

# UNDCP MODEL DRUG COURT (TREATMENT AND REHABILITATION OF OFFENDERS) BILL, [2000]

Bill No ..... of [2000]

-----

To be presented by the Minister of Justice

-----

## MEMORANDUM OF OBJECTS AND REASONS

-----

*The object of this Bill is to provide for the diversion of certain drug offenders from imprisonment or other traditional criminal justice outcome to court directed treatment and rehabilitation programmes, aimed at reducing and eliminating their criminal activity.*

ATTORNEY-GENERAL

An Act to provide for the establishment of Drug Courts empowered to direct drug dependent persons charged with certain drug offences or other offences while under the influence of drugs to treatment and rehabilitation programmes, with a view to reducing or eliminating their dependency on or propensity to misuse drugs, and thereby their related criminal activity.

**ENACTED by the President and Parliament of [name of State]**

### PART I - PRELIMINARY

#### 1. Short Title, Extent and Commencement

- (1) This Act may be called the "Drug Court (Treatment and Rehabilitation) Bill, 2000."
- (2) It shall extend throughout **[name of State]**.
- (3) It shall come into force at once.

#### 2. Definitions

In this Act, unless the context indicates otherwise,

- (a) "Approved treatment provider" means an individual or organisation approved by the [Secretary

of State] to carry out prescribed treatment programmes for the purposes of this Act;

- (b) “Drug” means a drug of abuse listed in Schedules I, II or III of the **[Drug Abuse Bill 2000]** or in regulations made under that Act;
- (c) “Drug Court” means a court designated to be a Drug Court for the purposes of this Act under regulations made pursuant to this Act;
- (d) “Eligible person” means a person described in section 3;
- (e) “Offender” means a person who is convicted and sentenced by the Drug Court under section 6;
- (f) “Prescribed treatment programme” means a programme for treatment and rehabilitation prescribed by the Drug Court pursuant to section 6;
- (g) “Referring court” in relation to a person who has been referred to the Drug Court under section 6, means the court by which the person has been referred;
- (h) “Regulations” means regulations made under section 22.

### **3. Eligibility**

- (1) A person is an eligible person if:
  - (a) the person is charged with an offence, other than an offence referred to in subsection (2);
  - (b) he or she is a drug dependent person within the meaning of **[section 3(1)(q) of the Drug Abuse Act 2000]**;
  - (c) the person’s drug dependency contributed to the commission of the offence referred to in subsection (1)(a) above;
  - (d) the facts alleged in connection with the offence, combined with any previous criminal record of the person, and any other relevant information available to the court, indicate that it is likely that the person will be sentenced to imprisonment of a minimum period of **[a year]**;
  - (e) the person is not a person who must be dealt with as a child under **[the Juvenile Justice Act]** and
  - (f) the person satisfies any other criteria as may be prescribed under the regulations.
- (2) A person is not an eligible person if he or she has been charged with a “disqualifying offence”, which is:
  - (a) an offence under **[Part III of the Drug Abuse Bill 2000]**, or
  - (b) an offence involving violent conduct or sexual assault, or
  - (c) any other kind of offence as may be prescribed under the regulations.

## **PART II - TREATMENT AND REHABILITATION PROGRAMMES**

### *Division 1 - Acceptance into Programme*

#### **4. Referrals to Drug Court**

- (1) This section applies to such courts and proceedings as are prescribed by the regulations.
- (2) It is the duty of a court before which a person has been charged with an offence to ascertain whether the person appears to be an eligible person.
- (3) If the person does appear to be an eligible person, the court shall refer him or her to Drug Court to be dealt with for the offence, if:
  - (a) the person has pleaded guilty to the offence or has indicated that he or she intends to plead guilty to the offence, and
  - (b) the person is willing to be referred to Drug Court to be dealt with for the offence.
- (4) The court shall exercise the powers under this section as soon as practicable after the person is charged with the offence.

#### **5. Assessment of Eligible Persons**

- (1) A person referred to Drug Court under section 4 shall be assessed by an approved treatment provider who shall make a recommendation to the Drug Court as to the person's suitability for participation in a prescribed treatment programme, and shall furnish to the Drug Court a plan of that programme.
- (2) Where, having regard to the person's antecedents and the assessment made under sub section (1) above the Drug Court considers that the person is not suitable for participation in a prescribed treatment programme, section 7 of this Act shall apply.

#### **6. Referrals to Treatment and Rehabilitation Programmes**

- (1) This section applies to a person who has been referred to Drug Court under section 4.
- (2) The Drug Court may, under this section, convict and sentence a person who has pleaded guilty to the offence for which the person was referred, whether before the referring court or the Drug Court, if it is satisfied as to each of the following matters:
  - (a) that the person is an eligible person;
  - (b) that having regard to the person's antecedents and the assessment of the person made under section 5, it would be appropriate for the person to participate in a prescribed treatment programme;
  - (c) that facilities to supervise and control the person's participation in such a programme are available, and have been allocated to the person, in accordance with the guidelines prescribed under the regulations;
  - (d) that the person accepts the conditions that the Court proposes to impose on the person (whether immediately or at some later date) as a consequence of his or her conviction and sentence under this section; and
  - (e) that the person has been informed of the Court's powers under Division 2 and of the respective

consequences, as regards the sentence to be imposed under section 12, of the person's compliance or non-compliance with a programme.

- (3) When the Drug Court sentences the person ("the initial sentence"), it shall:
  - (a) make an order requiring the person ("the offender") to undergo a prescribed treatment programme and to comply with the conditions imposed by the Court which have been accepted by the offender under subsection (2); and
  - (b) make an order suspending execution of the sentence for the duration of the offender's programme ("the offender's suspension order").
- (4) Where the Drug Court makes an order under subsection (3), the offender to whom it relates shall be required to signify his consent in writing to participate in the prescribed treatment programme, and to comply with the conditions imposed on him or her, including, where applicable, a condition that the offender undergo drugs tests at such times as are specified in the order.
- (5) Nothing in this Act entitles a person to be convicted and sentenced under this section, and no appeal lies against any decision by the Drug Court not to convict and sentence a person under this section, except with the special leave of the **[High Court]**.

#### **7. Persons not accepted into the programme**

- (1) This section applies to a person who has been referred to Drug Court under section 4 but whom the Drug Court has not convicted and sentenced under section 6.
- (2) The Drug Court may, under this section, convict and sentence a person who has pleaded guilty to the offence for which the person has been referred (whether before the referring court or Drug Court) if the person consents to being dealt with under this section.
- (3) If the person does not consent to being dealt with under this section, the Drug Court is to refer the person back to the referring court.
- (4) If the Drug Court refers a person back to the referring court, the proceedings against the person are to be continued before the referring court at a time and place specified in the order as if:
  - (a) the person had not been referred to Drug Court, and
  - (b) the proceedings had merely been adjourned to the time and place specified in the order.
- (5) A person who is convicted and sentenced by the Drug Court under this section with respect to an offence for which the person has been referred to Drug Court under section 4 may at the same time be convicted and sentenced for any other offence to which he or she has pleaded guilty (other than an offence referred to in section 3(2)), whether or not the person has been referred to Drug Court under section 4 in relation to that other offence.

### *Division 2 - Administration of Programme*

#### **8. Variation of conditions of programme**

- (1) The Drug Court may from time to time, and having taken into account any recommendation from the approved treatment provider, vary the programme as it considers appropriate by [adding new conditions to, or ] varying or revoking existing conditions of, the programme.
- (2) No appeal lies against any decision by the Drug Court to vary an offender's programme under this section

except with the special leave of the **[High Court]**.

#### **9. Proceedings for non-compliance with programme**

- (1) If it is satisfied, on the balance of probabilities, that an offender has failed to comply with the programme, the Drug Court:
  - (a) may, in accordance with the programme, impose any one or more of the sanctions specified in the programme, or
  - (b) if it is also satisfied that there is no useful purpose to be served in the offender's further participation in the programme, may decide to terminate that programme.
- (2) Without affecting the other circumstances in which an offender is taken to have failed to comply with the programme, an offender is taken to have failed to comply with the programme if he or she is charged before a court with an offence referred to in section 3(2).
- (3) No appeal lies in relation to any action taken or decision made by the Drug Court under this section except with the special leave of the **[High Court]**.

#### **10. Termination of programme**

- (1) The Drug Court may terminate an offender's programme:
  - (a) if the offender successfully completes the programme, or
  - (b) if the offender requests the Drug Court to terminate the programme, or
  - (c) if the Drug Court decides to terminate the programme in accordance with section 9(1)(b).
- (2) Where the offender's programme is terminated, the records of any tests performed on the offender concerned shall not be admissible in evidence in any proceedings against him or her.
- (3) No appeal lies against the Drug Court's termination of an offender's programme except with the special leave of the **[High Court]**.

#### **11. Procedure on termination**

As soon as may be reasonably practicable after the termination of the prescribed treatment programme, the offender shall be brought before the Drug Court to be dealt with in accordance with section 12.

#### **12. Imposition of final sentence**

- (1) On terminating an offender's programme, the Drug Court shall reconsider the offender's initial sentence, taking into consideration:
  - (a) the nature of the offender's participation in his or her programme, and
  - (b) any sanctions that have been imposed on the offender during the programme.
- (2) After reconsidering an offender's initial sentence, the Drug Court shall determine the offender's final sentence:
  - (a) by making an order setting aside the initial sentence and discharging the offender, either

unconditionally or conditionally on such conditions as the Drug Court imposes, or

- (b) by making an order setting aside the initial sentence, deferring the passing of sentence and releasing the offender conditionally on such conditions as the Drug Court imposes, or
  - (c) by making such order setting aside the initial sentence and imposing instead any sentence that it could have imposed for the offence to which the initial sentence related, or
  - (d) by making an order confirming the initial sentence.
- (3) Where the offender is discharged unconditionally under subsection (2)(a) above, the conviction in respect of the offence concerned shall not form part of his or her criminal record.
- (4) The final sentence determined for an offender in relation to an offence is not to be greater than the initial sentence imposed on the offender in relation to that offence.

### **13. Revocation of suspension order**

On sentencing an offender under section 12, the Drug Court shall revoke the offender's suspension order.

### **14. Arrest warrants**

- (1) Where the Drug Court suspects that an offender may have failed to comply with his or her programme, the Court may issue a warrant for the offender's arrest, authorising any police officer to arrest the offender and to bring him or her before the Drug Court to be dealt with under this Act.
- (3) The [Bail Act ...] does not apply to an offender who is arrested on the authority of a warrant under this section.

### **15. Sentences imposed by the Drug Court**

The sentences that may be imposed by the Drug Court under this Part are as follows:

- (a) in the case of an indictable offence, any penalty that could have been imposed by the [district] Court had the offence been dealt with on indictment by the [district] court,
- (b) in the case of a summary offence, any penalty that could have imposed by the [magistrates] court had the offence been dealt with summarily by a [magistrates] court.

### **16. Conditions of programme**

- (1) The conditions of a programme may allow the Drug Court to confer the following kinds of rewards on an offender who maintains a satisfactory level of compliance with the programme:
- (a) conferral of specified privileges,
  - (b) an appropriate change in the frequency of counselling or other treatment,
  - (c) a decrease in the degree of supervision to which the offender is subject,
  - (d) a decrease in the frequency with which the offender must undergo testing for drugs,
  - (e) a change in the nature of the vocational and social services attended by the offender or the frequency with which the offender is required to attend vocational and social

services, or

- (f) any other rewards as specified from time to time in the rules of court.
- (2) The conditions of a programme may allow the Drug Court to impose the following kinds of sanctions on an offender who fails to comply with the programme:
- (a) withdrawal of privileges conferred on the person, as referred to in subsection (1)(a),
  - (b) an appropriate change in the frequency of counselling or other treatment,
  - (c) an increase in the degree of supervision to which the offender is subject,
  - (d) an increase in the frequency with which the offender must undergo testing for drugs,
  - (e) a requirement that the offender pay a monetary penalty to the Drug Court not exceeding [ ] **standard fine units**,
  - (f) a requirement that the offender be subjected to imprisonment in a correctional centre for up to 7 days in respect of any one failure to comply with the requirements of the order,
  - (g) a change in the nature of the vocational and social services attended by the offender or the frequency with which the offender is required to attend vocational and social services, or
  - (h) any other lawful sanction as specified from time to time in the rules of court.
- (3) Where the Drug Court orders a person to pay an amount under sub section 2(e), that amount shall be recoverable by the registrar of the Drug Court as a debt in the [ ] court.

#### **17. Immunity from prosecution for certain offences**

A person shall not be liable to prosecution for any offence comprising the unlawful possession or use of drugs as a result of any admission made:

- (a) for the purposes of seeking a referral to the Drug Court under this Act [not being an admission of facts giving rise to an offence referred to in section 3(2)(a)], or
- (b) for the purposes of satisfying the Drug Court that the person should be accepted into a programme, or
- (c) as a result of any admission made in connection with the Drug Court's supervision of his or her programme,

nor may any such admission be admitted as evidence in proceedings for any offence comprising the unlawful possession or use of drugs that are brought as a result of the admission.

### *Division 3 - Information for the Drug Court*

#### **18. Provision of information**

- (1) Every approved treatment provider shall promptly notify the Drug Court of any failure by an offender to comply with the prescribed treatment programme.
- (2) The following provisions apply to and in respect of the provision of any information provided for the

purposes of this section (“the protected information”) -

- (a) the provision of the information -
    - (i) does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct;
    - (ii) shall not give rise to any action for defamation against that person;
    - (iii) shall not constitute a ground for civil proceedings for malicious prosecution or for conspiracy,
  - (b) the information shall not be admissible in any proceedings before a court, tribunal or committee;
  - (c) a person shall not be compellable in any such proceedings to disclose the information or to produce any document that contains the information.
- (3) The provisions of subsection (2)(b) and (c) do not apply to or in respect of the provision of protected information:
- (a) in proceedings before the Drug Court; or
  - (b) in support of, or in answer to, any charge or allegation made in proceedings against a person in relation to the person’s exercise of functions under this Act.
- (4) An offender is taken to have authorised the communication of protected information -
- (a) by an approved treatment provider to the Drug Court; and
  - (b) by any member of staff of the Drug Court to any other member of staff from the registrar to any person to whom this section applies.
- (5) A provision of any Act or law that prohibits or restricts the disclosure of information does not operate to prevent the provision of information in accordance with this section.

### **PART III - DRUG COURTS**

#### **19. Drug Courts and Judges of the Drug Courts**

- (1) The Secretary of State shall make regulations declaring specified [district] courts to be Drug Courts for the purposes of this Act.
- (2) The Secretary of State shall appoint to a special panel of judges those judges whom he or she considers to be specially qualified to deal with cases before the Drug Court, and no judge shall be qualified to sit as a member of the Drug Court unless he is a member of such a panel.

#### **20. Procedure of Drug Court**

All proceedings in the Drug Court are to be heard and disposed of before a Judge, who constitutes the Court.

#### **21. Jurisdiction of Drug Court**

The Drug Court has the following jurisdiction:

- (1) the criminal jurisdiction of the [district] court;
- (2) the criminal jurisdiction of the [magistrates] court; and

- (3) any such other jurisdiction as is vested in the Drug Court by this or any other Act.

#### **PART IV - MISCELLANEOUS**

##### **22. Regulations**

The **[Secretary of State]** may make regulations, not inconsistent with this Act, prescribing all matters necessary or convenient for giving effect to it, and, without restricting the generality of the foregoing, may make regulations:

- (a) prescribing eligibility criteria under section 3(1);
- (b) prescribing a disqualifying offence under section 3(2);
- (c) prescribing courts which are under a duty to consider whether a person is an eligible person for the purposes of this Act and proceedings where that duty should apply;
- (d) declaring specified [district] courts to be Drug Courts;
- (e) prescribing guidelines on the allocation of facilities to supervise and control participation of persons in treatment and rehabilitation programmes,
- (f) prescribing the amount of fine units under clause 16(2)(e) and
- (g) prescribing anything that, by this Act, is to be or may be prescribed.

##### **23. Transitional**

Part II applies to and in respect of an offence committed before the commencement of that Part in the same way as it applies to and in respect of an offence committed after that commencement, and so applies whether proceedings for the offence were commenced before or after that commencement.