



WORKING GROUP
ON A
COURTS COMMISSION

FIFTH REPORT

DRUG COURTS

SUMMARY

Le ceannach díreach ón
OÍFIG DHIOLTA FOILSEACHÁN RIALTAIS, TEACH SUN ALLIANCE,
SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
FOILSEACHÁN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
4 - 5 BÓTHAR FHEARCHAIR, BAILE ÁTHA CLIATH 2.
(Tel: 01 - 6613111 — fo-líne 4040/4045; Fax: 01 - 4752760)
nó trí aon díoltóir leabhar.

To be purchased directly from the
GOVERNMENT PUBLICATIONS SALE OFFICE, SUN ALLIANCE HOUSE,
MOLESWORTH STREET, DUBLIN 2,
or by mail order from
GOVERNMENT PUBLICATIONS, POSTAL TRADE SECTION,
4 - 5 HARCOURT ROAD, DUBLIN 2,
(Tel: 01 - 6613111 — exl. 4040/4045; Fax: 01 - 4752760)
or through any bookseller.

(Pn. 5186)

£7.00

© Government of Ireland 1998

The Working Group on a Courts Commission consists of:

Mrs. Justice Susan Denham, Judge of the Supreme Court.
Mr. Justice Robert Barr, Judge of the High Court.
Mrs. Justice Catherine McGuinness, Judge of the High Court.
His Honour Judge Esmond Smyth, Judge of the Circuit Court.
Judge Peter Smithwick, President of the District Court.
Mr. Justice Anthony J. Hederman, President of The Law Reform Commission.
Mr. Ken Murphy, Director General of The Law Society.
Mr. John McMenamin, Senior Counsel, Chairman of The Bar Council.
Mr. Ken Wright, Management Consultant.
Mr. John Rogers, Senior Counsel.
Ms. Róisín McDermott, Chairwoman of Women's Aid.
Mr. Kevin Duffy, Deputy Chairman of the Labour Court.

Departmental Representatives

Mr. Caoimhín Ó hUiginn, Department of Justice.
Mr. Comac Cronin, Department of Finance.
Ms. Caitlín Ní Fhlaitheartaigh, Attorney General's Office.

Secretariat

Ms. Marie Ryan, Department of Justice.

Working Group on a Courts Commission,
Four Courts,
Dublin 7.

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.

Table of Contents

	<i>Page</i>
CHAPTER 1	
Introduction	9
CHAPTER 2	
Drug Courts in the United States of America	11
CHAPTER 3	
Drug Courts Elsewhere	14
CHAPTER 4	
The Current Irish System	16
CHAPTER 5	
The Supporting Infrastructure	18
CHAPTER 6	
The Financial Implications	22
CHAPTER 7	
Recommendations	24

Appendices Which Appear in the 5th Report

- Appendix A Deferred Prosecution Agreement for Okaloosa County.
- Appendix B Superior Court of the State of Delaware Expedited Drug Case Management Drug Diversion Petition, Waiver and Agreement.
- Appendix C The Connecticut Experience. Special Dockets at New Haven, Bridgeport, Waterbury and Hartford.
- Appendix D Summary Paper of the Presentation by Ms. Caroline S. Cooper, Associate Director, Justice Programs Office, School of Public Affairs, The American University, to the Drug Conference in Dublin, 31st January, 1998.
- Appendix E Report to Working Group on a Courts Commission from Ms. Marilyn McCoy Roberts, Director, Drug Courts Program Office, Office of Justice Programs, U.S. Department of Justice.
- Appendix F Letter from Judge Patrick Morris, San Bernardino Superior Court, San Bernardino, California.
- Appendix G England & Wales: Home Office Discussion Paper Drug Treatment and Testing Order Background and issues for consultation.
- Appendix H Crime & Disorder Bill as introduced in the House of Lords on 2nd December, 1997.

- Appendix I Probation and Welfare Service A survey of compliance with Supervision Orders referred by Dublin Circuit Court, January — December, 1996.
- Appendix J A Twelve Monthly Medical Review of the Drug Treatment and Detoxification Unit at Mountjoy Prison; Compiled by Dr. Des Crowley, M.B., MICGP, Medical Officer to the Drug Treatment Unit.

CHAPTER 1

Introduction

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 survey found that two-thirds of all detected crime in Dublin is committed by drug addicts. 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.

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.

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.

DRUG COURT

The term "Drug Court" is used, especially in the United States of America, to describe a revolutionary new type of court process. It is a treatment orientated court where a judge dispenses justice with the help

of an integrated team of professionals who provide treatment to the defendant.

The philosophy which underpins the Drug Court is radically new. It involves an alteration in the approach of society and the courts. 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.

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.

CHAPTER 2

Drug Courts in the United States of America

The Drug Court movement is most advanced in the United States of America. 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.¹

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.

Drug Court Models

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

¹ 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.

- (i) The Deferred Prosecution Model
- (ii) The Guilty Plea Model
- (iii) The Stipulated Trial Model
- (iv) The Post-Adjudication Model

2.4 KEY COMPONENTS

The key components of Drug Courts have been defined:²

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

CONFERENCE

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 States³. 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.⁴ 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.⁵

SUCCESS

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. Murphy⁶:—

"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."

³ See Appendix D, Summary Paper of the presentation by Ms. Cooper.

⁴ 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.

⁵ See Appendix F, letter from Judge Patrick Morris to Chairwoman of the Working Group.

⁶ 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.

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. Of these other jurisdictions the work being done in England and Wales was found to be most useful.

ENGLAND AND WALES

The jurisdiction of England and Wales has 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. The paper proposes a drug treatment order scheme, stating:—

"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 **Crime and Disorder Bill**, as introduced in the House of Lords on 2nd December, 1997 seeks to introduce the drug testing and treatment order which will differ in two important respects from the treatment arrangements set out in earlier legislation. 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 Wales.⁷ The proposed legislation has many similarities to the Drug Courts of the United States of America.

⁷ 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.

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.

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.

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.

Furthermore, part of the legislative framework for a Drug Courts System is already in place. In particular the Working Group has noted the provisions in Section 28 Misuse of Drugs Act, 1977 as amended by Section 14 Misuse of Drugs Act, 1984.

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.

Mandatory Sentencing

A mandatory sentence is one fixed by law. 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. 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~~ *be* unjust in all the circumstances to impose the minimum 10 year sentence.

CHAPTER 5

The Supporting Infrastructure

A Drug Court cannot exist in a vacuum. A Judge ordering treatment, as opposed to punishment, 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.

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 is an overview of some of the infrastructure in Dublin which exists and which needs to be expanded.

Health Board Services

There is currently a spectrum of treatment facilities provided under the aegis of the Eastern Health Board. These include:

- 3 residential detoxification units
- 7 addiction centres
- 17 satellite clinics
- 1 mobile clinic
- 1 stabilisation unit (planned)
- Emergency services
- General Practitioner participation

- A Young Persons Programme
- A drugs helpline and
- Aftercare facilities

Other relevant agencies

A number of other bodies play a significant role in this infrastructure. These include:

- The National Drug Treatment Centre — Trinity Court
- Coolmine Therapeutic Community
- Merchant's Quay Project
- Private residential centres
- Various counselling services and
- Self-help groups such as Narcotics Anonymous

The Probation and Welfare Service

The Probation and Welfare Service is a key component of this infrastructure. Currently there are four distinct ways by which the Court may involve the Service in the disposal of criminal cases without resource to custody. These are through: a recognisance under the Probation of Offenders Act, 1907; a recognisance under the Misuse of Drugs Act, 1977; supervision during adjournment; and a Community Service Order.

Within the Probation and Welfare Service the Intensive Probation Supervision Programme (The Bridge Project) is of particular relevance to the issue of Drug Courts. 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 criminal behaviour among participants and will help them to become reintegrated into their communities in a more productive and pro-social way."⁸

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

⁸ Bridge Project Information Sheet

it as relevant as the philosophy of a Drug Courts 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 in the Fifth Report.

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;
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 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.

The Financial Implications

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.⁹ The cost of maintaining a person in prison in 1996 was £46,140 per annum.¹⁰ However, financing is needed for the treatment ordered by the court. It has been the experience of the United States of America that the Drug Court Programmes have saved money for the State.¹¹

"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.¹²

The study concluded that, in Multnomah County, Oregon, 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**

⁹ Figure provided by the Prison Planning Section, Department of Justice.

¹⁰ 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.

¹¹ *Op. cit.* Note 6 at p.487.

¹² *An Outcome Program Evaluation of the Multnomah County S.T.O.P. Drug Diversion Program*, Dr. Michael Finigan, State Justice Institute, 06 January, 1998.

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 University¹³ further underpins the argument that treatment is far more cost effective than the traditional criminal justice system. The study found that successful treatment of offenders can result in such substantial economic savings that in the United States only 10% of those treated need to stay sober and work for one year to yield a positive return on the treatment investment.¹⁴

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.

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.

¹³ *Behind Bars: Substance Abuse and America's Prison Population*. National Center on Addiction and Substance Abuse at Columbia University, January 1998.

¹⁴ *Ibid.*, p.18.

Recommendations

- **Drug Courts Planning Programme**

The Working Group recommends that a Drug Courts Planning Programme be commenced. 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.¹⁵ 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.¹⁶ 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.

- **Drug Courts Planning Committee**

The Working Group recommends that a Drug Courts Planning Committee be formed and 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.

- **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 and

¹⁵ Treatment-Based Drug Courts ... a Guide, (1994) Office of the State, Court Administrator, Florida Supreme Court, pp. 27-65.

¹⁶ 1997 Drug Court Survey Report, Vol. I: Judicial Operations and Perspectives, American University Publications.

would sit on 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. 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.

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 Courts co-ordinator:

- serves as assistant to the judge and provides clarification and direction to the remaining Drug Courts team members;
- co-ordinates the daily interaction of the various agencies involved in the Drug Courts;
- identifies resources to support the Drug Courts Programme;
- maintains statistics monitoring the effectiveness of the Drug Courts Programme; and
- reports on the progress of the programme to advisory boards and/or other appropriate groups.¹⁷

This is not an exhaustive list but does highlight the need for such an individual in a Drug Courts system.

• **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 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

¹⁷ Treatment-Based Drug Courts ... a Guide, (1994) Office of the State Court Administrator, Florida Supreme Court, p.43.

National Association of Drug Court Professionals, which will be held from 4th to 6th June, 1998 in Washington, D.C.; specific training programmes which are developed and operating in the United States; and visit and observe Drug Courts in operation.

- **Goals for Drug Courts Planning Committee**

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.

- **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.

- **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. 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. 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 Working Group recommends that a Drug Courts Programme commence in the District Court.

- **Circuit Court**

As the Drug Courts Planning Programme 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 Committee and judges of the Circuit 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.

- **Drug Court Judges of the District Court**

- (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.

- **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.

- **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.

- **Form of Entry**

There are many forms of entry to Drug Courts elsewhere.¹⁶ 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.

- **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;

¹⁶ See Chapters 2 & 3.

- (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.

- **Drug Treatment Order**

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. 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 he/she had faltered in the treatment programme, e.g., if he/she had failed a urinalysis test. Judge Morris 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.

- **Methadone Maintenance**

In light of the specific type of drug abuse problem 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.

- **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.

- **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.

- **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.

- **Resource Implications — Expert Subcommittee**

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 Courts 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.

- **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.