

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

GUIDANCE AND COMMENTARY

Background

1. The link between drug abuse and crime is well documented, as is the failure of the traditional criminal justice system to break that link for a substantial number of drug dependent offenders. However, evaluations indicate that there are a number of alternatives to formal criminal justice system processing that can significantly reduce the ongoing serious criminal behaviour of these offenders through reducing their ongoing drug dependency. They typically target offenders whose dependency contributes to serious criminal offences such as burglary, property offences, or domestic violence, and, depending on the jurisdiction, drug dealing, who consent to participate in the programme and are deemed suitable to do so.
2. Increasingly it is recognised that with careful targeting of offenders, treatment and rehabilitation schemes can address the offender's underlying drug dependency problems, and thereby reduce their related criminal activity. With the successful rehabilitation of these offenders into society, imprisonment costs and other costs incurred in dealing with their criminal activity will be saved, and community well being enhanced. A growing number of countries are turning to this type of approach to try and break the link between drug abuse and crime.
3. Such an approach fits in with international provisions on how drug offenders are treated. For example, Article 3(4) of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 empowers parties to provide, either as an alternative or in addition to conviction or punishment, that drug offenders undergo measures of treatment, education, aftercare, rehabilitation or social reintegration.
4. Building on Article 3(4), the Special Session of the General Assembly in New York in June

1998 agreed that Member States should consider providing, either as an alternative to conviction or punishment, or in addition to punishment, that abusers of drugs should undergo treatment, education, aftercare, rehabilitation and social reintegration. Member States were encouraged to develop within the criminal justice system, where appropriate, capacities for assisting drug abusers with education, treatment and rehabilitation services. In this context, it was declared that close cooperation between criminal justice, health and social systems was a necessity and should be encouraged.

5. Further, an objective of the guiding principles of drug demand reduction agreed in March 1999 by the UN Economic and Social Council is *“to provide prevention, education, treatment or rehabilitation services to offenders who misuse drugs, whether in prison or in the community, as an addition to or, where appropriate and consistent with the national laws and policies of Member States, as an alternative to punishment or conviction;...”*.
6. UNDCP has provided a forum for states to bring together and share the practical experience of major legal systems in reducing drug abuse and related recidivism through the conjunction of the criminal justice and healthcare systems, and to develop internationally agreeable principles to ensure maximum possible impact of that interdisciplinary approach.
7. In December 1999 UNDCP hosted an Expert Working Group on drug courts in Vienna, which brought together judges and other justice system experts from Austria, Australia, Canada, France, Ireland, Jamaica, the Netherlands, Sweden, the UK, and the US involved in diversion approaches involving treatment and rehabilitation programmes. The EWG reviewed the collective experience and impact of such programmes, identified core factors underlying effectiveness and success, and what needed to change for that to be achieved; and identified practical guidelines for interested States on how to best establish and implement similar programmes. On the basis of those guidelines, UNDCP has developed a model law for court directed treatment and rehabilitation programmes, the UNDCP model Drug Court (Treatment and Rehabilitation of Offenders) Bill, 2000.

8. There are many models for treatment and rehabilitation programmes. Some programmes have emerged on a non-legislative basis. ⁽¹⁾ There are differences between systems as to who is eligible to participate, at what stage individuals are diverted from the criminal justice procedure, and what outcomes there are at the end of the treatment and rehabilitation programme.
9. It is the experience of those jurisdictions who have introduced diversion schemes that a range of programmes needs to be considered as part of an overall drug diversion strategy that targets a wide range of drug dependent offenders. Any one strategy is insufficient to deal with the varying problems and circumstances of these offenders.
10. For example, a pre-trial, pre-plea model may be more appropriate to deal with minor offenders. A consenting offender could receive bail from a judge on condition that he or she enters a treatment programme, and at the conclusion of the programme, after conviction, the court takes into account a treatment report received from the treatment provider before sentencing the person.
11. Further, for particular groups, such as juveniles, or indigenous populations in countries such as America and Australia, a separate approach may be required.
12. It should be emphasised that the UNDCP model Drug Court (Treatment and Rehabilitation of Offenders) Bill, 2000 targets those offenders at the “hard end” of the spectrum. The model law is based on a post plea, post conviction model, and is aimed at serious drug dependent offenders (although certain offences are excluded) who would otherwise have faced a minimum period of imprisonment. It is a tool which can and should be adapted to suit the needs of each jurisdiction, and at various points options have been suggested for enacting states to consider as appropriate.

Clause 2 - Definitions

⁽¹⁾ Eg. the drug court movement in the US, and Canada.

13. “*Drug*” is defined in clause 2(b), referring to the classification in the UNDCP model law on Drug Abuse. Some jurisdictions have included alcohol in the definition of drug.⁽²⁾
14. Drug courts are courts which deal with appropriate drug related offences and offenders through court-directed treatment and rehabilitation programmes. Existing courts and judicial officers can be used to administer such programmes. Looking at clause 2(c) and 22, the Secretary of State or other specified person is empowered to designate by regulations certain courts to be Drug Courts for the purpose of the Act.

Clause 3 - Eligibility

15. Clause 3 is a crucial provision. The potential group of drug dependent offenders the Act could cover is very wide, but clearly not all would be suitable subjects for treatment and rehabilitation programmes. States will wish to ensure that precious resources are targeted at the group of drug dependent offenders where treatment and rehabilitation programmes are likely to have a real impact. Various factors need to be taken into consideration here, such as the likelihood of the offender successfully completing the programme, the need to target those offenders who are having a disproportionately disruptive effect on their communities as a result of their drug misuse, the nature of the offence the individual has been charged with, and public safety concerns if an offender is to participate in a treatment and rehabilitation scheme, rather than face imprisonment.
16. The first criterion set out in clause 3(1)(a) is that the person has been charged with an offence, other than a clause 3(2) offence. Clause 3(2) excludes offenders charged with a trafficking and/or related serious drug offence, as set out in Part III of the UNDCP model common law Drug Abuse Bill 2000. It should be noted that some pilot drug courts have included certain categories of traffickers in their drug court programme.⁽³⁾ Also excluded in this model are

⁽²⁾ See eg. the Drug Court (Treatment and Rehabilitation of Offenders) Act, 2000 of Jamaica.

⁽³⁾ Eg. the pilot drug court in Toronto, Canada.

offenders charged with offences involving violent conduct or sexual assault.

17. Under clause 3(1)(b), only *‘drug dependent offenders’* are eligible for participation in treatment and rehabilitation programmes. The model refers to clause 3(1)(q) of the UNDCP model Drug Abuse Bill, which defines a *‘drug dependent person’* in relation to a drug of abuse or analogue, as *‘any person who has a condition such that: (a) administration of the drug to him or her results in the person demonstrating impaired control in relation to the use of that drug, or drug-seeking behaviour suggesting such impaired control; or (b) cessation of the administration of the drug is likely to result in the person experiencing symptoms of mental or physical distress or disorder’*. *‘Impaired control’* can cover a broad range of behaviour and may not necessarily be apparent to a lay person. It would be sufficient for an expert, eg. a doctor, to believe that the person had impaired control, for this description to apply.
18. It should be noted that a number of jurisdictions have deliberately chosen to extend the target group to drug abusing offenders to recognise the reality that drug abuse does in fact occur prior to dependency in many cases and that intervention at the earliest possible time can in fact prevent a number of individuals from becoming drug dependent.
19. Clause 3(1)(c) provides that a person’s drug dependency must have contributed to the commission of the offence the person is charged with. This is a matter for the court to decide, on the basis of the available evidence. This can cover not only where the person was under the influence of drugs at the time when he or she committed the offence, but also where he or she committed an offence in order to obtain the means to purchase drugs for him or herself.
20. Looking at section 3(1)(d), the problem of *‘net widening’*, ie the undesirable inclusion of more minor offenders in treatment and rehabilitation programmes, needs to be avoided, to prevent ineffective targeting of limited resources, and to avoid overwhelming the court. Having considered this issue, the EWG of December 1999 concluded that when deciding whether the treatment option is appropriate where the offender would have otherwise incurred a sentence

of imprisonment, in addition to the other criteria used to assess the offender's suitability for treatment, the length of the sentence the offender would have otherwise received should be taken into account. The aim is to link the length of imprisonment with the length of the treatment and rehabilitation. Although these do not need to be the same, if one is substantially disproportionate in length as compared to the other, participation in a programme is not likely to be suitable.

21. Juveniles are excluded from participating in treatment and rehabilitation programmes established under this Act, not because it is considered inappropriate for them to participate as such, but rather states may wish to have separate regulation to cover juvenile justice. ⁽⁴⁾
22. Clause 3(1) preserves the flexibility of states to prescribe other criteria in regulations made under clause 22.

⁽⁴⁾ Such schemes are compatible with the relevant norms of UN guidelines on the rights of the child and juvenile justice. The Annex to the UN Guidelines for the Prevention of Juvenile Delinquency ("the Riyadh Guidelines") states that comprehensive prevention plans against juvenile delinquency should be instituted at every level of Government, and that Government agencies should give high priority and allocate sufficient funds and other resources for drug and alcohol abuse prevention and treatment. The UN Rules for the Protection Of Juveniles Deprived Of Their Liberty states that imprisonment should be used as a last resort for juveniles, and that every juvenile is to receive adequate medical care, both preventive and remedial, and that the medical services provided to juveniles should seek to detect and treat any substance abuse that may hinder the integration of the juvenile into society. The UN Standard Minimum Rules for the Administration of Juvenile Justice ("the Beijing Rules") states that consideration is to be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, and that efforts should be made to provide for community programmes and to involve community resources to contribute effectively to the rehabilitation of the juvenile in a community setting.

PART II - TREATMENT AND REHABILITATION PROGRAMMES

Division 1 - Acceptance into Programme

4. Referrals to Drug Court

23. Regulations made under section 22 are to prescribe which courts and which proceedings the Act will apply to, ensuring that a pilot programme can be expanded if considered appropriate with flexibility and speed.
24. A court to whom the Act applies must ascertain whether the person is an eligible person and has no discretion in this regard (clause 4(2)). Again, if the person does appear to be an eligible person, the court must refer him or her to Drug Court (courts to be prescribed as Drug Courts by the Secretary of State - see clause 19) if the person has either pleaded guilty or indicated he or she intends to plead guilty, and the person is willing to be referred to drug court to be dealt with for the offence.
25. The need for the consent of the offender is an important point. No existing court based diversion scheme coerces offenders into treatment, and as a result, the EWG identified as one of the success factors underlying successful court-directed treatment and rehabilitation programmes that the fully informed documented consent of each participant offender (after receiving legal advice) was obtained before participating in a programme. Moreover, coercion could raise constitutional difficulties.⁽⁵⁾
26. It is important that the offender understands fully what treatment comprises, and what the sanctions are for each type of behaviour. It should be made clear to the offender at the outset

⁽⁵⁾For example, in 1997, the German Federal Constitutional Court (the Bundesverfassungsgericht) declared that forced treatment for substance abusers which involved incarceration in a drug treatment centre regardless of whether there was any possibility of effective treatment, was unconstitutional. The Court based its attack on provisions in the constitution dealing with the right of freedom of the person. The court held that this right protected individuals from such incarceration unless there is a greater public safety interest in continuing with it. The court considered that this public safety interest would be served only if the patient had a realistic possibility of rehabilitation.

that there will be no opportunity for manipulation.

27. However it should be noted that although there is a clear correlation between the initial motivation to participate and a successful outcome, lack of initial willingness is not necessarily indicative of the likelihood of failure.
28. Also, care should be taken to avoid offenders admitting guilt to offences which they did not commit in order to obtain placement on a court-directed programme, and to deter would-be offenders committing a crime in order to gain access (or faster access) to treatment under such a programme.
29. The requirement for speed in clause 4(4) is important. The offender is likely to be at the most receptive to the programme having been arrested, charged and brought to court, and this opportunity should be capitalised.

Clause 5 - Assessment of Eligible Persons

30. Clause 5 provides for the assessment of eligible persons by an approved treatment provider, defined in clause 2(1)(a). The treatment provider will formulate a plan of treatment and rehabilitation to be submitted to the court, tailored to the individual needs of each offender. The assessment of each potential participant offender should be detailed and include the types of treatment and rehabilitation options which are considered appropriate, eg. residential treatment, counselling etc., and, where allowed by the jurisdiction, pharmacotherapy using drugs such as methadone as part of a treatment programme. The assessment should also include an analysis of areas where they will need immediate support structures in order to be successful in the programme (eg. stable and drug free housing).
31. The assessment will enable the court to fashion individualized treatment objectives for each offender and to determine the appropriate sanctions and rewards (see further clause 16), taking into account the personal characteristics of each offender. The court is not compelled to adopt

the proposed plan of the programme, but can modify it as it sees fit; the latter is a recommendation only. However one of the key features of the drug court approach is that although the judge is the final decision maker, the emphasis is on decisions concerning the offender's participation in the diversion programme being reached through a multi-disciplinary approach, involving team working as between the judge, counsel and treatment and other service providers. If the court did propose to amend the plan substantially, this should be therefore be a decision taken after discussion with the treatment provider, and counsel.

32. Clause 5(2) provides that where based on an assessment by an approved treatment provider a person is not considered suitable for participation in a prescribed treatment programme, section 7 is to apply. It is for the court to decide if a person is not suitable, based on the assessment by the treatment provider.

Clause 6 - Referrals to Treatment and Rehabilitation Programmes

33. Clause 6(2) sets out the preconditions the Drug Court must be satisfied as to before it convicts and sentences a person who has pleaded guilty. Firstly the person must be an eligible person within the meaning of clause 3(1), and so must fulfil all the criteria specified in that provision, including any specified in regulations made pursuant to section 3(1)(f).
34. On the basis of the assessment by the treatment provider, and the person's previous record, the court is to decide if it would be appropriate for the person to participate in a prescribed treatment programme. The court is not empowered to direct a treatment and rehabilitation programme unless facilities are available and have been allocated to the person. This is an important limitation on the powers of the court, included to ensure that the offender does not have to wait for what could be lengthy periods for these resources to become available, so that the treatment and rehabilitation programme follows on as swiftly as possible after the court has passed sentence.
35. Clause 6(2)(e) provides that the offender accepts the conditions that the court proposes to

impose on the person as a consequence of his or her conviction and sentence, regardless of whether they are imposed at the time of sentence, or at a later date. The person must have been informed of the Court's powers under Division 2 of the Act, and the consequences of compliance and non compliance with the programme.

36. Clause 6(3) provides that the Drug Court can sentence the person to an initial sentence. On account of clause 3(1)(d) in most cases this is likely to be to a period of imprisonment. At the same time as it passes this initial sentence, the court must make two orders; firstly an order requiring the person to undergo a prescribed treatment programme, and to comply with the conditions that the person has accepted, and secondly an order to suspend the execution of the initial sentence for the duration of the offender's treatment and rehabilitation programme.
37. Clause 6(4) is an added safeguard for the offender, requiring him or her to signify his consent in writing to participate in the treatment and rehabilitation programme, reinforcing the voluntary nature of his or her participation.
38. Clause 6(4) makes specific reference to drug testing as one of the conditions which may be imposed by the Drug Court. Drug testing can be critical to the success of the programme as it is one of the most important objective factors available to the court to assess the offender's progress, and to assess his or her truth telling. Although drug testing alone does not give a true and accurate measure of what the court has to offer from a holistic perspective, it is the most consistently reliable objective test, and should be viewed as an important part of a comprehensive strategy to tackle the problem of drug dependency.
39. Drug testing should be regular (if necessary random) and reliable. How and when drug testing is done will vary between jurisdictions, and cost factors will be relevant. It is crucial that the test results are obtained immediately, so that the offender's progress can be assessed and sanctions applied quickly if warranted. ⁽⁶⁾

⁽⁶⁾ On site testing has the advantage that offenders who provide a dirty sample may be immediately challenged and referred to the court for sanction. An on site testing cup needs to have a high level of accuracy and

40. Clause 6(5) spells out that the Act does not entitle a person to be convicted or sentenced under section 6. Further, there is no appeal against any decision by the Drug Court not to convict and sentence a person under clause 6, except with the leave of the High Court or other specified court. This provision is mirrored in clause 8(2), 9(3) and 10(3), and reflects the policy that in the interests of the administration of justice and effective implementation of the Act, the decisions at issue are classified as exercises of judicial discretion which should not be subject to challenge except on natural justice grounds⁽⁷⁾, (an example of such a ground in the context of this provision might be that the court omitted to consider the section 5 assessment before reaching its decision). It is considered that the very nature of the decisions the court is empowered to take under clauses 6, 8, 9 and 10 require this approach - there will inevitably be a wide range of options for the court to choose from, and the court should not be constrained by the prospect of challenges that it should have decided differently when exercising its discretion. Such a provision may require an amendment to the state's legislation on criminal appeals and procedure.

Clause 7 - Persons not accepted into the programme

41. Clause 7 would also apply where the person did not accept the conditions the Court proposed to impose on him or her. The Court is empowered to convict and sentence a person who has pleaded guilty under section 7, but only if the person consents to it doing so. If he or she does not consent, the Drug Court must refer the person back to the referring court for conviction and sentencing. Under clause 7(4), the proceedings before the referring court will continue as if the person had not been referred to Drug Court, and the proceedings had merely been adjourned. Clause 7(5) provides that the Drug Court can convict and sentence a person for any other offence to which he or she has pleaded guilty, regardless of whether the person was referred

the sample taker needs to be thoroughly trained in sample taking and result interpretation. Where a result is challenged, it is most desirable that laboratory verification be available. It is crucial that the judicial officer (who is responsible for imposing sanctions for "dirty" results) be confident in the results of urine testing.

⁽⁷⁾ Akin to eg. the right to object to three jurors, but no more.

to Drug Court under section 4 for that offence, with the exception of clause 3(2) offences.

Division 2 - Administration of Programme

Clause 8 - Variation of conditions of programme

42. Under clause 8(1), the Drug Court can vary the programme as it considers appropriate. It has been left as an option as to whether the Drug Court can vary the programme to add new conditions, but in terms of flexibility it would clearly be preferable if it could. Under clause 6(4), the offender would have been required to consent in writing to the conditions imposed on him or her in relation to his or her participation in the treatment and rehabilitation programme. As a safeguard for the offender, if new conditions are imposed which are objectionable to him or her, the offender can request the Drug Court to terminate the programme (clause 10(1)(b)). No appeal lies against this decision, except with the leave of a specified court.

Clause 9 - Proceedings for non-compliance with programme

43. Clause 9 makes provision where an offender has failed to comply with the programme. The Drug Court must be satisfied “*on the balance of probabilities*” that this is the case, taking into account results of drug tests administered during the programme, assessment of treatment providers etc. The Drug Court can either impose sanctions specified in the programme, or decide to terminate the programme.
44. Clause 9(2) provides that an offender is taken to have failed to comply with the programme if he or she is charged with a disqualifying offence under section 3(2). Again, no appeal lies against this decision, except with the leave of a specified court.

Clause 10 - Termination of programme

45. Clause 10 provides for the termination of the programme, in the event of successful completion, or on the request of the offender, or if the Drug Court considers there is no useful purpose to be served in the offender's further participation in the programme.
46. Clause 10(2) provides an important safeguard for the offender, in stating that in any of these circumstances, the records of tests performed on him or her shall not be admissible in evidence in proceedings against him or her (see further clause 17). In accordance with clause 10(2), if the person has failed a drug test, and thus is known to have possessed and used drugs, he or she shall not be liable to prosecution for such possession and use on the basis of the results of that test. It is recognised that drug dependent offenders may well lapse and use drugs whilst on the programme, and so in this way it is hoped to maximise the chances of success for the offender by removing the threat of further proceedings whilst he or she undergoes treatment and rehabilitation.

Clause 11 - Procedure on termination

47. Clause 11 provides for the procedure on termination.

Clause 12 - Imposition of final sentence

48. Clause 12(1) obliges the Drug Court to reconsider the offender's initial sentence imposed under clause 6(3), taking into account how the offender responded to the programme, and whether sanctions had been imposed on him or her during it. Thus the Court has the discretion to reduce an imprisonment term by time already served pursuant to his or her participation in the programme (see clause 16(2)(f)). Under clause 12(2), the Drug Court is to decide on the offender's final sentence in the ways prescribed. The sentence will take into account the offender's motivation and nature of participation in treatment, in addition to the seriousness of the current offence. As a general rule, if the offender has made substantial gains in treatment,

it is unlikely that he or she will receive a custodial sentence.

49. Clause 12(3) provides that where the offender is discharged unconditionally, the conviction in respect of the offence concerned shall not form part of his or her criminal record. Such an outcome should provide a strong incentive to the offender to successfully complete the programme. The provision will probably require a change to the enacting state's relevant sentencing legislation.
50. Clause 12(4) has been included to avoid the problem of an offender who breaches the programme conditions facing a sentence of greater imprisonment than would have been imposed on him/her at the outset, if he/she had not agreed to take part in the programme. This could be seen as an infringement of the offender's constitutional rights⁽⁸⁾. Under clause 12(4), the final sentence must not be greater than the initial sentence imposed on the drug offender in relation to that offence.

Clause 13 - Revocation of suspension order

51. Clause 13 provides for the revocation of the offender's suspension order imposed under section 6(3)(b) where the Drug Court has sentenced a drug offender under section 12.

Clause 14 - Arrest warrants

52. Clause 14 provides the statutory basis for the issuance of a warrant of arrest of an offender where the Drug Court suspects the person may have failed to comply with his or her programme (eg. where the person has missed court appearances, or treatment sessions), and provides that the relevant Bail Act is not applicable where the person has been arrested under this power.

⁽⁸⁾ See eg. Article 7 of the European Convention on Human Rights, which prohibits a heavier penalty being imposed on a person than the one which was applicable at the time the criminal offence was committed.

Clause 15 - Sentences imposed by the Drug Court

53. The effect of clause 15 is that the Drug Court is empowered to impose any sentence that could have been imposed by the relevant court in the event of an indictable or summary offence.

Clause 16 - Conditions of Programme

54. Clause 16 makes provision for rewards to be conferred and sanctions imposed on the offender, depending on the nature of his or her participation in the treatment and rehabilitation programme. Sanctions for non-compliance with court orders should be swift, certain and consistent. The offender must be allowed to state his or her view before the judge decides on a sanction. Equally, it is important to reward compliance with appropriate incentives and recommendations, to encourage and reinforce progress to date. While sanctions and rewards need to be consistent, particular circumstances should be taken into account in imposing them.
55. Clause 16(1) sets out the rewards the Drug Court may confer on an offender who is satisfactorily complying with the programme. In accordance with clause 16(1)(f), this list is not exhaustive, ensuring flexibility to enable the Drug Court to tailor its response to satisfactory compliance to each individual.
56. Clause 16(2) sets out the sanctions that may be imposed. Under clause 16(2)(e), the offender may be ordered to pay a monetary penalty to the Drug Court not exceeding a specified amount - the drafting in terms of standard fine units is designed to ensure this can be amended easily under section 22 regulations. Clause 16(2)(f) is an important provision, enabling the Drug Court to imprison the offender for up to 7 days. The objective of such a short term deprivation of liberty is *not* punishment for the original offence, but rather to encourage focus and the taking of responsibility by the offender for an ongoing serious problem. As with clause 16(1), the list of sanctions is not exhaustive (clause 16(2)(h)).

Clause 17 - Immunity from prosecution for certain offences

57. Clause 17 provides important safeguards for offenders in order to encourage candour and responsibility whilst on the programme, conferring on them immunity from prosecution for the unlawful possession or use of drugs as a result of an admission made to seek referral to Drug Court, or to satisfy the Drug Court that the person should be accepted into a programme, or as a result of any admission made in connection with the supervision by the Drug Court of his or her programme. Under clause 17(a), if the facts admitted give rise to a disqualifying offence under clause 3(2)(a), the person is not immune from prosecution (optional clause for states).

Division 3 - Information for the Drug Court

Clause 18 - Provision of information

58. Under clause 18(1), treatment providers are under a duty to promptly notify the Drug Court of any failure by a drug offender to comply with the prescribed treatment programme. Team work is vital here. Strong inter-disciplinary collaboration is recommended from the outset between the team members. The team would comprise the judge and other court staff, defence and prosecution lawyers, treatment provider, probation officer, rehabilitation personnel, and others concerned with the case as appropriate. The clear common goal of the team would be to reduce the level of criminal activity which results from drug dependency, by means of effective treatment and rehabilitation, through the performance of their usual roles, with some adaptation to suit the different process.
59. Ongoing communication (through meetings etc) between the team is essential, to ensure everyone is working together in the best way possible. The creation of a liaison position between the court and the treatment team can be particularly useful. The person who fills this position must be capable of acting in an unbiased manner, and provide a reliable conduit of information between the two teams. This individual would attend all pre-drug court meetings and all meetings of the treatment team where information is exchanged and strategies for drug court participants are discussed.

60. It is important that team discussion be as full and frank as possible, to ensure that decisions are well informed. With this consideration in mind, clause 18(2) makes provision for the protection of information provided under clause 18. Clause 18(3) provides an exception allowing such information to be provided in proceedings before the Drug Court, or in support of, or in answer to, any charge or allegation made in proceedings against a persons in respect of that person's exercise of functions under this Act.
61. To avoid a breach of rights to privacy and to comply with data protection requirements, clause 18(4) provides that the offender is taken to have authorised the communication of protected information in proceedings before the Drug Court, or 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 the Act. As a general point, the enacting state should consider data protection issues at the planning stage, when the information needs of the programme are identified.
62. Clause 18(5) overrides any other Act which prohibits or restricts the disclosure of information in respect of the provision of information under the section.

Part III - Drug Courts

Clause 19 - Drug Courts and Judges of the Drug Courts

63. Clause 19 empowers the Secretary of State to make regulations declaring particular courts to be Drug Courts for the purposes of this Act. This will require amendment to the relevant legislation dealing with courts and court procedure of the enacting state. Existing courts and judicial officers can be used; in some countries, judicial officers may sit say two half-days per week to deal with "drug court" matters, and the remainder in their normal jurisdictions. However because special personal qualities and experience are required of drug court judicial officers (see below), a limited number of dedicated drug courts (whether full time or part time) are preferable to an arrangement where all judicial officers may operate a drug court on a part time basis.

64. Clause 19(2) provides that the Secretary of State is to appoint judges to a special panel, and only those judges are qualified to sit as a member of the Drug Court. This reflects the experience of jurisdictions that not every judge will be appropriate for this work. They need high-levels of personal maturity, commitment and vision for both the court and its multi-disciplinary support team to best achieve the objective of reducing on-going criminal behaviour of offenders through effective treatment and rehabilitation. The work also requires a constructive openness to change, particularly of traditional practice and procedure in ways that preserve, complement and advance the core underlying justice purpose.

Clause 20 - Procedure of Drug Court

65. Clause 20 provides that all the proceedings in the Drug Court are to be heard and disposed of before a Judge, who constitutes the Drug Court.

Clause 21 - Jurisdiction of Drug Court

66. Clause 21 confers jurisdiction on the Drug Court.

Clause 22 - Regulations

67. Clause 22 confers on the Secretary of State the power to make regulations for the purposes listed in that provision, and for any others that are necessary or expedient for giving effect to the Act.

Clause 23 - Transitional

68. Clause 23 makes transitional provision, with the effect that the Act applies to and in respect of an offence committed before Part II of the Act commences, as if the offence had been committed after that commencement. It is therefore irrelevant to the application of the Act

whether proceedings for the offence were begun before or after that commencement.

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