost all Drug Courts provide public health services, including HIV and TB screening and referral. Many programs also provide special services for "dually diagnosed" defendants (e.g., defendants who have mental health problems either caused by or resulting from their substance abuse).

Almost all Drug Courts provide education, job training, employment and other rehabilitation services as well as components to address housing, family, and personal needs (e.g., self esteem, anger management) of participants. Many programs are developing differentiated treatment "tracks" to address the diversity of treatment needs presented by Drug Court clients, and special components to address the ethnic and/or cultural group represented as well as and other "special populations" of the Drug Court (pregnant women, mothers, fathers, persons who have been sexually abused, and others).

- **Adjuncts to Treatment Used**

Most Drug Courts use adjuncts to the treatment services provided, including: relapse prevention; cognitive restructuring; 12-step programs; community mentors; and acupuncture.

- **Child-care Service for Participants while Attending Treatment Sessions**

Approximately 20% of the Drug Courts provide child care services for participants while attending treatment sessions and an additional 35% permit participants to bring children to treatment sessions.

- **Aftercare and Alumni Activities**

Aftercare services are provided or being planned by over 60% of U.S. Drug Courts. In addition, graduates in a number of Drug Courts have spontaneously developed alumnae groups, often with planned functions, newsletters, and mentor service to new Drug Court participants.

- **Oversight/Advisory Committees**

Almost all Drug Courts have oversight committees composed of representatives from legal, medical, education, business, faith, and public health sectors of the local community. Some also have citizen representatives and representatives of local anti-drug initiatives. These oversight committees provide advisory services; guidance in policy and procedural development; and also assist in gaining community support.

PROGRAMME COSTS AND FUNDING SOURCES

The major costs associated with implementing a Drug Court have entailed the following:

- screening and assessment of extent of substances addiction and treatment needs;
- dedicated, intensive out-patient treatment services;
- other rehabilitation and support services (primarily education, vocational training, family counselling, housing assistance);
- case management/referral services;
- supervision of defendants to assure they comply with Drug Court conditions;
- urine testing on a frequent basis;
- general program co-ordination and court management support;
- judicial/staff support; and
- evaluation.

Some of these functions have been obtained through reorganisation of existing staff or services; others have required the procurement of new resources. A variety of outside funding sources has also been used.

Over one-third of the Drug Courts have received local funding from local county governments and the proceeds of special tax levies. One-third have received funding from federal block grant funding programs and 25% have received federal funds, primarily through the U.S. Department of Justice. Two-thirds of the programs also charge participants fees, ranging from \$40 to \$4,300, generally imposed on a sliding scale basis and/or deferred until the participant is employed. As of January 1997, Drug Courts reported a total of \$1,794,192 assessed in participant fees and \$1,206,371 (67%) collected. Twenty-five percent of the programs also report that public assistance funds were used to support at least a portion of the treatment services for the Drug Court.

EXPERIENCE OF THE DRUG COURTS IN THE U.S. TO DATE

As noted above, Drug Courts were designed to achieve the goals of stopping the "revolving door syndrome"; reducing recidivism; reducing drug use; improving the supervision of offenders released in the community; and achieving greater co-ordination and accountability for services provided to criminal justice populations. Not only have these goals been achieved but, in addition, a number of significant unanticipated results have also been realised.

Recidivism rates continue to be significantly reduced for graduates as well as for individuals who don't complete the program. Recidivism rates in terms of **rearrests** range between 2% and 20%, depending upon the characteristics of the population targeted. **Conviction** rates are much lower. Less than three percent of the recidivism reported involves violent offences, almost all of which has involved misdemeanours. Most recidivism involves new drug possession charges or traffic violations arising out of driving license suspensions resulting from the initial charge Drug Court charge.

Participant Retention rates (total graduate plus active participants divided by total number ever enrolled) for Drug Courts remain high, generally between 65 and 85 percent, despite the difficult populations most programs are targeting, the rigid participation requirements of these programs, the recent proliferation of Drug Court programs, and their expansion to more complex caseloads. This high retention rate is estimated to be at least three times that experienced with treatment programs serving criminal justice populations not enrolled in Drug Court programs. Retention rates for programs begun during the period of 1989 — 1992 are similar to those of the more recently implemented programs. Retention rates have also not been negatively affected by the population

size of the jurisdiction served. Drug Courts in large metropolitan areas (e.g., with populations over 750,000) appear to retain participants at a rate similar to Drug Courts in smaller jurisdictions with populations under 200,000, and in rural areas.

Incidents of Relapse decline as the period of program participation lengthens. As noted earlier, Drug Courts are premised on the recognition that relapse will likely occur as a part of the recovery process. The time frames observed to be most common for incidents of relapse among Drug Court participants occur during the first 90 days and then drop off significantly. This descending frequency of relapse incidents reaffirms the importance of the Drug Court approach — the provision of continuing, sustained treatment, even during periods of relapse, until the individual can become clean and sober for sustained periods of time. Incidents of relapse are also noted just prior to graduation, pointing to the need for more sustained aftercare support.

Drug usage, measured by the percent of negative urines for Drug Court participants during frequent, random urinalysis, is being reduced for most *participants*, not just *graduates*, despite the substantial drug usage of these defendants when they enter the Drug Court program.

Educational development and job skill training have become a required component of almost all Drug Courts, in recognition of the strong correlation between literacy, employment, and drug usage.

A very high percentage of defendants have either been able to **retain their employment or have obtained employment** as a result of Drug Court program participation. Almost 70% of Drug Court participants are unemployed at the time of program entry or employed on a sporadic basis. A high percentage obtain employment while enrolled (most Drug Courts require participants to be employed as a condition of graduation). In addition, many of those who were employed at the time of program entry were able to *retain* employment (which they would otherwise have lost because of their arrest and/or pre-trial detention) by demonstrating participation in the Drug Court. Many Drug Courts (Portland and Las Vegas, for example), have a job counsellor on site dedicated to working with Drug Court participants.

The positive impact of Drug Courts on families has been almost indescribable. Not only have many parents (primarily mothers) who were in danger of losing custody of their children regained them as a result of Drug Court participation, but almost every Drug Court judge can testify to the numerous letters of gratitude he or she has received from

mothers, fathers, sisters, brothers, and "significant others" to the Drug Court for reuniting them with the now clean and sober Drug Court participant whom they had heretofore given up as lost. In addition, well over 450 drug free babies have been born to women participating in the Drug Court.

Drug Courts developing close working relationships with broad base of community organisations to promote long-term sobriety and rehabilitation of participants. Defendants are often linked with community mentors shortly after entering Drug Court, through community networks and involvement with local AA and NA groups. Drug Courts also are developing close working relationships with local chambers of commerce, medical service providers, community service organisations, the local educational system, the faith community, and other local institutions to provide broad-based network of essential services to draw upon to serve needs of Drug Court participants.

Drug Courts continue to achieve costs savings for the justice system. All sectors note "cost avoidance" results from reduced recidivism. Among the specific justice system savings reported by jurisdictions that have implemented Drug Courts are the following: (1) reducing the drug caseload of other judges; (2) reducing the probation caseload to permit probation resources to focus on other cases and defendants, not amenable to a Drug Court approach, who warrant their active supervision; increasing the time availability to try civil cases; savings in the use of jail space for pre-trial and sentenced defendants; and savings in prosecutor and law enforcement functions, particularly for court appearance costs.

TASKS NEEDED TO INSTITUTIONALISE DRUG COURTS IN THE U.S. JUDICIAL PROCESS

When asked what tasks were needed to institutionalise their Drug Court program, Drug Court judges most frequently cited: (1) development of a stable funding source; (2) development of ongoing evaluation data demonstrating the effectiveness of the Drug Court program; and (3) increasing the support of other members of the bench, local government officials and community organisations. Interest in Drug Courts continues to grow in the U.S. — not only in terms of the number of programs developing but in expanding current programs as well. While there is still a health debate as to whether serving as a Drug Court judge is an appropriate judicial function, there is increasing recognition among both the bench and bar of the significance of Drug Court programs in the

local judicial process. To date, almost all of the more than five hundred judges who have served as Drug Court judges report that their service was an extremely positive experience and many have requested either an extension of their assignment or another rotation into it.

Report to Working Group on a Courts Commission The Infrastructure To Drug Courts

By

Marilyn McCoy Roberts
Director, Drug Courts Program Office,
Office of Justice Programs,
U. S. Department of Justice.

Drug treatment courts in the United States are a local initiative. Each one is different, designed to address the unique substance abuse problems of a locality by using the available local resources. The court is the core of a collaborative effort that joins the criminal justice system with the community treatment system. The leadership to begin a Drug Court usually comes from a judge, but sometimes from a concerned prosecutor or defence lawyer or treatment provider. Leadership is important to the development and long term stability of these court innovations, because they are not easy programs to implement in that all the key players must take on new roles to achieve a new goal.

Drug Courts are a new approach to using and co-ordinating community resources to address the many problems of the substance abusing criminal justice population. What are the critical components and the resources necessary to create a treatment Drug Court?

First, the judge, prosecutor and defence attorney agree that their common goal is to achieve law abiding behaviour and sobriety for the substance abusing offender. They agree to a non-adversarial court process and to a close partnership with substance abuse treatment

providers. The judge supervises the offender's participation in treatment over a long period of time, usually one year or longer.

Substance abuse treatment is a key component in the Drug Court. Intensive outpatient treatment is the usual therapy for Drug Court participants, however, it is important that detoxification and residential services be available as needed. Supervision in the community is generally provided by pre-trial services, probation or court case managers.

Since most criminal justice offenders have many other problems in addition to substance abuse or addiction such as homelessness, joblessness, education and vocational training deficits, as well as health and mental health problems, it is important that all of these issues are addressed during the program period. It is therefore important to engage community resources to address these many problems.

What is the advantage of the Drug Court approach? Judges and attorneys find that this approach produces accountability for the offender — finally the offender must learn to be accountable for his/her behaviour and finally become a productive citizen. Judges and attorneys receive regular feedback about offenders change behaviour before them. This is a new experience for judges and attorneys who have experience in dealing with the substance abusing offender population.

Some jurisdictions are seeing cost savings as a result of Drug Courts — less jail time, fewer court appearances for new crimes. Other long term benefits come from offenders becoming healthy, productive citizens, thereby reducing the crime rate and reducing public welfare costs.

Many American Drug Courts have been started without new funding streams, but through the reallocation of existing resources. Once the Drug Court concept is accepted, judges and attorneys reallocate their time to deal with substance abuse cases in a different way. Often when the court team approaches the substance abuse treatment community, there are treatment resources that can be reallocated to the Drug Court program, for example public dollars that are currently spent on one program can be redirected to the Drug Court program. Treatment providers also collect fees from insurance companies, the public health care system, and sometimes from criminal justice clients.

Drug Courts with limited resources available for treatment or other services have started small, using available services. As Drug Court programs have been able to show their success, it has been easier to engage community and business leaders in the program. Because the court is monitoring the behaviour of defendants in the program

businesses are more willing to provide jobs and the community leaders more willing to provide services such as job training, health care, and education.

It is important to collect data about the Drug Court participants from the beginning of the program so that individual progress can be monitored and so that the overall program can be evaluated. An evaluation design must be a part of the initial program planning. Program impact data are critical to gaining greater funding support for Drug Courts. County and state legislators will pay attention to program statistics that prove reduced crime and tax savings. These local and state politicians are also impressed when they attend Drug Court and see and hear for themselves the stories from participants of changed lives.

Drug Courts in the United States have become a federal, state and local partnership. Drug Courts remain a local phenomenon, designed to meet local community needs and drawing on local resources. Local Drug Courts, however, have successfully leveraged county and state tax dollars, as well as a variety of federal grant programs, by showing that this new approach to managing substance abusing offenders works.

The federal grant program created in 1994, administered by the Department of Justice, Office of Justice Programs, provides support for planning Drug Courts, seed money for beginning new Drug Court programs, and improvement funds for existing Drug Courts to add services or serve more offenders. The training and technical assistance provided with these funds relies on the experience of practitioners and encourages the establishment of a diverse funding base and written policies and procedures to ensure long term stability.

APPENDIX F

Letter to Chairwoman of Working Group

FROM
JUDGE PATRICK MORRIS,
SAN BERNARDINO SUPERIOR COURT
SAN BERNARDINO,
CALIFORNIA.

CHAMBERS OF
THE SUPERIOR COURT
SAN BERNARDINO, CALIFORNIA.

PATRICK J. MORRIS, JUDGE

16th February, 1998

Mrs. Justice Susan Denham,
The Supreme Court,
Dublin 7, Ireland.

This correspondence is not intended to be a primer on how Drug Courts operate or a recital of the principles that govern these courts. Caroline Cooper's working paper and the printed materials from the National Association of Drug Court Professionals and the U.S. Department of Justice adequately covers these subjects. Rather, I intend to share some random observations about implementing a Drug Court in Ireland.

I. Having talked to judges from all levels of Ireland's court system, observed calendars being called in Circuit and District Courts and read the Department of Justice's description of the Irish Judicial system, I am

persuaded that the District Court is the most logical court in which to pilot a Drug Court. Why?

- (a) It is the arraignment court or point of first contact with most drug-addicted defendants and thus will enable you to engage addicts early on in recovery programs.
- (b) The atmosphere in the courtroom is user-friendly. The judge and support staff appear to be approachable and accustomed to exchanging important information informally, and quickly. I noted considerable collegiality between the judge, the prosecutor, defence attorney, arresting officer, and the probation officer. It is in this atmosphere that busy treatment courts thrive.
- (c) The District Court call calendar year-round. Continuing judicial oversight of the progress of recovering addicts is essential in Drug Court and, as I understand it, the District Courts do not break for lengthy summer, Christmas and Easter holidays.
- (d) District Courts sit throughout the nation. Therefore, a pilot project in Dublin could be easily expanded to other regions of Ireland.

Use of the District Court as your Drug Court situs may require some legislative changes to permit their court to deal with defendants both pre and post plea.

II. Select your first Drug Court judge with great care. Most critically, this judge must philosophically "buy-into" the idea of restorative justice; that is, hold a belief that it is possible to "rehabilitate" and "reintegrate" offenders in a way that they are able to live freely and responsibly in a community. He or she must be willing to learn about the compulsive and relapsing nature of drug addiction and the limitations of judicial coercion as a drug rehabilitation tool.

The Drug Court judge's leadership skills in developing a collaborative model of justice will be vital to the success of the program. He or she must be prepared to share power and co-ordinate efforts with a broad team. Good communication skills are essential. The judge must be able to articulate the Drug Court concept to all who have an interest — from the addict standing before the court, to the leaders in the community and the reporters from the press. It will be important that this judge be willing to leave the bench and enter the community in order to educate and build public support for this new model of jurisprudence.

Finally, your first Drug Court judge must have staying power. The judge should be willing to commit a number of years to this enterprise. Warren Bennis, a distinguished professor at the University of Southern California, who has written several books on leadership, concludes that, "leadership is the ability to translate ideas into reality and sustain them over time".

As with all efforts of systems' change, Drug Court leadership is exhausting. It would not be inappropriate to provide the leader judge and support team with the benefit and reward of travel to the United States for education and training. There is much to be learned and nothing matches firsthand observation and training.

III. The Drug Court movement exploded upon the judicial landscape in the United States because judges saw the futility of "simply" locking up addicts for long periods of time and expecting a change in behaviour. The challenge has been to persuade lawmakers and administrators to embrace alternatives and reallocate resources from prisons to treatment. It has been a tough, slow sell. America's Drug Court movement has benefited greatly from a vibrant self-help community of recovering addicts and alcoholics. Because Alcoholics Anonymous, Narcotics Anonymous, and Cocaine Anonymous are everywhere and cost-free, we have come to rely substantially upon these 12-step programs.

You begin with a different scenario in Ireland. The position papers written by the majority party, Fianna Fáil, make it clear that you have threshold support from public policy makers. What a great advantage for Irish society! It remains for the judiciary to embrace the structural changes required to administer Drug Courts and document the budget requirements of treatment. Don't be shy about your needs. In your budget planning include not only money for frequent drug testing, drug counsellors, and probation officers, but also request dollars for general education, job training, healthcare, parenting, and anger management courses. A network of residential treatment facilities, ranging from seven-day detoxification beds to long-term programs is also critical. The Coolmine program is a good start, but much more is needed.

One of your important challenges will be to assist your recovering addicts to build a strong 12-step support system, within the community, that will be there for them *long after* the court terminates its jurisdiction. Addiction is a relapsing brain disease, and long-term sobriety requires a daily commitment to sobriety supported by recovery groups.

IV. The planning process is important. You should be as inclusive as possible, inviting not only the traditional criminal justice players, but the treatment community, education institutions, and public health and welfare agencies. Faith leaders are also important, for they provide strong philosophic support for the concept of restorative justice and have resources to offer. Here in the States, many churches play a leadership role in providing residential treatment facilities, and offering housing for 12-step meetings.

However, don't let the planning process drag on. Set yourselves a tight planning time line and stick to it. I would suggest six months for planning and training, with a late summer or early fall start up of your pilot Drug Court. The mantra of Drug Court judges in America is "JUST DO IT!" That motto reflects the reality that a simple design and modest start is preferred over a prolonged and intricate planning process that tries to anticipate and solve all conceivable problems in advance of implementation. Well-defined goals and the goodwill of all participants will overcome most of the problems you encounter in your first year of operation. Regular and frequent meetings of the Drug Court team are essential to assess the progress of the program and make needed modifications during the early months of operation.

V. This new concept of judicially led restorative justice has many other applications that you will want to investigate. Special domestic violence courts, drunk driving courts, juvenile Drug Courts, and community courts are becoming a part of the judicial landscape of America. All are documenting a more cost-effective and humane approach to repairing families and communities than relying on traditional ideas of retributive justice.

I wish you greatest success as you and your Working Group prepare your report and move forward with planning and implementation. If I can be of any further assistance, please feel free and call upon me. It was an honour and privilege to be a member of the team invited to visit and share ideas with you. My expectations about the beauty of the Irish people and the land did not match the reality of my experience with you. You are so much more! I came home so very proud of my heritage.

With warmest regards,

Patrick J. Morris,

Judge of the Superior Court.

Drug Treatment and Testing Order: Background and Issues for Consultation, 1997

HOME OFFICE PUBLICATION

(ENGLAND AND WALES)

THE HOME OFFICE CONSULTATION PAPER DRUG TREATMENT AND TESTING ORDER: BACKGROUND AND ISSUES FOR CONSULTATION IS CROWN COPYRIGHT AND HAS BEEN REPRODUCED BY PERMISSION OF THE CONTROLLER OF HER MAJESTY'S STATIONARY OFFICE.

The following outline of the order is based on the outline proposals in the document "Breaking the Vicious Circle". This paper does not commit the Government to the details of the proposed scheme.

Summary of the proposal

2. Relatively little use has been made of the existing arrangements under Schedule 1A(6) of the Powers of Criminal Courts Act, 1973 (as inserted by the Criminal Justice Act, 1991) to impose treatment as part of a sentence. Recent inspection findings indicate that the main reasons for this are:

- the Home Office and probation service policy position in relation to use of the disposal was neutral and no guidance on use of the disposal was issued to sentencers;

- reluctance on the part of probation officers to make such proposals in their pre-sentence reports, based on the view that coerced treatment is unlikely to be effective;
- lack of information for sentencers on what is available, what treatment involves and how it fits with harm reduction strategies;
- a perception of lack of enthusiasm on the part of treatment providers to operate mandatory programmes;
- difficulties in getting the cost of treatment programmes (especially residential programmes) met by local authorities under the existing community care arrangements and lack of any specific probation budget.

3. The aim of the new Order will be to solve these problems by strengthening the court's power to make an Order, with the offender's consent, requiring the offender to undergo treatment for their drug problem either as part of or in association with an existing community sentence. It will be targeted through screening out serious drug misusers with a view to reducing the amount of crime committed to fund a drug habit.

Two crucial differences between this new Order and the present treatment requirement are that the court will have regularly to review the offender's progress on the Order and that drug testing will be mandatory.

4. The success of any new legislation will depend on the availability of treatment and the resolution of cultural differences between the criminal justice system and treatment providers, underpinned by strong interagency arrangements. It is proposed that the probation service should be funded to purchase treatment directly. The probation service would be required to submit a proposal for funding to the Home Office which would follow a strict contractual specification, the details of which are to be discussed in these consultations. The local DAT would be consulted on the proposal.

Eligibility for the order (as set out in legislation)

5. We believe that any offender who is dependent on or has a propensity to misuse controlled drugs, and whose dependency is such as requires and may be susceptible to treatment, should be eligible for the order on the recommendation of the probation service; it will not

therefore be possible to make the order without a Pre-Sentence Report (PSR). The court would not be required to make any judicial finding as to the offender's misuse of drugs, much less specifying which drugs. The issue is the offender's criminality and the court, having received a PSR assessment from a probation officer and, if it is so proposed, obtained the consent of a treatment provider, will decide whether the offender in question is suitable for the order.

WE WOULD WELCOME VIEWS ON THIS PROPOSAL

Eligibility for the order (in practice)

6. In practice, experience has shown that initiatives such as this only work when mutual understanding and agreement about the aims of the order and the way it will work have been reached between the sentencer, probation service and treatment provider; police co-operation in providing accurate and timely intelligence is also crucial. Guidance will be issued to probation services on assessment for the orders; some guidance will also be issued to sentencers but it is the probation service who will be crucial in assessing the offender and recommending the order.

7. It is envisaged that the order will be aimed at drug misusers who are known to commit a high level of crime in order to fund their habit or are violent and who show some degree of willingness to co-operate with treatment. In practice, the contract specification will need to address the need for speed, promptness and accuracy of assessment. Existing arrest referral schemes should be used to the full and replicated according to best practice wherever possible. The role of the PSR will be central and, where arrest referral schemes would not be practical, consideration should be given to specialist probation assessors establishing effective contracts in police stations to assist in early informal assessment. (The resource implications of this will need to be assessed). In practice, many of the offenders who end up being sentenced to the testing and treatment order will already be known to the probation service and the police.

WE WOULD WELCOME VIEWS ON THE SCREENING PROCESS

Consent

8. It is envisaged that the consent of the offender and the treatment provider would be needed for the court to make such an order. One of

the options available to the court in the event of the offender withholding consent would be to sentence him or her to imprisonment.

WILL THERE BE CIRCUMSTANCES IN WHICH OTHER SANCTIONS (FINE, OTHER COMMUNITY SENTENCE ETC.) WOULD BE A SUFFICIENT ALTERNATIVE?

The role of drug testing

9. It is unlikely that it will often, if ever, be necessary for drug testing to take place before the order is made though it may be desirable for the legislation to leave this at the court's discretion. There are several reasons for this approach:

- it would be extremely expensive to test everybody coming before the courts;
- the quick metabolization of certain of the most serious drugs means that detection may not be possible at the time of testing;
- arrest/trial may both take place well after the commission of the offence;
- a pre-conviction test would be difficult legally to enforce;
- a post-conviction, pre-sentence test can be too easily influenced by the offender.

It is therefore envisaged that testing will be primarily an enforcement tool.

WE WOULD WELCOME VIEWS ON THIS

10. It is vital that the PSR writer is equipped with the skills necessary both to identify the presence of a drug problem and to persuade offenders, if necessary in conjunction with the treatment provider and the court, that it is in their interest to consent to the order. But the PSR must also contain a specialist assessment for the benefit of the court. The cost of that assessment must be calculated and included in the draft tender.

11. We believe that the purchasing specification should set out the minimum requirements for post-sentence testing. In our view, the

offender should be tested *at least* on a weekly basis. In many cases, it is hoped that the use of a broad-range test screening for a variety of drugs will enable the treatment provider to persuade the offender to disclose any continuing drug misuse and to tackle the reasons for it. This would negate the necessity for the use of the more expensive tests more frequently than necessary *unless* there is some reason for suspecting that the offender is "under-reporting" the type or level of misuse that is taking place.

12. Testing in isolation has been shown to become ineffective after quite a short period whereas if it is carried out in association with treatment it can be motivational. We therefore think that it should be the presumption that the person who carries out the tests should normally be the treatment provider. Confirmatory tests for evidential purposes would have to be analysed by a laboratory and the results made available to the court via the probation service. But there could also be circumstances in which it makes sense for the probation officer, GP or an independent clinic to carry out this type of testing. The arrangements to be employed should be agreed locally and set out as part of the contract tender but should not be so rigid as to *prevent* someone other than the person specified carrying out a test.

WHO SHOULD DO THE TESTS?

FREQUENCY OF TESTING

TYPE OF TESTING — COSTS

Court powers/involvement

13. Current arrangements have led to the making of unclear orders which are not enforced properly. Evidence from the UK and USA also seems to show that the court can have a positive role in reinforcing the offenders' sense of the seriousness of their position. In the Government's view, the regular involvement of the sentencer is central of the effectiveness of the order and it therefore wishes the court to undertake reviews on a more structured basis.

14. For the order to be enforceable, the court needs clearly to define its terms. The sentencer's pronouncement and, most importantly, the wording that appears on the order itself are therefore crucial. The Government believes that the court should be required to specify in the order the location (residential or non-residential), length/frequency, and provider of the treatment, after consultation with the probation service and treatment provider, though not its precise nature.

15. Where there has been no PSR recommendation, the court should nonetheless have the power to request an assessment for the testing and treatment order where drug misuse appears to it to have been a factor in the offence.

SHOULD EACH COURT BE ENCOURAGED TO USE PREPARED WORDING IN SENTENCE PRONOUNCEMENTS AND COURT ORDERS AND THE PROBATION SERVICE TO DO THE SAME IN PSRs? HOW PRESCRIPTIVE CAN THE COURT BE AT THIS STAGE?

16. It is envisaged that the court should review the progress of the order on a regular pre-set basis (the *minimum* frequency will need to be decided, but more frequent hearings in the initial stages of the order will probably be beneficial — the Government envisages that hearings should be held at periods of not less than one month). In addition, of course, breach hearings might double up as review hearings. The costs of these hearings will need to be assessed. There needs to be further discussion of the purpose of such hearings and the necessity for them to be held on a regular basis. One option is that an initial mandatory hearing should be held after three months, following which reviews should only be held at the request of the treatment provider or probation service. Alternatively, the law could state that reviews should be held no more than, say, monthly, but at least every four months (with the possible addition of breach hearings). Ministers are clear that some review hearings must take place throughout the order.

**MINIMUM FREQUENCY OF THE HEARINGS
SHOULD OFFENDERS HAVE THE RIGHT TO REQUEST A HEARING?**

17. The court should have the power at review hearings to vary the conditions of the order, with the consent of the treatment provider. Offenders will have to consent to any variation of conditions, a possible sanction for withholding consent being imprisonment. But the court would have no power other than at a breach hearing to imprison an offender. Thus, if it appeared to the court at a review hearing that the offender was not complying with the conditions of the order (rather than simply not responding well to the treatment) then it would have to request the probation service to prepare a breach application. It is not clear whether, having consented to undertake treatment, the offender

should have the right to legal aid at review hearings, where he or she will be liable to have the treatment, but not the sentence, varied.

18. One way of reinforcing the court's influence over the course of the order is for the sentencer to reserve to him or herself the conduct of future review or breach hearings in the case. However this may not be practicable. Any proposals as to how enhanced sentencer involvement could be achieved would be greatly welcomed.

POWER TO VARY CONDITIONS ON REVIEW — HOW WILL THIS OPERATE IN PRACTICE?

IMPACT ON LEGAL AID AND OTHER COSTS

SANCTION OF IMPRISONMENT ON REFUSAL OF CONSENT — SHOULD THIS BE AUTOMATIC?

SHOULD COURT BE ABLE TO REQUEST A BREACH APPLICATION? IF NOT, HOW WILL THE COURT IMPOSE ITS JUDGMENT?

Enforcement

19. Offenders will be brought back to court within the order in two ways: at the regular scheduled court hearings and on breach action. Clear expectations of both the probation service and the court will need to be defined. Courts will need to recognise that drug dependence is a relapsing condition and that a degree of test failure is to be expected. Of course, the offender may also appear in court to face new charges. In these circumstances the probation officer, treatment provider and, if possible, the sentencer should be reconvened to consider how to proceed (although the new offence may not be known to the probation service or the court, or the offence may be tried in a different jurisdiction). The Government believes that sentencers should always give consideration to the possibility of continuing the order, possibly under different conditions, although immediate revocation on a breach application must be an option for wilful and persistent non-compliance. It will, of course, be for the court to decide how to proceed in the circumstances of any particular case.

20. Orders will be enforced by the probation service who will provide the link between the treatment provider and the court. Treatment providers should report regularly to the supervising probation officer, who will be given timely copies of all test results. We also think that treatment providers should make a written, pro-forma report to the probation officer, copied to the court. At the review and breach hearings

both the probation service and the treatment provider will be present, i.e. there will be joint ownership but with the probation service in the lead. These details will be set out in the contract with the provider.

HOW DO WE HANDLE CASES WHERE FURTHER OFFENCES ARE COMMITTED IN DIFFERENT PARTS OF THE COUNTRY? FREQUENCY AND CONTENT OF REPORTS

21. The Government considers that there should be a clear framework for breach, with the probation service retaining responsibility for all aspects of breach proceedings up to the breach hearing. It would seem reasonable to frame this around the existing breach framework: verbal warning, first written warning, second written warning and then a breach hearing. Although the recommendation to the court may be continuation of the order, a breach hearing is a good opportunity to re-engage the offender. The terms for breaching offenders will be set out in the contract specification issued to the probation service and in the contract that they will establish with treatment providers. But each case will need to be considered on its merits and judgments made on each offender's progress.

WE WOULD WELCOME VIEWS ON THIS

Combination with other disposals

22. The Government proposes that the drug testing and treatment order should be free-standing and should be able to be combined with other community sentences. It is not intended to be an additional requirement to a probation order. Nor will it be a substitute for treatment provided under an arrest-referral or bail support scheme. The order will not cover cases of post-release supervision.

23. It would seem reasonable to try to combine the benefits of electronic tagging and of hostels with the arrangements for piloting the testing and treatment orders. There is anecdotal evidence from chaotic drug misusers that tagging has helped impose a degree of discipline on their lives as well as the more specific benefits of preventing them going out to their dealers at particularly vulnerable moments. Hostels have long been used for more serious offenders for whom custody is not required. Many offenders living in hostels have serious drug misuse problems and some examples of best practice in hostels will be identified in the HMIP thematic inspection to be published in the Autumn.

VIEWS WELCOMED

Costs and funding arrangements

24. It is envisaged that a probation service or services would submit a proposal for funding to the Home Officer to follow a specification drawn up after these consultations. The costs of the order would include: the initial PSR and initial and ongoing specialist assessment; court time; provision of treatment; probation and provider attendance at court; reports to courts. The proposal for funding would have to be considered by the local Drug Action Team as part of their commissioning strategy; the extent of their role will need to be considered. The probation service would be given additional 100% funding to purchase treatment from local providers *during the pilot stage*; but it should be stressed that there will only be a limited budget to pay for these orders even during the pilot stage and the pilot cannot be completed demand-led. Even estimating costs is difficult because of the range of treatment that could be applied (estimates range between £2,500 — £10,000 per order) and because we know that the present low take-up of mandatory drug treatment does not reflect the true picture of offender drug misuse. Evaluation of the project will need to be funded. It will include an assessment of the costs involved.

HOW WILL THIS WORK IN PRACTICE?

WHAT HAPPENS WHERE THERE IS MORE THAN ONE DAT COVERING THE PILOT AREA?

SHOULD AVAILABLE FUNDS BE DIRECTED AT TWO OR THREE MAIN PILOTS OR USED TO PUMP PRIME A NUMBER OF LOCAL PARTNERSHIPS REQUIRING RESOURCE COLLABORATION ?

25. If/when the pilots are rolled out naturally, any additional provision will be put into the normal 80/20 probation revenue grant and Revenue Support Grant (RSG).

Treatment, inter-agency and existing arrangements

26. Treatment provided under the order will have a clear criminal justice focus. The contractual specification should ensure this. Account will need to be taken of existing probation service partnerships. Wherever possible, these arrangements should be exploited to make the money available go further. Interagency involvement will be essential in order to determine, for example, arrangements for

information to be given to sentencers; proposals for the wording to be used in sentence pronouncements in respect of each type of treatment available; how to arrange the requirement for court review hearings; agreed protocols on breach and information sharing, other practice and procedural issues; handling of police intelligence; and other issues. It is proposed to establish local steering groups to oversee the pilots.

SHOULD THE LOCAL GROUP BE THE DAT? IF NOT THE DAT, WHAT SHOULD BE THE MEMBERSHIP OF THE LSG, CHAIR ETC.? WHAT TREATMENT IS CURRENTLY AVAILABLE? HOW MUCH OF IT IS SPECIFICALLY GEARED TO THE CRIMINAL JUSTICE SYSTEM? WILL PROBATION PURCHASING POWERS STIMULATE SUPPLY OF SPECIFICALLY CRIMINAL JUSTICE INTERVENTIONS? IS IT FEASIBLE OR DESIRABLE TO RUN THESE SEPARATELY FROM TREATMENT FOR THOSE UNDERGOING VOLUNTARY TREATMENT EITHER AS PART OF AN ORDER OR NOT?

Present S1A(6) requirement

27. The proposal is that where the Testing and Treatment Order is available, courts should not make treatment orders under the present provision. The existing power to order for treatment for alcohol dependency will remain.

Pilots

28. It is as yet unclear how many or widespread the pilots will be. It would seem sensible for the pilot to run for two years to allow a full evaluation to take place.

ARE THERE ANY AREAS PARTICULARLY SUITABLE FOR PILOTS?

WHAT SHOULD BE THE CRITERIA FOR DETERMINING THE MOST SUITABLE AREAS?

Evaluation

29. The pilots will be fully evaluated and will cover e.g. any effects on services for non-offenders, the availability and nature of treatment, the operation of the courts, interagency arrangements, and any differences of interpretation of results at court, probation and treatment provider level.

Training

30. The NACRO pack produced for probation staff provides a useful starting point but more materials will be needed, particularly on management of court mandated treatment. There will be a need for training for probation officers, sentencers and treatment providers.

WHAT TRAINING WILL BE NEEDED, WHO WILL DO IT, AND SHOULD IT BE UNDERTAKEN JOINTLY?

Summary of issues to be covered by guidance

31. Guidance should be issued to probation services, sentencers and treatment providers and will need to be balanced carefully with the training that will be developed. The guidance for probation services will probably be the fullest, as it will be contracting to purchase services. It should cover: the importance of inter-agency consultation and clarity about the aims of the order; the need for a clear specification of requirements to be set out in the contract with treatment providers; planning (funding) and the need for clarity about what category of offender will be suitable for the order; information for sentencers; the importance of good initial assessment and good relations with the police for intelligence purposes; the purpose of review by the court; testing; the role of the probation officer in the order and the need to address the range of needs that the offender presents; the importance of rigorous enforcement; the need to maintain regular contact with the treatment provider; which should be part of the contract specification; the importance of monitoring and evaluation.

32. Guidance to sentencers will need to be discussed in detail with the Lord Chancellor's Department and the Magistrates' Association. However, at this stage, we envisage that it will cover: the aims of the order; the purpose and value of review hearings — the court's position to influence the offender; harm reduction; testing — results and how to use them; circumstances in which the sentencer might call for a pre-sentence test; information to consider on breach; the roles of the probation officer and treatment provider.

33. Guidance to treatment providers will need to be discussed in detail with the Department of Health (although it will also need to cover voluntary sector workers). We envisage that it will cover: the aims of the order; working within the criminal justice system; the role of testing in enforcement; the role of the sentencer and the probation officer.

Crime and Disorder Bill

As introduced in the House of Lords on 2nd December, 1997

Drug Treatment and Testing Orders

Offenders dependent etc. on drugs.

S.48-(1) This section applies where a person aged 16 or over is convicted of an offence other than one for which the sentence —

- (a) is fixed by law; or
- (b) falls to be imposed under section 2(2), 3(2) or 4(2) of the 1997 Act.

(2) Subject to the provisions of this section, the court by or before which the offender is convicted may make an order (a “drug treatment and testing order”) which—

- (a) has effect for a period specified in the order of not less than six months nor more than three years (“the treatment and testing period”); and
- (b) includes the requirements and provisions mentioned in section below.

(3) A court shall not make a drug treatment and testing order unless it has been notified by the Secretary of State that arrangements for implementing such orders are available in the area proposed to be specified in the order and the notice has not been withdrawn.

(4) A drug treatment and testing order shall be a community order for the purposes of Part I of the 1991 Act; and the provisions of that Part, which include provisions with respect to restrictions on imposing, and

procedural requirements for, community sentences (sections 6 and 7), shall apply accordingly.

(5) The court shall not make a drug treatment and testing order in respect of the offender unless it is satisfied —

- (a) that he is dependent on or has a propensity to misuse drugs; and
- (b) that his dependency or propensity is such as requires and may be susceptible to treatment.

(6) For the purpose of ascertaining for the purposes of subsection (5) above whether the offender has any drugs in his body, the court may by order require him to provide samples of such description as it may specify; but the court shall not make such an order unless the offender expresses his willingness to comply with its requirements.

(7) The Secretary of State may by order amend subsection (2) above by substituting a different period for the minimum or maximum period for the time being specified in that subsection.

Requirements and provisions to be included in orders.

S. 49-(1) A drug treatment and testing order shall include a requirement ("the treatment requirement") that the offender shall submit, during the whole of the treatment and testing period, to treatment by or under the direction of a specified person having the necessary qualifications or experience ("the treatment provider") with a view to the reduction or elimination of the offender's dependency on or propensity to misuse drugs.

(2) The required treatment for any period shall be —

- (a) treatment as a resident in such institution or place as may be specified in the order; or
- (b) treatment as a non-resident in or at such institution or place, and at such intervals, as may be so specified;

but the nature of the treatment shall not be specified in the order except as mentioned in paragraph (a) or (b) above.

(3) A court shall not make a drug treatment and testing order unless it is satisfied that arrangements have been or can be made for the

treatment intended to be specified in the order (including arrangements for the reception of the offender where he is to be required to submit to treatment as a resident).

(4) A drug treatment and testing order shall include a requirement ("the testing requirement") that, for the purpose of ascertaining whether he has any drug in his body during the treatment and testing period, the offender shall provide during that period, at such times or in such circumstances as may (subject to the provisions of the order) be determined by the treatment provider, samples of such description as may be so determined.

(5) The testing requirement shall specify for each month the minimum number of occasions on which samples are to be provided.

(6) A drug treatment and testing order shall include a provision specifying the petty sessions area in which it appears to the court making the order that the offender resides or will reside.

(7) A drug treatment and testing order shall —

(a) provide that, for the treatment and testing period, the offender shall be under the supervision of a responsible officer, that is to say, a probation officer appointed for or assigned to the petty sessions area specified in the order;

(b) require the offender to keep in touch with the responsible officer in accordance with instructions as he may from time to time be given by that officer, and to notify him of any change of address; and

(c) provide that the results of the tests carried out on the samples provided by the offender in pursuance of the testing requirement shall be communicated to the responsible officer.

(8) Supervision by the responsible officer shall be carried out to such an extent only as may be necessary for the purpose of enabling him —

(a) to report on the offender's progress to the court by which the order is made;

(b) to report to that court any failure by the offender to comply with the requirements of the order; and

- (c) to determine whether the circumstances are such that he should apply to that court for the revocation or amendment of the order.

Periodic reviews.

S.50-(1) A drug treatment and testing order shall —

- (a) provide for the order to be reviewed periodically at intervals of not less than one month;
- (b) provide for each review of the order to be made, subject to subsection (6) below, at a hearing held for the purpose by the court making the order (a "review hearing");
- (c) require the offender to attend each review hearing;
- (d) provide for the responsible officer to make to the court, before each review, a report in writing on the offender's progress under the order; and
- (e) provide for each such report to include the test results communicated to the responsible officer under section 49(7)(c) above and the views of the treatment provider as to the treatment and testing of the offender.

(2) At a review hearing the court, after considering the responsible officer's report, may amend any requirement or provision of the order.

(3) The court —

- (a) shall not amend the treatment or testing requirement unless the offender expresses his willingness to comply with the requirements as amended;
- (b) shall not amend any provision of the order so as to reduce the treatment and testing period below the minimum specified in section 48(2) above, or to increase it above the maximum so specified; and
- (c) except with the consent of the offender, shall not amend any requirement or provision of the order while an appeal against the order is pending.

(4) If the offender fails to express his willingness to comply with the treatment or testing requirement as proposed to be amended by the court, the court may —

- (a) revoke the order, and
- (b) deal with him, for the offence in respect of which the order was made, in any manner in which it could deal with him if he had just been convicted by the court of the offence.

(5) In dealing with the offender under subsection (4)(b) above, the court —

- (a) shall take into account the extent to which the offender has complied with the requirements of the order; and
- (b) may impose a custodial sentence notwithstanding anything in section 1(2) of the 1991 Act.

(6) If at a review hearing the court, after considering the responsible officer's report, is of the opinion that the offender's progress under the order is satisfactory, the court may so amend the order as to provide for each subsequent review to be made by the court without a hearing.

(7) If at a review without a hearing the court, after considering the responsible officer's report, is of the opinion that the offender's progress under the order is no longer satisfactory, the court may require the offender to attend a hearing of the court at a specified time and place.

(8) At that hearing the court, after considering that report, may —

- (a) exercise the powers conferred by this section as if the hearing were a review hearing; and
- (b) so amend the order as to provide for each subsequent review to be made at a review hearing.

(9) In this section any reference to the court, in relation to a review without a hearing, shall be construed —

- (a) in the case of the Crown Court, as a reference to a judge of the court;
- (b) in the case of magistrates' court, as a reference to a justice of the peace acting for the commission area for which the court acts.

Supplementary provisions as to orders

S.51-(1) Before making a drug treatment and testing order, a court shall explain to the offender in ordinary language —

- (a) the effect of the order and of the requirements proposed to be included in it;
- (b) the consequences which may follow (under Schedule 2 to the 1991 Act) if he fails to comply with any of those requirements;
- (c) that the court has power (under that Schedule) to review the order on the application either of the offender or of the responsible officer; and
- (d) that the order will be periodically reviewed at intervals as provided for in the order (by virtue of section 50 above);

and the court shall not make the order unless the offender expresses his willingness to comply with its requirements.

(2) The court by which a drug treatment and testing order is made, or amended under section 50(2) above, shall forthwith give copies of the order, or the order as amended, to a probation officer assigned to the court, and he shall give a copy —

- (a) to the offender;
- (b) to the treatment provider; and
- (c) to the responsible officer.

(3) Schedule 2 to the 1991 Act (enforcement etc. of community orders) shall have effect subject to the amendments specified in Schedule 3 to this Act, being amendments for applying that Schedule to drug treatment and testing orders.

Probation and Welfare Service

**A SURVEY OF COMPLIANCE WITH SUPERVISION ORDERS
REFERRED BY DUBLIN CIRCUIT COURT,
JANUARY — DECEMBER, 1996.**

Suzanne Vella

Senior Probation and Welfare Officer

The Survey of outcomes of supervision orders from Dublin Circuit Court was undertaken in the period January — December, 1996.

In the sample survey 127 outcomes were examined at the point where supervision by the Probation and Welfare Service was terminated.

While 12 orders came from the District Court on appeal, 115 were convictions for serious crime dealt with by the Dublin Circuit Court.

The sample comprised 8 females and 119 males.

68% completed supervision without any evidence of re-offending.

All cases of non-compliance with the Court Order were promptly re-entered in Court.

Cases re-entered in Court are listed for hearing within 2 weeks.

Most cases re-entered in Court resulted in custodial sentences. In some cases, warrants for arrest were issued.

Given that the majority of those cases were re-entered in Court for non-compliance with the Court Order received custodial sentences, it can safely be presumed that had supervision not been considered by the Court, substantial custodial penalties might have been imposed initially.

In 59% of cases clients were placed on supervision on conviction of property crimes.

Crimes against the person accounted for 36%.

Most positive responses were from those convicted of sex offences, handling stolen property and arson.

Least positive responses were from those convicted of car-related offences, forgery and fraud.

Apart from over 35's who were compliant in 89% of cases, age does not appear to be a significant factor in compliance and non-compliance with Court Orders.

	COMPLIANT	%	NON-COMPLIANT	%
JANUARY	8	(53%)	7	(47%)
FEBRUARY	7	(58%)	5	(42%)
MARCH	8	(61%)	5	(39%)
APRIL	3	(42%)	4	(58%)
MAY	7	(77%)	2	(23%)
JUNE	8	(66%)	4	(34%)
JULY	13	(68%)	6	(32%)
AUGUST	7	(100%)	0	(0%)
SEPTEMBER	4	(80%)	1	(20%)
OCTOBER	5	(71%)	2	(29%)
NOVEMBER	5	(71%)	2	(29%)
DECEMBER	11	(78%)	3	(22%)

TOTAL NUMBER OF CASES, 127
COMPLIANT, 68% — NON-COMPLIANT, 32%

OFFENCE	COMPLIANT	%	NON-COMPLIANT	%
ROBBERY	35	(63%)	20	(37%)
STOLEN PROPERTY	2	(100%)	0	(0%)
FORGERY/FRAUD	2	(50%)	2	(50%)
ABH/GBH	6	(66%)	3	(34%)
MALICIOUS DAMAGE	3	(75%)	1	(25%)
DRUGS	18	(78%)	5	(22%)
CAR OFFENCES	5	(55%)	4	(45%)
SEX OFFENCES	7	(87%)	1	(13%)
FIREARM/WEAPON	4	(66%)	2	(34%)
ARSON	4	(100%)	0	(0%)

COMPLIANT, 68% — NON-COMPLIANT, 32%

YEARS	COMPLIANT	%	NON-COMPLIANT	%
15-18	4	(80%)	1	(20%)
19-24	25	(59%)	17	(41%)
25-30	28	(70%)	12	(30%)
31-35	12	(60%)	8	(40%)
OVER 35	17	(89%)	2	(11%)

COMPLIANT, 68% — NON-COMPLIANT, 32%

A Twelve Monthly Medical Review of the Drug Treatment and Detoxification Unit at Mountjoy Prison

COMPILED BY: DR. DES CROWLEY MB, MICGP.
MEDICAL OFFICER TO THE DRUG TREATMENT UNIT

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1. Preface
2. Patient Profile
3. Treatment Outcomes
4. Recommendations

1. PREFACE

A drug detoxification and rehabilitation unit opened in the Mountjoy prison in July, 1996.

This unit is now up and running for twelve months. The program consists of an eight week cycle. Two weeks of detox and six weeks of rehabilitation. Nine or ten suitable prisoners are selected for each program. Selection is based on an interview where a prisoner's motivation, drug use, and length of prison sentence are assessed by representatives of the probation staff and prison officers. Usually for Methadone, detox is assessed on a complete drug history and on urinalysis. Usually fifty per cent will require detox. Dosage of Methadone is dependent upon quantity of heroin used. Patients are usually started on thirty to fifty milligrams and are detoxed by two to five milligrams

daily over a period of ten to fourteen days. Symptomatic relief is provided. Patients receive Zimovone for sleeping difficulties; Motilium for GIT symptoms, Mefenamic acid for muscular discomfort. Patients continuing to have withdrawal symptoms after completion of their Methadone detox receive Lofexidine for a further one to two weeks depending upon severity of symptoms. To date, of the thirty six prisoners receiving detox, thirty five have successfully completed the detox with the above regime. Patients who have a long history of Benzodiazepine abuse receive a four to six week Benzo detox. This consists of reducing their Benzo intake by five to ten milligrams every two to three days. Again, all patients have successfully detoxed from Benzodiazepine prior to discharge from the program. Once the detox is completed patients enter the rehabilitation phase of treatment. Four agencies are involved with providing the rehabilitation component of the program. These are the *Probation and Welfare Services, Ballymun Youth Action Project, Coolmine Therapeutic Community, and Anna Liffey Drug Project*. Each agency has devised a curriculum for the six week period and these are available through the respective agencies. *Coolmine Therapeutic Community* also provide a family group for family members of the prisoners involved. The *Probation and Welfare Services* also meet family members prior to prisoners starting the program. Once patients are in the rehabilitation component the medical issues of HIV, Hepatitis-C and Hepatitis-B vaccination are dealt with. Patients are actively encouraged to test for all three. Testing is usually preceded by an information session provided by the nursing staff and also pretest counselling session provided by the *Probation and Welfare Services*. Follow-up is then arranged depending on result. Hepatitis-B vaccination is monitored and courses are initiated or completed where relevant. At the end of the program patients are transferred to the training unit, *Coolmine* or are given temporary release into the community depending on the patient's suitability.

2. PATIENT PROFILE

- SEX — Male 100%
- AGE — Range 18 yrs — 41 yrs
average 28.5 years

- FAMILY BACKGROUND** — 6% live alone
 25% live with partner
 69% live with family
- 42% have a partner who uses drugs
 38% have partners who do not use drugs
 10% have no partners
- 38% have no children
 62% have children
- Average number of children 1.8%
 Range — 1-5 yrs
 Average age of child — 6.1 yrs
- EDUCATION** — Average age to leave school 13.9 yrs
 Range — 6-11 yrs
 80% sat no recognized examination
 12% sat group certification
 8% sat intermediate certification
- WORK** — 32% have worked or had work experience
 68% have never had job or training experience
- MEDICAL PROFILE** — Hepatitis-C positivity — 65%
 Hepatitis-C status unknown — 35%
- Hepatitis-B negativity — 65%
 Hepatitis-B status unknown — 35%
 Hepatitis-B vaccination completed — 5%
 Hepatitis-B anti-bodies adequate — 0%
 Hepatitis-B vaccination primary course received — 65%
- HIV Test Taken — 40%
 HIV Test Refused — 60%
 HIV Positivity among those tested — 1.2%

DRUG TAKING PROFILE — PREVIOUS DRUG TREATMENT — 100%

DETOX IN PRISON (41)

DRUGS USED —

Heroin	—	100%
Cocaine	—	58%
Ecstasy	—	63%
Cannabis	—	80%
Benzodiazepines	—	80%
Cigarettes	—	97%
Alcohol	—	58%

Average Age of first use of illicit drug — 14.5 yrs

Drug First Used	— Cannabis	— 80%
	— Ecstasy	— 15%
	— LSD	— 5%

INJECTING PROFILE —

IV Drug use	—	90%
Smoking Only	—	10%
Average age first used needle	—	18 yrs
Change from smoking to IV use while in prison	—	20%
Number who shared needles while in prison	—	100%
Number who admitted to using cleaning works in the previous 3 months	—	35%

3. TREATMENT OUTCOME

Eighty-eight patients have now entered the drug treatment programme at *Mountjoy Prison*. Nine of these prisoners are still completing the rehabilitation component of this present cycle. Of the eighty-eight patients only two failed to complete the course. One patient voluntarily discharged themselves from the program. The other patient was

discharged for smoking cannabis. Of the eighty-eight sent to the training unit, four patients are presently in *Coolmine Lodge* and remain drug free. A further twenty-three patients are in the training unit and continue to be opiate free. Four patients are inmates in *Portlaoise Prison* and continue to be drug free. Eighteen patients are presently in *Mountjoy Prison* and only two appear to be drug free. One patient is an inmate in *Cork Prison* and another prisoner is in *Wheatfield Prison* and again both these appear to be drug free. Twenty-six patients are out of prison and six of these are unlawfully at large. Of the twenty-six patients, three are on methadone maintenance programmes, three are drug free, and the remaining twenty have returned to drug use. In summary, of the eighty-eight patients accepted into the programme, thirty-six have returned to drug use. Of the patients in the initial six-month audit, twenty-four of the forty-one have returned to drug use.

4. RECOMMENDATIONS

The drug detox unit has proven to be a huge success. We have a successful completion rate of 98%. We have proven that prisoners who are motivated and who are given an opportunity to engage in a structured detox and rehabilitation programme and whose environment is made drug free through strict regulation visits will successfully stay off illicit drugs. However, once the prisoner is placed in a less secure and regulated environment in terms of illicit drug availability there is a huge potential for this prisoner to relapse. To decrease our three and six monthly relapse rate we need to urgently review the treatment available to detox patients in the drug free unit. After our six-month review a limited after care programme was put in place with the view of improving our relapse rate. This has been somewhat successful with only thirteen patients relapsing in our last six months as opposed to twenty-seven in our first six months. However, the aftercare is still inadequate and the patients find it difficult coming from an intensive detox programme to a much less disciplined after care follow-up. The employment of a full time counsellor to co-ordinate and to provide one-to-one counselling is an urgent priority.

Prisoners who fail to abide by the rules in the training unit have been returned to the main prison. Some have not restarted illicit drug use and were returned to an environment where it is extremely difficult to stay opiate free. While I understand perfectly the need to maintain rules and regulations in the training unit and the necessity for strict criteria to the continuing success of the unit, I feel that a "halfway house" may be appropriate for patients who break disciplinary rules and who have had

cannabis positive and alcohol positive urines. In this environment they may stay drug free and be returned after a period to the training unit. Most of the patients discharged to the community have returned to drug use. This may be avoided by connecting the patient to a treatment center before release where they can get appropriate counselling and follow-up care in the community.

From the available statistics on the drug taking profile of the prisoners who entered the detox program, it is alarmingly obvious that an extension of the drug treatment facilities is required at *Mountjoy Prison* in the very immediate future.

Ninety per cent of the prisoners entering our programme were IV drug users, twenty per cent had become IV drug users while in prison. The reason for changing from smoking to IV use was because of limited availability of heroin in the prison. All prisoners on the programme gave a history of having shared needles while in prison. All prisoners with history of IV drug use who went for Hepatitis-C screening were positive and of the thirty-nine per cent of the prisoners who had taken an HIV test only one was positive. The rate of Hepatitis-C is quite alarming and, while reflecting community levels of Hepatitis-C among IV drug users, it is significant that all the prisoners had shared needles in the prison while they were Hepatitis-C positive. Sharing needles while in prison is a significant source and root of the spread of both HIV and Hepatitis-C. To avoid the sharing of needles Methadone maintenance treatment is urgently required in the prison. This applies both to maintaining Methadone maintenance which has been initiated in recognized treatment centers in the community and also the initiation of maintenance treatment *denovo* in prison. I feel that Methadone maintenance should initially be offered to people stable in community clinics when they come to prison. A procedure has started which will enable us to gather the names and numbers of such people who would be suitable for this treatment. I feel the medical unit is an ideal location for these prisoners. The present compliment of medical staff would suffice to offer Methadone maintenance to a maximum of fifteen patients. However, certain changes are needed. These changes include better access by nursing staff to the prisoners on a daily basis. A restructuring of the nursing staff with the appointment of a charge nurse and also inclusion of a full-time relief nurse to cover holiday and sick leave. In terms of counselling, I believe a new internal appointment should be made giving one person responsibility for the organization and monitoring of the various counselling components of both the detox and maintenance programmes. This person should liaise closely with

both the medical officer, probation services and psychiatrists. To enable the above services to be implemented efficiently and rapidly a working party should be set up to oversee the implementation of a more complete treatment service for drug addicts in the prison service. Since our last audit a new initiative has occurred in the bottom floor of the medical unit. All patients who are HIV positive and are suitable for methadone maintenance are placed on maintenance with a view to treatment with the very promising triple therapy combination for HIV disease. Again this initiative has proved successful with the prisoners complying to a contract and giving opiate free urines. It is possible to expand this initiative to include community maintenance people with some extra resources. However, space is a limiting factor and this needs urgent attention by the Department of Justice. The idea of a drug free wing with various programmes taking place in tandem seems a good idea and the D wing could be a possible location. Also the separation unit has been mentioned as another option but both of these would require relocation of other prisoner groups. For the time being the most suitable option appears to be the medical unit with the second floor vacated to allow the continuation of methadone maintenance which has been initiated in the community. A final point worth making is that similar drug treatment facilities need to be provided in both St. Patrick's and the Women's Prison.