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## **Executive Summary**

This report, which was commissioned by the Scottish Executive, is based on an 8-day study visit to California by the author in May/June 2000. The visit included attendance at an International Association of Drug Court Professionals Conference, the 6<sup>th</sup> US National Drug Court Training Conference and visits to a number of drug courts in California.

The report describes the workings of a number of working drug courts; reports on such US evaluations of the drug court system as were made available to the author; identifies a number of key components in the drug court approach; highlights recent developments; and considers which aspects of the approach might be applicable in the context of the Scottish Criminal Justice system.

The report focuses mainly on experience in California. But, given that representatives from a number of countries attended the conference, it also considers briefly how some other international jurisdictions have adapted the drug court model.

The drug court model first emerged in the United States in the late 1980s where it was viewed as a way of cutting through frustration with the 'revolving door' of drugs and crime. The model did not emerge out of a vacuum; other methods and programmes had tried to link offenders with drug treatment. Initially drug courts were designed to deal primarily with less serious offenders through diversionary programmes. By 1997, most US drug courts had established probation-based and post-plea programmes for offenders with more serious criminal histories and long-term drug use.

It appears that, where they have been introduced, US drug courts have generated new levels of programme co-ordination within the criminal justice system; have created partnerships with community organisations; have fostered collaboration between government agencies; and have inspired judicial leadership. Within the US alone, there are now nearly 500 separate drug courts in operation, with another 200 in the planning stages.

One of key components of the US drug court approach is a more proactive role for the Judge, who in addition to presiding over the legal and procedural issues of the case, functions as a reinforcer of positive client behaviour. The traditional role of the Judge is not changed. Rather it has been adapted to take on a more problem solving emphasis that draws on the strong interdisciplinary approach of the drug court team. The team element of drug courts involves both prosecutors, defence counsel, case manager, treatment providers and court clerks.

The development and implementation of US drug courts has far outpaced research on their effectiveness. The past few years have, however, seen more comprehensive research studies undertaken. The general consensus from these studies is that drug courts produce significant economic, social and individual benefits; some studies have indicated that drug courts produced savings amounting to seven times higher than the cost of treatment. Research by the RAND Corporation on the relative cost effectiveness of treatment, domestic enforcement, interdiction and source county control found that for 'heavy drug users' treatment interventions through drug courts would cost one-seventh as much as enforcement to achieve the same reduction in drug use.

US drug courts usually employ a multi-phase treatment process, generally divided into a stabilisation phase, an intensive treatment phase, and a transition phase. The stabilisation phase may include a period of detoxification, initial treatment assessment, education, and screening for

other needs. The intensive treatment phase typically involves individual and group counselling and other core therapies. The transition phase may emphasis social reintegration, employment and education, housing services, and other aftercare activities. Frequent status hearings and drug testing are central to monitoring the success of drug court participants. The use of sanctions in drug court, including the use of jail time, has been viewed as instrumental in changing behaviour among drug court participants. Comparison studies have demonstrated that where sanctions and incentives play an essential role the retention rate and outcome of participants in drug court treatment is greatly improved.

Over the past four years there have been a number of expansions, as well as new developments, of the US drug court approach. Re-entry drug courts are one of these new developments. In essence, a re-entry drug court facilitates monitors, supervises and rehabilitates offenders as they are released from prison back into the community. In some jurisdictions where re-entry drug courts operate, an approach called ‘Split Sentencing’ is being used. This is where an offender is required to serve part of his or her sentence in custody with the remaining part in the community, under the supervision of the re-entry drug court. In addition to split sentencing a similar development has been early release pilot projects; the goal of these programmes is to reduce the prison population by providing intensive community based supervision and treatment programmes for eligible candidates who have successful completed the prison drug treatment programme.

Following the success and level of co-ordination created by US drug courts a number of other countries have implemented, or are planning to implement, a drug court model. Ireland, Bermuda and Jamaica are due to have part-time drug courts in operation by the end of the year. England, Australia and Canada have drug courts that have been operational for approximately the past two years; preliminary evaluation findings have been favourable with the result that drug courts are been expanded within each of the jurisdictions.

The experience of the US and other counties, as considered by the United Nations expert group on drug misuse, shows that there is no single module for drug courts. What works best in one jurisdiction may not in another. However, what is particularly evident is the core underlying characteristics are the same. These involve:

- effective judicial leadership (with particular emphasis on review hearings);
- strong interdisciplinary collaboration;
- good team knowledge of addiction, treatment and recovery;
- clear eligibly criteria and screening;
- speedy referral to treatment;
- swift, certain and consistent sanctions and rewards; and
- clear documented consent of the offender.

COSLA’s December 1999 report to the Scottish Executive on alternative ways of dealing with drug offenders had already noted that Scotland has an infrastructure, through the use of the Probation Order, which could be adapted to allow a drug court approach to be implemented here. Courts already have powers of punishment for non-compliance of probation orders. Their powers are not restricted to severe punishment (e.g. imprisonment) by revoking a probation order but

also, and significantly, include powers of summary punishment whilst allowing the probation order to continue.

This report notes that other pre-requisites would need to be in place before a drug court approach could be adopted in Scotland. These would include the availability of sufficient local treatment and testing facilities and other measures to meet any conditions that the court may apply. Investment in comprehensive planning and the development of drug court team training would also be essential to ensure a clarity of purpose, effectiveness, and co-ordination between key players. However, the establishment of full time specialist drug courts in Scotland would not sit easily within the Scottish system and may in any case be impracticable, given other demands on the system. What might be more appropriate would be if identified courts were to reserve a period when they would deal with such cases (up to possibly a half-day each week).

The report concludes that, while drug courts are not a quick or magic solution to the growing problems of drug offending, they appear to have demonstrated benefits in every jurisdiction where they have been introduced not just for those brought before them but also for society more generally in both social and financial cost terms.



# REMIT

## 1. Background

In December 1999, COSLA submitted to Scottish Ministers a report titled 'Alternatives for dealing with drug using offenders'. The report put forward proposals for a new approach to drug offending in Scotland, adopting certain aspects of the drug court model which appeared to be working well in a number of other countries. The report was prepared by a working group chaired by COSLA with representation from the Police, the voluntary sector, local authority criminal justice social work services, the legal profession and a sheriff. The Scottish Executive attended with observer status.

The group had looked at examples of work being done with drug offenders through the courts in a number of countries, including England, Ireland, Australia, Canada, and the United States of America. One approach, which was being applied or investigated in each country, stood out. This was the drug court model. It involved an element of the court system specialised in responding to cases of drug misusing offenders.

As a follow-up to the report, COSLA and Phoenix House jointly hosted a conference 'Dealing with Drug Using Offender – An International Perspective' in April 2000. Conference speakers included Andrew Wells (Senior Legal Adviser for the United Nations Drug Control Programme), Judge Jeffrey Tauber (President, National Association of Drug Court Professionals (USA)), and Judge Paul Bentley (Ontario Drug Treatment Court, Canada).

The conference led to an invitation to me, as COSLA's local government drugs officer, to attend and speak at the International Association of Drug Court Professionals Conference and the 6<sup>th</sup> National US Drug Court Training Conference running between Monday 28<sup>th</sup> May and Saturday 3<sup>rd</sup> June in San Francisco.

It was agreed that I should prepare a report on experience gained while in California. In addition to attendance at the conference, I also arranged a series of meetings with international and US delegates as well as visits to 4 drug courts in the San Francisco area. (A list of those interviewed is given in Annex D.)

### 1.1 Remit

Against this background, the brief set by the Executive for the study visit was to review the experience of American, Canadian and Australian (and other) drug courts and to consider these in the context of the Scottish Criminal Justice system, examining:

- the aspects of the model which would translate most readily to the Scottish system;
- the individual elements which would deliver most benefit and added value;
- the underlying conditions which would make them most successful (type of offender/nature of offence/criminal history);

- good examples of how to create the links between the criminal justice intervention and other essential support services (treatment/rehabilitation/employment/education/training/prisons and throughcare); and
- an evaluation of the key components of infrastructure, which would be essential to a successful adaptation of drug court approaches.



## Chapter 1: Background to US Drug Courts

1. This chapter provides a brief overview of the development of drug courts in the United States, including a description of the key elements involved in the drug court model.

2. In communities throughout the United States, drug courts are changing the way in which the criminal justice system deals with drug-using offenders. Since the first programmes started in 1998, more than 140,000 drug using offenders have entered comprehensive programmes that include frequent drug testing, supervision, treatment, and judicial monitoring and court-mandated sanctions. The main impetus for developing drug courts at a local level came from individual judges who were frustrated at the 'revolving door' of drugs and crime. Nationally, however, drug courts have come to be seen as a part solution to the United States quadrupling of the national prison population since the 1980s (making it the highest among Western democracies). Stringent drug control policies, increasing drug use, and mandatory minimum sentences for drug offences have all contributed to this dramatic rise in prison population. Two out of every five black Americans sent to prison are convicted of a drugs offence, whilst for white Americans the ratio is one in four (Human Rights Watch briefing paper, May 1999). Drug and alcohol use, abuse, and addiction are implicated in the incarceration of 80% (1.4 million) of the men and women currently in prison in the US, according to a 1998 Study by the Centre of Addiction and Substance Abuse (CASA).

2. When drug courts were initially established, they were designed to deal primarily with less serious offenders through diversionary programmes. By 1997, however, most drug courts had established a probation-based and post-plea-based programmes for offenders with more serious criminal histories, and drug histories that often extend back at least 15 years.

3. Most drug courts did not emerge out of a vacuum; other methods and programmes had been tried over the past 20 years to link offenders with drug treatment at various points in the criminal justice process. Some drug courts evolved from existing programmes or efforts to engage defendants in treatment, such as Treatment Alternatives to Street Crime (TASC) programme interventions. But such efforts were often considered to be too fragmented, inconsistently or inappropriately utilised or not (viewed) sufficiently effective. Supervision of treatment often rested on several agencies, and consequently, it was difficult to monitor treatment progress or compliance with court-imposed conditions.

4. As of June 2000, 475 drug courts were in operation across the United States (with another 200 in the planning stages). The key goals of most are:

to reduce drug use and associated criminal behaviour by engaging and retaining the drug-involved offender in programmatic and treatment services;

to concentrate expertise about drug cases into a single courtroom; to address the defendants needs through clinical assessment and effective case management; and

to free judicial, prosecutorial and public defence resources for adjudicating non-drug cases.

5. The drug court model usually entails:

- Judicial supervision of structured community based treatment
- Timely identification of defendants in need of treatment and referral to treatment as soon as possible after arrest
- Regular status hearings before the judicial officer to monitor treatment progress and programme compliance
- Increasing defendant accountability through a series of graduated sanctions and rewards
- Mandatory periodic drug testing

6. The drug court model incorporates a more proactive role for the judge, who in addition to presiding over the legal and procedural issues of the case, functions as a reinforce of positive client behaviour. Although the judge is a central player in the programme, most drug courts seek to function as a team in which prosecutors, defence attorneys and counsellors work together to help offenders over-come their drug problems and resolve other issues relating to employment, finances and family. Defendants who complete the drug court programme either have their charges dismissed (in a diversion or pre-sentence module) or their probation sentences reduced (in a post-sentence module).

7. I was told that it is now generally accepted politically in the US that the collaboration between the justice and treatment/public health systems created by drug courts offers considerable hope for a long-term reduction in drug-related crime and lower jail sentences.

## Chapter 2: Drug Court Evaluation

8. This chapter outlines recent drug court evaluation studies, including cost savings, drug use reduction based on urine tests and recidivism rates among drug court participants. It does not aim independently to prove, or evidence, the overall long-term effectiveness of drug courts but rather to report on national and local research findings.

9. The development and implementation of drug courts has far outpaced research on their effectiveness. As a result of this it has been difficult to evidence fully the success of drug courts for this paper. The first drug court programmes, developed in the late 1980s and early 1990s were 'grassroots' efforts, born out of frustration with 'revolving door' justice. These early programmes often operated on shoestring budgets with little or no capacity to document their effectiveness with independent evaluations. Since about 1996-97 there has been a move to quantify and evidence the perceived success of drug courts with the development of both national and local drug court evaluations programmes. However there are still relatively few comprehensive evaluations conducted on a national basis which have attempted to measure long-term outcomes.

10. The Drug Court Clearinghouse and Technical Assistance Project at American University has published information nationally about the activities and performance of drug courts. The Clearinghouse's 1997 Summary Assessment of the Drug Court Experience, based on information compiled from surveys, observations and through providing technical assistance to drug court programmes points to a number of areas that drug court approaches appear to be more effective than traditional case processing, including;

- Reductions in drug use
- Reductions in recidivism
- Intensive supervision of defendants in pre-trial status and of convicted offenders
- Capacity to promptly respond to non-compliance/relapse
- Capacity to integrate drug treatment with other rehabilitation services to promote long-term recovery
- High retention in the programme
- Cost-effectiveness
- Reunited families
- Birth of drug-free babies
- Criminal justice resources freed up to handle violent and other serious cases
- Greater credibility for the criminal justice process

### Cost savings of drug courts

11. One of the most important policy questions about drug courts is whether the cost of operating such programmes are more economically and socially beneficial to the community.

12. The general consensus from the evaluations reviewed is that drug courts generate savings in jail costs, especially for pre-trial detention. In addition, several evaluations have found savings in probation supervision, police overtime and other criminal justice system costs. One study that employed a more comprehensive methodology and multiple outcome measures, estimated substantial long-term savings attributed to the drug court.

13. There is an emerging body of research that concludes that drug treatment is cost-beneficial for populations similar to that served by drug court. Research in 1994 by the RAND Corporation on the relative cost-effectiveness of treatment, domestic enforcement, interdiction and source country control found that for heavy drug users, treatment interventions would cost one-seventh as much as enforcement to achieve the same reduction in cocaine. A comprehensive study of the economic benefits and costs of drug treatment in California found that the economic benefits were seven times higher than the cost of treatment. (Gerstein, D.R. 1994. Evaluating Recovery Services: The California Drug and Alcohol Treatment Assessment)

14. Michael Finigan has estimated that a one-year admissions cohort of 440 drug court clients produced criminal justice system cost savings for just one area (Multnomah County) of \$2,476,795 over a two year period (net the annual \$1million cost of operating the drug court programme). Adding estimated savings in victimisation, theft reduction, public assistance and medical claims costs to the criminal justice costs, it was estimated that the drug court produced overall cost savings of \$10,223,532 over two years. (Finigan, M 1998. An Outcome Evaluation of the Multnomah County S.T.O.P. Drug Diversion Programme).

### **Drug use reduction based on urine tests**

15. Based on urine test results, drug use is substantially reduced while drug courts offenders are in the programme. For example, the Santa Clara County Drug Court Evaluation found that only 5.4% of urine tests of drug court participants tested positive over a ten-month period, compared to 10.2% of tests for non-drug court offenders in electronic monitoring, 13.2% of tests for offender on intensive supervision probation and 24.5% of tests for probationers under general supervision. Preliminary results from the most recent American University drug court survey found that, for the 13 courts that reported urinalysis test results, an average of 10% of tests were positive. By contrast, in the same jurisdiction the average percentage of positive tests for similar defendants not in the drug court but under probation supervision was 31%. (Cooper, C. 1997. 1997 Drug Court Survey Report: Executive Summary).

### **Recidivism rate**

16. Based on National Centre on Addiction and Substance Abuse at Columbia University analyses of re-arrest rates while clients are participating in the drug court, most of the evaluations found that criminal behaviour was substantially reduced during participation in the programme. In Delaware adult drug court, 4% were rearrested during treatment. An evaluation for Ventura County showed a 12% re-arrest rate compared to a 32% re-arrest rate for a comparison group (over a 8 – month period); and a Jackson County evaluation found a 4% re-arrest rate compared to a 13% re-arrest rate for the comparison group (over a 6 month period).

Drug Court	Author	Comparison Sample	Follow up period	% Arrested Drug Comparison	Court
Maricopa County, AZ	RAND	Offenders randomly assigned to probation track	36 months	33.1	43.7

		(n=364)			
Oakland, CA	Tauber	Defendants referred to Diversion between 1/1/90 and 3/8/90, prior to establishment of treatment oriented of drug court (n=110)	36 months	.75a	1.33b

a – Average number of arrests per defendant

b – Proportion of offenders who were rearrested after sentencing

Drug Court	Author	Comparison Sample	Follow up period	% Arrested Drug Comparison	Court
Riverside County, CA	Sechrest, et. al.	Randomly selected offenders who committed a felony drug offence prior to 7/1/96 who were identified as possible candidates for drug court had it existed at that time (n=243)	Drug court participants: up to 21 months. Comparison group: up to 27 months	13.4	33.0
Denver, CO	Granfield and Eby	Two comparison groups of 100 offenders each selected from the pre-drug court years of 1993 and 1994	12 months	53.0a	58.0b

a – Average number of arrests per defendant

b – Proportion of offenders who were rearrested after sentencing

## System Impacts

17. One of the important differences between drug courts and other types of criminal justice based treatment interventions is the unique linkages and partnerships. In addition, drug courts depart from the traditional court structure through its encouragement of a non-adversarial relationship amongst the key players. These qualitative impacts are somewhat difficult to measure and there is no national data that fully explores the impact of this. However, a number of individual drug court evaluations have cited the successful development and implementation of criminal justice/treatment partnerships and a high degree of satisfaction among drug court staff with the inter-agency relationship.

18. Other positive system impacts from US literature have been noted in drug court evaluations that seem to reflect the operational structure and philosophy of drug courts. These evaluations have drawn on observations and interviews with participants and have noted increased partnership between the court and the community, increased co-operation among various criminal justice agencies and their personnel and the development of and expansion of a ‘problem solving’ approach to justice.



## **Chapter 3: Drug Court Systems -- Practice: Examples From The Field**

19. Included within this chapter are three examples of different types of approaches adopted through drug courts, highlighting differences in treatment phases and tracks. The chapter also draws attention to recent new developments, mainly re-entry drug courts, family drug courts and split sentencing. It provides a very brief overview of general treatment provision and the use of sanctions in the drug court model.

20. Case management approaches in jurisdictions with drug court systems tend to be varied. The following examples highlight key features and differences of how cases are managed.

### **San Bernardino County, California**

21. The drug court programme, to which the most serious offenders are referred, provides the highest level of supervision and services. Clients must attend daily treatment sessions, submit to mandatory drug testing, and appear before the judge at a weekly status hearing. The second track is the PRIDE programme, which requires clients to attend treatment sessions up to three times a week, provide random drug tests, and appear before the drug court on a regular basis. The third track is a Deferred Entry of Judgement between the court and the defendant, which is an 18-month probationary period. During the first six months the defendant is required to show proof of participation in weekly recovery group meetings, and weekly treatment sessions.

22. Defendants who fail to complete the programme may have their charges reinstated by the court.

23. The San Bernardino Drug Court also provides a '**re-entry drug court function**' in collaboration with a model jail-based programme called 'inroads' (for further information on re-entry drug courts see under new developments and Annex A).

### **Denver, Colorado**

24. The Denver Drug Court operates daily, to review cases and to work with new cases filed in the court. One district court judge sentences defendants and reviews all post-sentences clients. Pre-sentence matters are handled by a magistrate. A second magistrate was added in April 1999 to review lower risk cases and to provide additional time for the district judge to review the higher-risk cases and to hear motions.

25. The drug court utilises a system of tracks and phases. The tracks correspond to the sentence status of the individual. Track 1 is a deferred judgement, Track 2 is a sentence to probation or community corrections and Track 3 is a sentence to the Department of Corrections. Phases are distinguished by the number of drug tests the client must provide each

month and how often they must report to the court for review. Phase 1 clients must submit 8 - 10 drug tests per month and report to drug court every 3 – 4 weeks. Phase 2 clients submit 4 – 5 drug tests per month and report to drug court every 5 –6 weeks. Phase 3 clients submit 2 - 3 drug tests per month report to drug court every 6 – 8 weeks.

26. There are seven treatment levels in the system. The judge assigns clients to a treatment level at the time of sentencing, with input from the Probation Department, information from pre-trial drug test reports, and relevant information provided by defence counsel.

27. A Drug Court Continuum of Care Centre (CCC) helps clients find employment, develop life skills, or attend aftercare meetings. Clients who successfully complete all three phases graduate from the programme. An internal study conducted by the Denver Drug Court Co-ordinator's office found a much lower rate recidivism among drug court graduates compared to regular probationers with similar drug offences.

## **Minneapolis, Minnesota**

28. Case management of the Hennepin County Drug Court is based on speedy disposition, which the court believes is a key factor in reducing recidivism. Within 24 hours of their arrest, individuals undergo a health assessment and drug test with immediate results; they appear before the judge in drug court; and they are placed in inpatient or outpatient treatment, if appropriate. In many cases, drug court clients begin treatment the evening of their arrest.

29. Individuals appearing in drug court are frequently granted a conditional release without bail. Conditions of release include; curfew, geographic restrictions, and participation in drug testing and treatment. Curfew compliance is checked randomly by police. Clients return for a pre-trial hearing approximately one week after their preliminary appearance, with the goal of resolving the case at that time. Additional appearances may be granted to resolve legal issues, but the foremost consideration in all cases is the court's commitment to speedy resolution.

30. Nearly half of the drug court clients receive drug dependency treatment, primarily in outpatient programmes. Treatment options range from education and support to outpatient and inpatient services, with options for extended care and halfway house placements. Drug court clients also have access to acupuncture on demand, support groups, and other services to assist in rehabilitation and relapse prevention. Clients do not pay for treatment, instead they receive a \$250 credit towards the minimum court fine of \$6,000 each time they come in.

### 1.2 New developments

## **1.3 Re-entry Drug Courts**

31. Re-entry drug courts are a relatively new concept, first introduced by National Institute of Justice Director Jeremy Travis during a speech at the 1998 National Corrections Conference in Los Angeles. The opportunity that re-entry drug courts present within the wider US drug court system are viewed as a future area of massive growth. In essence a re-entry drug court facilitates monitors, supervises and rehabilitate offenders as they are released from prison back into the community.

32. The re-entry court concept draws on the drug court model – using judicial authority to apply graduated sanctions and positive reinforcement and to co-ordinate resources to support the prisoner’s reintegration. Central to all efforts is developing strategies to do a better job of tracking, supporting and supervising offenders upon release.

33. In principle ‘re-entry’ describes an approach founded on the belief that from the time an offender enters a jail-based treatment programme, he or she is being prepared for re-entry into the community as a responsible drug free citizen.

34. The treatment programme is viewed in two phases; an in-custody treatment phase, followed by a community supervision phase. Even when the offender is released from jail, the treatment programme and the purview of the drug court will continue. This ensures that treatment provision within the prison both reflects and complements longer-term community based treatment and support programmes. This has been particularly effective in regards to aftercare services where previous links had been seen to be ineffective and weak.

35. In some jurisdiction a “**split sentencing**” approach is now being used. This involves a drug-using offender, who meets specific criteria, is initially sentenced to a fixed term within prison followed by a period of supervision under the re-entry drug court. For example, a prisoner receiving 3 years may be required to serve one in prison with the remain two participating in re-entry drug courts. As part of the custodial sentence conditions will be set requiring successful participation within the prison based drug treatment programme followed by compliance with the requirements of re-entry drug court. Failure to adequately comply with either part will result in a series of sanctions.

36. For further details on the workings of Re-entry Drug Courts and Jail Based Treatment Programmes, see Annex A.

## 2. Family drug court systems

37. The San Diego County Juvenile Court is an example of the creative application of the drug court model to address a broad range of cases. It is perhaps the only jurisdiction in the country that has applied a systematic, comprehensive drug court to juvenile and family problems.

38. Research showed that 80% of the court’s dependency cases involved drug misuse by one or both parents, and have drug treatment as a requirement of the reunification case plan. Traditionally, however, the availability of drug treatment was extremely limited, with waiting lists of several months. As a result, permanent placement decision for children of drug using parents were rarely made within 18 months, as required by California law. In 1994, the average length of time from initial case filing to permanent placement was 34 months. In many cases, final placement decisions could not be made because the Court was unable to provide parents with reasonable services to overcome their substance abuse problems. The result was children often spent years in foster care, with multiple changes of placement.

39. In response to these circumstances, the Court launched a specific programme called the ‘Drug Dependency Court’ to get parents in treatment in order to reduce the amount of

time that their children spend in foster care, and to limit permanent psychological damage to the child.

40. The programme targets all child abuse or neglect cases with drug involved parents. If following the initial assessment the social worker determines that drug treatment should be a component of the reunification plan, the parent is referred into the programme within 24 hours.

41. The Dependency Drug Court is a three-phase, nine-month programme. Participants are required to appear in front of court once a week during phase I, once every two weeks during phase II, and once a month during phase III. The programme is similar to that of other drug courts but will have an additional focus on parenting skills.

42. The overall compliance rate with this particular module is between 60 – 70%, and over 75% parents who participate in the programme were reunified with their children within one year.

## **Drug court treatment**

43. The results of the 1999 National Drug Court Treatment Survey carried out by the Centre for Substance Abuse Treatment found that in general a broad continuum of primary treatment services is available to drug courts. Most drug courts report having access to residential (92%), intensive outpatient treatment (93%), and regular outpatient treatment (85%). Almost all drug courts (93%) encourage or require participation in self-help activities including Alcoholics Anonymous (AA), or Narcotics Anonymous (NA).

44. Until recently most US treatment programmes have been based on an abstinence approach, although clearly recognising that relapse is likely to occur. Whilst in principle this is still true, some drug courts are now providing methadone substitution as part of detox programme for long term opiate drug users.

45. The main difference between the provision of community based treatment through drug courts and that of drug treatment within Scotland is the strong emphasis placed on support and recovery groups. Although individual counselling does form part of treatment programmes, there is a very clear progression of individual support to that of community/group support. NA and AA have a particular following within the US and account for a large proportion of the drug court directed treatment. NA and AA both are based on the 12 step model of which abstinence is key. The use of Substitute prescribing in the majority of drug courts is limited, and only used as part of a detox programme.

46. The involvement of ex-users as mentors is also central to the workings of many drug courts. *Evaluations carried out with drug court graduates highlighted that the role of mentor was an important element in their commitment to remain drug free.* As well as the involvement of ex-users, drug courts have also emphasised the requirement of collaboration with the community, local agencies, police etc. In a number of jurisdictions, police together with the court team have taken on the responsibilities to raise funds through sponsored activities.

### 3. The use of sanctions in the drug court model

47. The use of sanctions in drug court, including the use of jail time, has been viewed as instrumental in the changed behaviour among drug court participants. Sanctions are most effective in reducing drug use and criminal behaviour, when they are immediate, or increasing severity, and predictable (Anglin et al., 1998; Apospori & Alpert, 1993; Brennan & Mednick, 1994; Byrne, et al., 1992; Marlowe, 1999).

48. In the evaluation of the D.C. drug court programme, sponsored by the National Institute of Justice, 'defendants on the sanctions docket (where penalties of up to 7 days in jail could be imposed) were more than three times as likely to be found drug free when tested than those on the control docket' (Harrell, 1998). 'Sanctions programmes participants were significantly less likely than the standard docket sample to be arrested in the year following sentencing'.

49. Drug treatment courts use the leverage of the criminal justice system to improve treatment outcomes. The research literature overwhelmingly indicates that retention and completion of treatment programme have a tremendous affect in reducing drug use and criminal behaviour (Belenko, 1998; Hubbard, et al. 1989; Nemes, et.al, 1998). Drug courts, where sanctions and incentives play an essential role, are far more successful in retaining participants in treatment in longer periods of time than traditional treatment.

50. The factors that appear to separate the successful treatment programmes from the unsuccessful treatment programmes are that the successful ones concentrate on the following;

- Employ a therapeutic emphasis on assisting the offender to change his/her behaviour.
- Are longer in duration, with multiple levels of care which give the offender ample time to change his/her behaviour
- Uses the leverage of the criminal justice system to retain the client in treatment and improve outcomes (Taxman, 1999)



## **Chapter 4: Overview of the Implementation of Drug Courts in countries outside the US**

51. This chapter focuses on how a number of other international jurisdictions have adapted the US drug court model. As the countries involved are either in the planning stages of a drug court or still in the early stages of development, this chapter does attempt to draw any clear conclusions on how successful the approach has been. What it does do is describe different referral routes, assessment procedures and any early evaluation results.

52. Following the perceived success of the US drug courts, a number of other countries have since introduced, or are planning to introduce, a drug court type of approach within their own jurisdictions. Whilst the countries highlighted are not they only ones implementing drug courts, they are relatively similar in culture or judicial terms to the Scotland.

### **Ireland**

53. The Irish programme is due to be up and running by September 2000. The drive for drug courts in Ireland is Government policy.

54. It is envisaged that the court will sit for two mornings a week and initially deal with approximately 100 offenders throughout the pilot stage of the project. While places remain in the pilot project, an offender having expressed a wish to be admitted to the drug court and at the recommendation of either the Gardai, the Probation Service, a drug treatment professional or the defending solicitor, the case will be transferred to the drug court. The offender's consent to placement is requested. If following assessment it is found that s/he is not suitable s/he is referred back to the ordinary court for sentencing.

55. Assessment of suitability for drug court is made initially by the court probation officer (who in many instances it is expected may already have previous knowledge of the offender) in consultation with the drug court co-ordinator. If successful at this stage, the offender is then sent to a treatment provider where a full assessment is then completed. Before the person goes there, s/he will be asked to sign a bond whereby they consent to be bound in a sum of money to appear on a set date and subsequent dates as directed by the court. Independent surety may sometimes be requested. Various conditions will be attached to the bond. For instance (i) the offender will be requested to abide by the dictates of the drug court finished or (ii) consent to random drug testing. Further and other conditions could be (a) curfew, i.e. to remain indoors during certain hours, (b) place of residence – to inform the court where he intends to live and remain there until treatment is finished or until the court consents to him living elsewhere (c) sign on at a police station at specified times.

56. A drug court team has been established and includes a full time co-ordinator, and on a part-time basis, a judge, court clerk and court defence. Currently the team, including the judge, is undergoing drug court training. As part of this process the team has just finished a week of shadowing the Canadian drug court in Toronto.

57. Funding for the pilot programme has been established from agreement of key agencies to top-slice part of their drugs expenditure budget.

## **Canada**

### **4. Toronto Drug Treatment Court**

58. Drug Courts in Canada initially developed from the proactive work of individual judges and treatment agencies. Following approaches to government agencies, the National Crime Prevention Centre and the Federal Government agreed to fund a four-year pilot project. The pilot project, based in Toronto, came into operation in 1998 and targets prostitutes, youth and visible minorities, although other offenders with drug related offences are eligible to enter the programme.

59. Whilst many of the US drug courts have adopted an abstinence model, the Toronto Drug Treatment Court (DTC) has embraced a harm reduction approach. As a consequence, while the court requires that participants work towards abstinence from all illegal drugs, use of drugs while in the programme will not attract sanctions. Where participants have achieved a positive life style change, stopped crack/cocaine and/or heroin use, but occasionally use marijuana and/or alcohol, they may be permitted to complete the programme at the discretion of the DTC. Such completion will include a probationary period, during which time participants are expected to end all illegal substance use.

60. The Canadian system has drawn extensively from the US experience of drug courts and in many ways is reflective of the operational workings of US drug courts. The main obvious difference is that Canada has integrated a harm reduction treatment module of methadone maintenance within the programme. (Although it also worth mentioning that in US drug courts prescribed methadone to long term heroin users as part of the detox process.)

61. The Toronto Drug Treatment Court operates a two-track eligibility system. Track 1 targets those offenders who have little or no criminal record and are charged with simple possession of crack/cocaine or heroin. They will be eligible to enter DTC prior to plea. If they complete the programme the charge will be withdrawn or stayed. Offenders precluded from Track 1 may be eligible for track 2.

62. Track 2 incorporate those offenders with more serious records or who are charged with trafficking and are required to plead guilty to the charges as a condition of entering the programme.

### **5. Preliminary evaluation results**

63. As the Drug Court has only been in operation for 18 months success factors are still in initial stages. However, early evaluation reports conclude that the retention rate in treatment programmes where there is no judicial supervision are lower than corresponding rates in the Toronto DTC.

64. It is also worth noting that the DTC has mostly taken on post-plea candidates. The reasoning for this is that the court found it had more control over the type of sanctions that could be imposed on this group compared with pre-plea candidates.

## Workings of the Toronto DTC

65. The court sits twice weekly and involves a pre court team meeting, lasting between 12 – 2pm. At 2pm new DTC candidates come before the court and the main court runs between 3 – 4.30pm. A typical session will involve between 25 and 40 drug court participants.

66. Pre-court team meetings involve the judge, crown, probation, court liaison worker, treatment team member and court clerk. Initially pre-court meetings did not directly involve all the aforementioned. However, the drug court judge changed this and has since felt that the current system is much more effective.

67. The procedure for a person appearing before the DTC for the first time will involve an assessment on eligibility. Between acceptance for drug treatment and appearance before the DTC, there will be a pre-court meeting to discuss every new application that wishes to enter the DTC. Prior to entering DTC, the participant signs a contract, confirming their wish to waive certain rights, and abide with relevant rules and regulation governing the programme. This is done in the presence of counsel.

68. In discussing particular problems the one area which the judge felt would be a key advantage to develop would be an integrated management information system like those which have been recently developed in some of the larger US courts. Such systems of computer based drug court data have dramatically reduced time involved in the management of caseload information. The systems are designed to allow members of the drug court team, including judges, case managers, drug assessors etc to have instant up-to-date information on areas such as clients appointments, court dates, drug test result, programme requirements. Information on Court based management systems is provided in Annex B.

69. Other areas within Canada are now actively engaged in the planning stages of developing drug courts.

## **Australia**

(NB The Australian judge did not attend the conference. The information in this section is therefore drawn from such Australian drug court papers as were made available by the UN Drugs Control Programme Office in Vienna. These may not be fully up to date.)

70. In various parts of Australia, schemes operate at the pre-trial stage of the criminal justice process. A consenting adult charged with a non-violent offence that has a 'demonstrable drug problem' might receive bail from a magistrate on condition that he or she enters a treatment programme. The range of re-offending while on bail dramatically decreased in relation to those offenders who fully complied with the treatment programme.

71. A post-plea, post-sentence drug court is being trailed in New South Wales (opened in February 1999) and is to be trailed in Queensland and Western Australia. These courts are legislation-based.

72. The NSW court targets serious offenders, typically person charged with serious offences of dishonesty (e.g. burglary) who have a substantial criminal record and are heavily dependent upon heroin.

73. Consenting substance offenders who wish to plead guilty and are likely to be sentenced to imprisonment are referred to a dedicated drug court at the earliest opportunity. The drug court imposes an initial sentence, and suspends that sentence while the offender undergoes a drug court programme, which includes extensive treatment and social support over a period of approximately twelve months. An offender who graduates from the programme can expect to receive a non-custodial sentence, probably a good behaviour bond (probation). Failure on the programme will result in termination and probably result in the offender serving the sentence of imprisonment imposed initially. Although the evaluation is in the early stages it looks as if over 50% will graduate, taking into consideration offenders' extent of previous convictions together with heavy, long-term heroin use these figures are in fact encouraging.

## **Bermuda**

74. Due to implemented by the end of this year. Funding was received from the Government via the National Drugs Commission. Offenders are eligible for placement in the drug court both pending trial and pending sentencing if they meet the necessary criteria. It is expected that the drug court will sit for one day a week.

## **England**

75. In 1995, the Chief Constable of West Yorkshire Police visited Judge Stanley Goldstein in the Miami Drug Court. The Chief Constable was so impressed that he arranged for Wakefield DAT members to go to the US on a fact finding mission in early 1997. Following that visit Wakefield DAT secured an initial grant of £200,000 from the Police authority to start the STEP Project (Substance misuse Treatment Enforcement Programme).

76. The STEP project is staffed by a project management team consisting of a GP, a Turning Point manager and a drug court services manager, three criminal justice workers, an employment/benefits advisor and team administrator. The STEP project has a team of specially trained Magistrates, all of whom expressed an interest in working in the substance misuse field. The Magistrates conducting the drug court work as part of the STEP team, and have a full range of powers for sentencing, including making a probation order with a condition of treatment.

### Referral to the drugs court

77. When an arrest is made the person is taken to the police station where the custody sergeant makes a decision as to whether to charge the individual on the evidence presented. Using STEP criteria and information supplied by the accused, the investigating police officer or defending solicitor the Custody Sergeant will decide if there should be a referral to the drug court. As well as the custody sergeant the accused themselves or defending solicitor can also refer. Referrals are only made when an element of consent is given.

78. Once referral is made, a full assessment will be carried out within 24 hours. The aim of the assessment is to ensure suitability and to provide the necessary information to the drug court Magistrates. Prior to any appearance before the drug court, contact with the STEP

project is voluntary, and the accused can still request to be transferred back into the normal court system.

79. The treatment programme involves three stages which cover, detoxification, stabilisation and a aftercare programme. A number of therapeutic approaches are incorporated into the treatment package. Frequent scheduled and random urine testing is an integral part of the programme. Positive drug tests result in the case been taken back to the drug court and a warning or sanction given.

80. Since the initial start up grant, the project has met continuing costs from the re-prioritisation of DAT member budgets. Treatment programmes are predominately community based with very little access to residential provision. The pilot scheme has recently been expanded to include all of West Yorkshire with other areas of England also looking at adapting similar approaches.

## Chapter 5: Key success factors from the drug court approach for Scotland

81. This chapter draws together some concluding thoughts, based on the experience gained in the US and seeks to draw out some lessons which might be applicable in Scotland.

82. There is no single drug courts model. What works best in one jurisdiction may not in another. This paper has tried to emphasise that there are a range of drug court models in operation. Key differences include eligibility to participate, when the case is diverted, and end of programme outcomes. However, while models may differ, the *core underlying characteristics are the same*.

<b>*Success Factors</b>	<b>*Drug Court Key Elements</b>
Effective judicial leadership (together with regular review hearings)	Integrated justice/health care system case processing
Strong interdisciplinary collaboration	Non-adversarial approach
Good team knowledge (including the judge) of addiction, treatment and recovery	Prompt identification and placement of offenders
Operational manual	Access to a broad range of treatment and recovery services
Clear eligibility criteria and screening	Objective compliance monitoring through frequent drug testing
Detailed offender assessment	Co-ordinated compliance/non-compliance
Fully informed and document consent of each participant	Ongoing judicial interaction with participants
Speedy referral to treatment and rehabilitation	Monitoring and evaluation (programme goals and effectiveness)
Swift, certain and consistent sanctions and rewards	Continuing interdisciplinary education
Ongoing programme evaluation and improvement	Partnerships for support and programme effectiveness
Sufficient, sustained, dedicated funding	Support services extend to community reintegration
Changes in underlying law, where necessary or appropriate	Flexible programme content for groups with special needs

**\* Success Factors and Drug Court Key Elements identified by the United Nations Expert Working Group on ‘Improving Inter-sectoral Impact in Drug Abuse Offender Casework’, June 2000.**

83. There are a number of differences between Scotland and the US which have to be borne in mind in considering whether and how elements of the drug court approach might be applicable here. First, the treatment component within US drug courts tends to be more abstinence and community based when compared to treatment provision in Scotland. However, drug courts in Canada, England and Australia have all implemented a harm

reduction substitute prescribing policy. Although there is no clear evidence to say if such policy impacts on the effectiveness of drug courts, those interviewed felt substitute prescribing had no negative effect to the overall effectiveness of the drug court programme.

84. Second, in the US support services for drug court participants such as housing, benefits, childcare etc are often funded directly by the drug courts. This would not be the case for Scotland as such services are already available and/or co-ordinated through the Benefits Agency/housing providers. The issue in Scotland would be about making such services readily accessibly to the court.

85. Third, relatively more black Americans are charged with drug offences than white Americans. Therefore US drug courts programmes tend to have a higher percentage of black American participants. Those drug courts visited in preparation of this paper did not distinguish any real differences in black participants as compared to white participants – except that the religious influence for black Americans tended to be stronger, resulting in greater utilisation of local church based organisations as a resource to the drugs court.

#### 6. Effective Judicial leadership together with Regular Review Hearings

86. The key features of the proposals put forward by COSLA in its December 1999 paper 'Alternatives for Dealing with Drug Offenders' included:

- a) a small, specialising Bench with expertise in, and knowledge of, drugs and drug misuse and the full range of treatments and options available to deal with those brought before it;
- b) regular direct oversight by the Bench of the offender's progress, in open court, with the offender present;
- c) consistency in the member of the Bench involved in each case, as regards making an order and holding reviews throughout an order;
- d) a direct relationship between the bench and the offender;
- e) a different role - perhaps more restricted as part of a wider team – of the supervision officer;
- f) the treatment provider being determined by the court (albeit with specialist advice) frequently being different from the supervision authority;
- g) the ability of the Bench to act as both motivator (possibly through the development of incentives or a reward system) and sanctioned (so that where there is non-compliance, the court can dispense a range of instant relevant punishments);
- h) following from (g), the severity of sanction available for non-compliance;
- i) drug testing as an integral part of a Court order; and
- j) Immediate access to any necessary drug treatment.

87. However, a specialist Bench would need the general agreement and co-operation of Sheriffs and of the court administration. In some instances the practice of ensuring the same Bench member hears reviews is already in place. Alternatively, identified courts might, as appropriate, reserve a few hours per week or fortnight to deal with drugs offenders. The US, Canadian and English drug courts all reported that the system of specialist courts, once fully operational, resulted in court time being freed up rather than placing an additional burden on the system.

88. Piloting an approach along the lines suggested by the COSLA report would need careful consideration. There would need to be clear evidence that all the necessary support and training was in place. It would be important not to rush into any new arrangements without knowing that they could be both delivered and sustained. All the operational drug courts emphasised the importance of planning and training prior to any developments. In any event, it would be necessary to have arrangements in place to monitor and evaluate the progress of any new arrangements.

89. The key elements involved in the COSLA proposals would not fundamentally change the traditional role of the Sheriff nor of the rest of the Scottish court system. Rather, they would entail adapting the Scottish system to take on a more forward-looking, problem-solving emphasis that draws on the strong inter-disciplinary collaboration of the Sheriff and supporting team. Within this approach, regular review hearings, conducted effectively, can be one of the most important factors in changing participant behaviour. Drug courts in other countries – as well as the early experience of the Glasgow Pilot DTTO - have demonstrated that participants soon realise that they will be held accountable to the court at every stage of the programme. When the judge/sheriff conducting the review hearing is both interested and well informed on drug issues, this has an extremely positive impact in supporting a reduction in drug use and criminal behaviour.

#### 7. Good team knowledge of addiction, treatment and recovery

90. A clear message from all the operational drug courts visited and the interviews with judges responsible for courts is that the team component is critical to success. Team based training (including the Sheriff) regarding addiction knowledge together with an understanding of the respective roles and responsibilities of each member of the team is fundamental prior to the development of drug court approach.

91. Canada and the US are currently delivering a drug court-training package to the team established to set up drugs courts in the Republic of Ireland. Such packages could be easily amended to take account of jurisdiction and individual court approaches. There would be merit in considering the development of a Scottish based training component for any changes introduced here. This would support clarity of purpose and co-ordination.

#### 8. Clear eligibility criteria

92. For first-time, minor offenders who are unlikely to receive a custodial sentence, the drugs court type of approach can appear a costly alternative when compared, for example, to a caution. Careful consideration is therefore needed to ensure that the net is not spread too wide to include very minor offenders. Care is also needed to ensure that the criminal justice

system is not used to fast track drug dependant people into treatment without there being a clear drugs/crime link.

93. Other than in Canada and Australia, both of which included more serious offenders from the start, most drug courts have initially started off with first time low level drug dependent offenders. Once success has been achieved at this level a progression has been made to extend eligibility to include those with more serious, longer term offending and drug using history.

94. Another option is to consider the twin track system adopted in Canada. If this were to be adapted to fit the Scottish context, it might involve an approach along the following lines.

Track one: pre-sentence/deferred sentence basis would target those accused who have little or no criminal record and who are charged with small scale possession offences, or a minor offence but are unlikely to receive a simple caution. (Through deferred sentence it is possible to bring an offender back at interim periods by continually deferring the sentence, say on a monthly basis. Legislation also allows the court to attach any condition it so wishes as part of the deferred sentence – this would greatly support a drug court type of approach for low tariff offenders). This track would need to complement, not compete with, existing Diversion Schemes.

Track Two – Post Plea Alternative would then incorporate offenders with a more serious record, and whose charge would preclude them from Track One. Track two offenders would be required to plead guilty to the charges as a condition of entering the programme.

95. In both Tracks the following factors will be relevant in determining whether an offender is a suitable candidate for entry:

- Whether the accused has previously violated the criminal laws (including convictions, discharge, or diversions) and if so, the date and nature of previous violations.
- Whether the accused is facing other criminal charges
- Whether the offender poses a risk to the community
- The seriousness of the offence, if the offence is one ordinarily punishable by a particular period of imprisonment
- Acceptance of the candidate to abide by the terms of the treatment/programme contract

#### 9. Types of offences excluded from drug court programmes

96. In most jurisdictions, drug courts exclude offenders with a history of, or outstanding charges relating to violent crime, the involvement of knives/guns/weapons, child abuse, traffickers and sex offences.

97. The trafficking issue is one that has posed a number of problems as many drug users may be involved in the small time scale of drugs in order to fund their own drug use. In such instances many drug courts have stipulated a cut off quantity of drugs involved in sale that will not preclude eligibility into a drug court programme. Also a number of the US drug courts have started to accept those with domestic abuse history; this has followed substantial research that has demonstrated the link between alcohol/drugs and its relationship to domestic abuse.

## 10. Referral to drug court/or similar system

98. There are a number of avenues in which possible participants can be both identified and referred to a drug court system. The obvious time for referral will be at arrest. This will involve an initial assessment, which would identify whether the individual meets drug court criteria. In those areas that are due to, or already have, established an arrest referral scheme, the arrest referral worker could undertake initial assessments.

99. For Scotland, arrest referral schemes could be developed and supported through the Scottish Drugs Enforcement Agency. It may be possible to utilise the UTA (Undertaking to appear before the court). This involves a person being released from custody with an agreement to appear before the court; normally within a week of arrest. For non-serious offences, in which drugs link has been established a UTA could allow further drugs assessment prior to a court appearance. If after initial assessments it is decided that the offender meets set criteria, a full assessment including a Social Enquiry Report can then be undertaken followed by referral to the court. The offender at this stage would be required to give full, documented consent.

100. Other avenues of referral could include the accused themselves, defending solicitor, Procurator Fiscal or another Sheriff.

101. The main criteria for referral would depend on the target group. Once this has been defined, it would be a relatively straightforward task to utilise the experience available within the court system (particularly in a drug court context) to develop criteria for both the initial and full assessments. The Drug Court Programme Office, of the US Department of Justice provided extensive support regarding the setting of criteria, team training, and the management of information systems to Canada, Australia, Bermuda and Ireland. There is equally a wide range of Scottish based experience, including that of the Drug Treatment and Testing Orders pilot sites in Glasgow and Fife.

### **Differences between drug courts and DTTOs**

102. An important difference between the DTTO system and a drug court approach would be that if an offender breaches the rules of a DTTO programme, the range of intermediate sanctions is narrower. Under the DTTO system, the offender can be fined for non-compliance or ordered to be retained in treatment for longer, but cannot be ordered to be imprisoned for certain periods (although the person can be re-sentenced for the offence if they fail the programme completely), as the person has already been sentenced (through the DTTO).

103. The decision taking with drug courts involves more established teamwork than is the case with the DTTO regime, but the aim of both programmes is the same. The COSLA proposals would complement that of the DTTO regime. Early indicators from the Glasgow pilot DTTO have shown that the outcome following a number of assessments has been a probation order with conditions of drug treatment instead of a DTTO. In Wakefield, which is just about to start DTTOs, the drug court approach is to be the vehicle for implementation. This ensures that the decision-making process is judge-led, but in dispensing justice, the judge is assisted by an integrated multi-disciplinary team of professionals committed to the same goal. The team typically includes representatives from the law enforcement, prosecution,

defence, treatment, probation, prisons and parole services – linked closely into education and employment services.

104. Drug courts would also be able to utilise a greater flexibility of the types of participants that could be included within the programme, especially in relation to those eligible for the “Track One” approach set out above. “Track One” participants may also not require as intensive treatment input as compared to participants of DTTO. The use of random, monitored drug testing together with regular review hearings for some “Track One” participants may provide enough of an incentive to remain ‘drug free’.

#### 11. The vehicle for introducing a drug court approach in Scotland

105. If the elements involved in the COSLA proposals were to be established in Scotland, the key vehicle for implementation would be primarily through the use of Probation Orders. This approach provides the full infrastructure required to take forward the success factors and drug court key elements identified in the second column of the table in paragraph 82 above. In principle no new legislation would be required. The only exception would be if prison were to be used as a sanction through the drug court; this could not be done without revoking the probation order and re-sentencing the offender.

106. The Procurator Fiscal currently has the right to waive or defer prosecution where an alleged offender agrees to co-operate with drug treatment as arranged by, or through, the social work department or specialist agency. Negotiation would need to take place in order to fast-track people into the drug court system, although care would need to be taken not to draw people into the system when they could be dealt with through diversion.

107. Clerks to the court and the Scottish Court Service would co-operate in ensuring that the consistency of the same Bench member (sheriff) hearing participant reviews at a particular time each week. This has been overcome in similar jurisdictions to Scotland but in the longer term can result in considerable savings court time and court appearances. It would be worth looking in more detail how this was overcome in both Canada and Bermuda as both have similar systems to that of Scotland.

### **Other areas of consideration**

#### Re-entry Drug Courts & Split Sentencing Models

108. Whilst re-entry drug courts would not be feasible in Scotland at the present time because of the requirement for on-going judicial involvement throughout the custodial sentence, there are a number of dynamics which may be worth considering. If a drug court type of approach was to be established in Scotland, there could be merit in combining an early release programme for those who successfully complete prison based drug treatment programmes. Such a system could target offenders where the original offence was committed due to offender’s use of drugs. On satisfactory completion of the prison treatment programme, and if he/she met set criteria, the offender could be placed into the jurisdiction of the drug court. This would allow a co-ordinated and monitored approach to be developed between the prison system and on-going judicial supervision for those who have participated in drug treatment. This approach would ensure intensive, monitored supervision and could in principal help reduce recidivism rates and be cost effective.

109. As regards 'Split Sentencing', this model could be used at the time of sentencing and could include those who would not be deemed suitable for a completely non-custodial sentence but where the offending is obviously drug related. The 'Split Sentencing' approach is based on the assumption that the offender will participate in prison based drug treatment.

110. If either Re-entry Drug Courts or Split Sentencing were to be given further consideration the Scottish Prison Service would need to be involved at an early stage.

## **12. Drug Testing**

111. Drug Testing is a central element of court monitoring of drug using offenders. There are a number of ways that testing can be carried forward. These can be on site or off site or by oral or urine samples. But it would be important to ensure that lessons from the Glasgow DTTO Pilot, as well as those of operational drug courts, are taken on board in order to ensure that this central element is effective. What is clear is that testing needs to be regular, with the most up-to-date results available for court reviews. The team requires good knowledge of what drugs, including over the counter remedies, will result in a positive test. Without this knowledge, tests may be unnecessarily contested and inappropriate sanctions given.

## **Conclusion**

112. There is a growing body of experience and evidence around the operation of drugs courts. It is also clear that, where they are in operation, drug courts are continuing to adapt and develop. The proposals which COSLA put forward to the Executive in December 1999 formed a basis for a new approach in Scotland to complement existing court arrangements. Many of the characteristics of the COSLA proposals, were they to be implemented, would be informed by the experience of others in applying the drug court model. This Chapter has set out some of the areas where that experience could be applied.

113. While all those who have witnessed drug courts in operation have been impressed by what they have seen and while the drug court approach appears to have advantages and to have achieved a level of success in breaking the cycle of drugs and crime in other jurisdictions, this chapter and this paper cannot be regarded as a comprehensive study. The author had only a very limited period in which to gather evidence and to form impressions and the aspects covered are based on that experience. However, the findings do offer an initial foundation on which to build. Moreover, links have been established with a range of senior officials and judges which can be followed up in future.



## **Annex A**

### **Workings of Re-entry Drug Courts and Prison Based Treatment Programmes**

#### 13. Nevada Prison Early Release Programme Description

##### Goal

The goal of the prison early release pilot programme is to reduce the prison population by providing intensive supervision and treatment programmes for eligible candidates in order to continue rehabilitation thereby breaking the cycle of crime and recidivism associated with drug use.

##### Programme Description

The drug court programme target non-violent offenders who have serious addictions to substances. Participants are required to attend a minimum of one-year intensive outpatient treatment and regular scheduled court appearances. This particular programme is aimed at those who have successfully undertaken prison drug treatment, the offender is then released early but is held accountably to the drug court programme.

##### Programme cost for early release

Nevada has already begun to address the area of financial feasibility of releasing inmates into the community. The Nevada Department of Corrections (NDOC) will release 150 inmates' six months early into two existing drug courts (Las Vegas and Reno). Legislation has been passed for NDOC to relocate approximately \$4,500 per inmate released into a drug court. Saving will be substantial (about \$3,500/inmate), as NDOC costs for housing and feeding minimum-security inmates is estimated to be \$8,000 per year. Long-term savings are also apparent when comparing as 80% recidivism rate from NDOC to the Las Vegas and Reno Drug Courts who report only 14% recidivism rate.

#### 14. Oklahoma

The Oklahoma County Drug Court team is setting up a re-entry process using a split sentencing format (i.e., a portion of the offender's sentence will be in confinement, while the remaining portion of that sentence is suspended on a probation statute outside confinement). Upon return of the offender to the community on a split sentence through a re-entry drug court, the re-entry programme will be mandatory, keeping the remaining portion of the offender's sentence as an incentive for completion of the programme.

#### 15. Los Angeles County, California

The in-custody drug treatment and drug abuse resistance education programmes in the Los Angeles County Jail provide a programme bridge to the 11 adult drug courts currently in operation. A drug court module for men is set aside at the Century Regional Detention Facility, completely with space for meetings, acupuncture, and counselling. This module is isolated from the general population of the jail. A similar, separate facility for women inmates exists in a different facility. A private, licensed drug treatment provider operates the in-custody drug treatment programme.

The most recently implemented drug court in Los Angeles County is the Sentenced Offender Drug Court. It requires completion of a mandatory 90 –day, jail based treatment programme phase (Impact Programme), in addition to any previous period of incarceration served as a condition of the initial grant of probation. The target population for this programmes includes probationers with severe drug addiction and repeated criminal justice system involvement. The purpose of the in-custody component is to accommodate incarcerate sentences as well as to provide the first three months of treatment in a secure environment. Unique to this in-custody programme is that transitional housing is made available to appropriate participants who do not have safe and sober living accommodations in the community.

A preliminary cost benefits analysis of the programme showed to the savings to the country through utilisation of the in-custody treatment programme.

#### 16. The Role of Drug Courts in Jail-based Treatment

The National Association of Drug Court Professionals clearly expressed the view that they felt that drug court programmes can have a profound affect on in-custody participants. They attributed this to the judge's ongoing supervision and to the direct relationship that offenders have with the judge and drug court team staff. Typically, the re-entry drug court judge hears the offender's initial plea (or tries the case), then remains involved with the participant during the jail phase of the programme by seeing them in drug court hearing throughout their custody.

## **Annex B**

### **CASE MANAGEMENT SYSTEMS FOR DRUG COURTS**

Drug courts, or similar type of approaches, face a myriad of operational and administrative requirements. In response to this over the past few years there has become a growth market in the production of computer based software systems which support ease of information exchange. Such systems are designed to allow members of the drug court team, including judges, case managers, drug assessors, and treatment providers, access to all relevant data collected by the team. Confidential information is password protected, but team members have agreed access to all or part of the information held. Judges, for example, can review a participant's case file at any time allowing for communication and accountability to be maximised.

For operational decision making purposes, drug court teams need information about individuals for two main functions: (1) deciding on initial admission to the drug court programme and, if admitted, the initial testing and treatment regimen to be ordered, and (2) once an individual is admitted to the programme, monitoring the individual's behaviour and deciding on changes with respect to supervision and treatment, including recognition of progress when appropriate and imposition of sanctions if necessary.

#### 17. Information Needed for Initial Decision making

The types of information needed for initial decision-making will vary depending on the jurisdiction, but generally will include the following:

- Current charge, including circumstances of the case
- Individuals criminal history
- Individual's drug abuse history, including drug of choice, nature and severity of current substance abuse, and history of any prior substance treatment
- Detoxification needs
- Date of birth, gender, race/ethnicity
- Employment status
- Family situation
- Housing situation
- Education
- Willingness of the individual to participate in the drug court programme
- Other relevant information, e.g. pregnancy, child care needs, mental health

#### 18. Information Needed for Ongoing Supervision of Drug Court Participants

Drug court judges need a core of key information at the time of each court appearance by a drug court participant:

- Drug test results
- Level and types of treatment services being provided to the individual

- Participation in treatment (e.g. attendance at required treatment sessions, extent of active participant I treatment groups)
- Compliance with other programme requirements (e.g. job training, educational programmes)
- Medical and family issues
- Ancillary services that may be needed by the participant
- Milestones and major life events for the participant
- Evidence of relapse or danger of imminent relapse
- Any new arrest
- Record of previous sanctions and rewards while in participant in the drug court

The short-term goal for a drug court information system should be to get a system in place that supports the operation and management of the drug court. The longer term goal should be to work towards a fully integrated system that uses modern computer technology to enable the electronic interchange of information between and among the drug court and all the agencies involved in the drug court programme and provides operational, management, evaluation, and national reporting capability.

The software for any drug court management system should be capable of supporting day-to-day courtroom operations, overall drug court docketing and caseload management, funding body reporting, and general research and drug court operations and impact.

The key characteristics of drug court management systems, as described by the Drug Court Programme Office, are:

- Ability to rapidly record and transmit a wide range of information
- Effective integration with existing criminal justice, treatment, public health, and social welfare information systems.
- Ability to provide comprehensive information at very early stages of a court case – generally within hours following arrest or other event that warrants court action
- Capable of being easily programmed to provide for operational decision-making and for a wide range of reports for monitoring and evaluation purposes
- User friendly – suitable for users who have widely varying levels of computer sophistication
- Appropriate in scale and cost to the size of the drug court and scope of the drug court

## **Annex C**

### 18.1 PEOPLE INTERVIEWED FOR THIS PAPER

#### 19. UNITED STATES

Hon Harlan G. Grossman, Superior Court Judge, Contra Costa County  
Judge Jeffrey Tauber, President, National Drug Court Institute  
Jim Fitzsimons, Criminal Justice Consultant, California  
Vicky Boyd, Drug Court Programme Co-ordinator, (Treatment), Jackson County Prosecutors Office  
Caroline Cooper, Director, Drug Court Clearance House, America University  
West Huddleston, Deputy Director, National Drug Court Institute  
Judge Julie Tang, Superior Court, San Francisco  
James Egar, Public Defender of Santa Barbara

#### **UNITED NATIONS**

Andrew Wells, Senior Legal Adviser, United Nations Drug Control Programme, Vienna

#### 20. CANADA

Judge Paul Bentley, Ontario, Canada  
Koffie Barns, Federal Prosecutor, Department of Justice, Canada

#### 21. IRELAND

Pat McLaughlin, Eastern Health Board, Ireland  
Hon. Gerald Haughton, Judge, District Court, Ireland  
Sean Lowry, Assistant Chief Probation and Welfare Officer, Ireland

#### 22. BERMUDA

Derrick Binns, Chief Executive Officer, Bermuda National Drugs Commission  
Alfred Maybury, Drug Court Co-ordinator, Bermuda National Drugs Commission

#### **ENGLAND**

Val Barker, Assistant Director of Public Health, Wakefield, England  
Caterina Fagg, Drug Court Programme Manger, Wakefield, England



## Annex D

### 22.1

## **ADDITIONAL INFORMATION AVAILABLE FROM THE DRUG MISUSE OFFICE**

- **Drug Court. Publications Resource Guide. Second Edition.**

This is a product of the National Drug Court Institute's (NDCI's) Research Dissemination Committee and is intended to assist researchers and practitioners in identifying drug court related information that will assist them in planning, implementing, enhancing and evaluating their drug court programmes. It is organised into three – (1) Drug courts, (2) Research, evaluation & statistics and (3) Treatment. There are not only publications, but also web-sites.

- **National Drug Control Strategy. 2000 Annual Report. Office of National Drug Control Policy.**

This report provides information on progress over 1999 in implementing the National Drug Control Strategy in the States. It details trends in drug use and availability; assesses the costs or drug abuse to the USA society; and outlines accomplishments of federal prevention, treatment, law enforcement, interdiction and international programs.

- **Resource and Funding Guide. NADCP.**

This monograph examines resources available to communities that are developing or institutionalising drug courts in the States. It delineates monies available from federal, state and local sources that will enable drug courts to remain viable in their communities. Also outlines planning and developing drug courts, Offers advice on budgeting and provides a detail worksheet.

- **Making the connection between Law Enforcement and supervision. NADCP**

A monograph detailing how supervision, law enforcement and drug court could optimally work together as partners in the drug court arena.

- **Re-entry Drug Court. NADCP**

Re-entry drug courts are a new concept and are defined as the means by which all offenders (not just drug users) could be reintegrated into communities once released from prison. Re-entry drug courts provide a mechanism for the successful reintegration of the serious drug-using offender back into society.

- **Defining Drug Courts: The Key Components. US Department of Justice.**

This document is organised around 10 key components which describe the basic elements that define drug courts. It is not blueprint, but a guide.

- **Drug Court Monitoring, Evaluation, and Management Information Systems.**

This document reports the best thinking of drug court practitioners and experts on the issues of evaluation and management information systems. This document highlights the

importance of evaluating drug courts and the inextricable link between evaluation and effective data collection and information system.

- **Notre Dame Law Review. Volume 74:2. January 1999**

Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionising the Criminal Justice System's response to drug abuse and crime in America.

- **Heroin Overdose. Research and Interventions. The Lindesmith Centre. 2000**

Heroin overdoses and overdose fatalities have been increasing in North America and around the world. Efforts to understand why people overdose, why some people die and how to prevent both from occurring are complicated. This book highlights the research, interventions, a bibliography and information on ordering overdose prevention materials produced by harm reduction agencies.

- **Syringe Availability. The Lindesmith Centre. 1997**

Fact sheet. Bibliography.

- **Heroin Maintenance Treatment. The Lindesmith Centre. 1998**

There is good reason to believe that heroin maintenance has a useful role to play in our effort to reduce the harms of both drug use and drug prohibition. This Research Summary is intended to stimulate more informed discussions and proposes scientific trials in the USA and elsewhere.

- **Methadone Maintenance Treatment. The Lindesmith Centre. 1997.**

A fact sheet on Methadone maintenance, including a bibliography.

- **Safer Injection Rooms. The Lindesmith Centre. 1999**

Research paper and bibliography on SIRs.

- **Drug Courts: Issues and Prospects. September 1998**

Australian Institute of criminology – trends and issues. Paper offering recommendations of implementing USA Drug court model in Australian judicial system.

- **Drug Courts: A Research Agenda. National Drug Court Institute.**

This publication is intended to help the drug court practitioner begin to understand the primary research priorities for the drug court field. It lays the foundation for the essential role of evaluation and it offers a framework for the practitioner who wants to help shape the scope and breadth of programme evaluation.

- **The Interrelationship between the use of alcohol and other drugs. American University. 1999**

A summary overview for drug court practitioners which addresses the underlying physiological, sociological and psychological foundation for prohibiting persons addicted to controlled substances from using alcohol.

- **Federal Confidentiality Laws and how they affect Drug Court Practitioners.**

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The goal of this document is to inform drug court practitioners generally about potential conflicts and to demonstrate that most pitfalls can be avoided without infringing on drug court participants' confidentiality interests or impairing drug court operations.

- **Foreign Affairs. January/February 1998. Commonness Drug Policy. Ethan A Nadelmann**

A small booklet offering advice on a constructive drug policy which calls upon the lessons learned and experiences of the USA and other countries.

- **Law Enforcement/Drug Court Partnerships: Possibilities and Limitations. 2000**

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A Case Study of Partnerships in Four California Counties.

- **National Institute on Drug Abuse.**

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Various articles on Drug Abuse Treatment.

- **Effective Drug Court Program Evaluations.**

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Drug courts have made great progress in the area of program evaluation and the majority of drug courts have a monitoring and/or evaluation component. Specifically evaluations are instrumental in assisting drug courts to determine what works and what doesn't work. This paper outlines key issues.